

February 13, 2024

MPP Goldie Ghamari
Chair, Standing Committee on Justice Policy
Whitney Block
Room 1405
99 Wellesley Street W
Toronto, ON M7A 1A2

RE: Feedback on Bill 153, the Building Infrastructure Safely Act, 2023

Dear MPP Ghamari,

The Ontario Chamber of Commerce (OCC) is the indispensable partner of business and Canada's largest, most influential provincial chamber. It is an independent advocacy and member services organization representing a diverse network of 60,000 members. The OCC's mission is to convene, align and advance the interests of its members through principled policy work, value-added business services, and broad engagement to drive competitiveness and inclusive, sustainable economic growth in the province.

The OCC is committed to working with the Government of Ontario on behalf of our members to improve locate delivery timelines and enhance safety outcomes, while managing costs for stakeholders and ratepayers. As such, this letter builds on the OCC's [previous advocacy](#) on this issue.

Introduction

On November 22, 2023, the Government of Ontario introduced the *Building Infrastructure Safely Act, 2023* (Bill 153), which contains many welcome amendments to the *Ontario Underground Infrastructure Notification System Act, 2012* (the Act). Bill 153 proposes key changes including to prohibit infrastructure owners from introducing fees for locates, remove recourse provisions for excavators, align Ontario One Call (OOC) powers with other administrative authorities, and enhance the Minister's regulation-making powers.

The government has also engaged in public consultation on proposed regulations associated with Bill 153, to provide underground infrastructure owners and operators with a more realistic timeline for completing locates for large projects (the Proposal). This Proposal laid out a phased approach for introducing regulations under the Act for large projects to be in effect in May 2024 (Phase 1). It also prescribes a detailed process that excavators must follow when submitting locate requests to be in effect in early 2025 (Phase 2).

The OCC welcomes the opportunity to provide feedback and support for next steps. This submission summarizes our feedback on Bill 153, outlines two additional issues that should be addressed as legislative and regulatory amendments are proposed, and provides feedback on the government's regulatory Proposal.

Feedback on Bill 153

The OCC supports the government's overall direction as outlined in Bill 153 – particularly proposed amendments that will allow for realistic locate delivery timelines and remove excavator recourse provisions. Both these changes are important to ensure the modernization of the locate services industry and enhance safety outcomes while managing costs for all stakeholders and ratepayers.

The *Getting Ontario Connected Act, 2022* (Bill 93) created absolute liability offences for failing to meet locate delivery timelines by removing language requiring companies to make “reasonable attempts” to deliver locates on time. By doing this, Bill 93 created a firm five-day timeline for delivering locates. This was particularly problematic given that there are scenarios beyond the control of infrastructure owners to deliver locates on time (e.g., storms, access issues).

While OOC will be taking a gradual approach to enforcement of the Act through administrative monetary penalties, infrastructure owners are still required to make significant investments now to retain and attract locators as well as invest in additional resources, equipment, vehicles, training, and IT infrastructure to meet these locate delivery timelines. Increased investments present additional pressure on operations and maintenance budgets.

We remain supportive of Bill 153, and particularly the removal of excavator recourse provisions that allow excavators to seek cost recovery for delays attributable to late locates at the Ontario Land Tribunal. **The OCC encourages the removal of both member and excavator recourse provisions from the Act.** As an alternative, empower the OOC to mediate disputes of this nature, reducing the burden placed on the Ontario Land Tribunal.

In addition, **we strongly support the government's phased proposal to extend locate delivery timelines for larger projects.**

Lastly, the OCC supports the expansion of the Dedicated Locator model, which would assist project owners with larger-scope projects and help industry stakeholders make this a viable alternative.

Additional Priorities for the Cost-Effective and Timely Delivery of Locates

While the OCC supports the government's proposed direction in Bill 153, more can be done. Two additional measures would further advance the modernization of the locate services industry while supporting infrastructure projects and enhancing safety: removing absolute liability language and exploring opportunities for further adoption of the Dedicated Locator model.

First, **the government should introduce further amendments to the Act focusing on compliance instead of penalties.** As noted above, Bill 93 created absolute liability offences for failing to meet locate delivery timelines. The government should remove the absolute liability language from the Act while working with relevant stakeholders, industry partners, and OOC to allow for the enforcement of requirements outlined in the Act when necessary. Unless the absolute liability provisions are removed from the Act, infrastructure owners will need to heavily invest in their locating capabilities to meet locate delivery timelines set out in Bill 93, which would impose an unreasonable financial burden that could necessitate forms of cost recovery.

Second, **the government should continue discussions with industry to explore opportunities for enhancing and encouraging the adoption of dedicated locators for large projects where appropriate.** This would create significant efficiencies and cost savings for locate delivery while giving infrastructure owners time to adapt to this model. Alternatively, if deemed necessary, **the government should consider delegating authority to OOC to support projects that meet certain criteria to use dedicated locators.**

The government could also directly mandate the adoption of dedicated locators by expanding the list of projects in section 7(1) of the Act through regulation. While dedicated locators are mandated for designated broadband projects, this could be expanded to also cover other large infrastructure projects identified in other legislation (e.g., transit) and /or by excavation size (e.g., 500m or more). The government could also introduce exemptions for certain projects.

Feedback on the Government's Regulations under Bill 153

In addition to our overall support for Bill 153, **the OCC strongly supports the government's recent steps to adopt new regulations, updated under the Act and outlined in a phased approach.** The comments below are consistent with feedback submitted by the OCC in November 2023.

Specifically, we support Phase 1 of the government's Proposal that calls for locates for large projects to be completed within 10 business days beginning in May 2024. This Proposal will help mitigate some challenges with delivering locates within five business days for all locate requests regardless of size and complexity. There also may be opportunities in Phase 2 to further differentiate between dig projects based on size, as recommended below. In addition, moving to more attainable timeframes on project locates will also give added visibility to the locate industry to better align resources and focus attention on larger scope locates.

We further support the government's Phase 2 Proposal with refinement through consultations to require that standard locate requests not be separated into smaller projects/phases unless these requests are made more than 30 days apart. Such a requirement will help reduce abuse of the locate request procedures.

The OCC and its members remain committed to working with the government and OOC on Phase 2 of the Proposal. **While we support the government’s Phase 1 Proposal, we continue to recommend the project classification approach outlined in the Ontario Energy Association’s (OEA) [proposal](#)**, which further breaks down locate requests into small and large projects as follows:

- **Emergency Locate Request:** 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. (Note: this definition is unchanged)
 - Delivery Timeline: We are not proposing a change to the current two-hour legislative timeline.
- **Standard Locate Request:** A locate requested by the owner or tenant of a property where they reside or a locate requested for a single address plus any work associated with that address (e.g., adjacent properties or work to be done across the road from the property).
 - Delivery Timeline: The Member shall make all reasonable attempts to provide the locate within five days from the submission date.
- **Small Project Locate Request:** A locate request for work that exceeds the size of a standard locate request but does not meet the threshold of a large project locate request.
 - Delivery Timeline: The project owner must submit the locate request at least fifteen days before the proposed excavation commences.
 - In addition, OOC should have the flexibility to require a small project locate request to use a dedicated locator based on the project scope.
- **Large Project Locate Request:** A locate requested for a dig area that either (i) spans a distance greater than 500 metres in an urban environment or 1000 metres in a rural setting; or (ii) will take longer than 30 days to complete (e.g., a large water/sewer replacement project, deep servicing, utility relocations, etc.).
 - Delivery Timeline: The project owner must submit the locate request at least 30 days prior to the date that the proposed excavation will commence. The Act should stipulate that a dedicated locator be used for large project requests with the same compliance timelines as “designated projects” under the Act. That said, OOC should have the flexibility to require a large project locate request to use a dedicated locator based on project scope.

We appreciate that OOC may not currently have the capabilities to implement this recommendation as part of Phase 1 due to limitations with its locate intake systems. However, there may be opportunities to implement this recommendation later as part of Phase 2 or otherwise.

Since the government’s proposed ten business day timeline for large project locates is less than the 15-30-day timelines proposed through the OEA’s June 2023 submission, we encourage the government to remain engaged with industry partners through the implementation of Phase 2 of the Proposal.

The OCC continues to support proposals that provide infrastructure owners and their Locate Service Providers with as much lead time as possible when receiving locate requests to facilitate advanced planning and the most efficient deployment of locating resources.

We recommend that the implementation of administrative monetary penalties be postponed from the current target of May 2024 to May 2025. This would provide firms and developers of all sizes the time necessary to comply with the proposed changes and ensure the proposal aligns with the timing of Phase 2 in the government's Proposal. If the government acknowledges the need to provide longer timelines for completing project locate requests, it would be premature to implement administrative penalties while project locates remain subject to the five business day delivery requirements.

In closing, we would like to thank you for the opportunity to comment on these important regulations. The OCC and its members look forward to working with you, the government, and OOC to improve the locate delivery system and accelerate infrastructure builds to support economic growth, greater productivity, and resilience in communities throughout the province.

Sincerely,



Daniel Tisch, APR, FCPRS, ICD.D
President and CEO
Ontario Chamber of Commerce

cc: Hon. Todd J. McCarthy, Minister of Public and Business Service Delivery
Hon. David Piccini, Minister of Labour, Immigration, Training and Skills Development
Hon. Prabmeet Singh Sarkaria, Minister of Transportation
Hon. Todd Smith, Minister of Energy
Hon. Kinga Surma, Minister of Infrastructure
Hon. Lisa M. Thompon, Minister of Agriculture, Food and Rural Affairs
MPP Sam Oosterhoff, Parliamentary Assistant to the Minister of Red Tape Reduction