

November 20, 2023

The Hon. Todd McCarthy  
Ministry of Public and Business Service Delivery  
Public Safety and Operations Policy Branch  
56 Wellesley St. West, 6th floor  
Toronto, Ontario  
M7A 1C1

**RE: Consultation on a draft regulation proposal to specify large project locate requests under the Ontario Underground Infrastructure Notification System Act, 2012 (Proposal: 23-MPBSD013)**

Dear Minister McCarthy,

For more than a century, the Ontario Chamber of Commerce (OCC) has supported economic growth by advocating for business priorities on behalf of our 60,000 members, including local chambers of commerce and boards of trade in close to 160 communities.

Following a series of recent consultations and efforts to address the ongoing backlog of locate requests and enhance the locate delivery system throughout Ontario, the Ministry of Public and Business Service Delivery (MPBSD) has drafted a proposal in response to stakeholder feedback that not all locates can be completed within the required 5 business days, and to offer increased flexibility to underground infrastructure owners/operators during locates for extensive projects. This initiative aims to balance the need for adaptability with cost considerations, considering potential alterations in land use and municipal governance.

The OCC welcomes the opportunity to provide feedback on the proposed regulation to specify large project locate requests under the Ontario Underground Infrastructure Notification System Act (2012), on behalf of Ontario's business community. The submission below provides the OCC's feedback on MPBSD's phased approach as outlined in the consultation paper (the Proposal), followed by a summary of outstanding priority items for ongoing consultation.

## **Overview**

The OCC appreciates the phased approach proposed by MPBSD, which acknowledges that there are different types of locates (e.g., standard address vs. projects) with varying delivery timelines required.

Specifically, **we support Phase 1 of the Ministry's Proposal** that calls for locates for large projects to be completed within 10 business days beginning in May 2024. The OCC's members believe this Proposal will help mitigate some of the challenges with delivering locates within 5 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.

**We further support the Ministry's Phase 2 Proposal with refinement through consultations** to implement a requirement 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 MPBSD and Ontario One Call on Phase 2 of the Proposal. **While we support the Ministry's Phase 1 Proposal, we continue to recommend the project classification approach outlined in the Ontario Energy Association (OEA) proposal submitted June 30, 2023, as part of an earlier MPBSD consultation**, 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 5 days from the date of submission.
- **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 15 days prior to the date that the proposed excavation will commence. In addition, Ontario One Call ought to have the flexibility to require that a small project locate request use a dedicated locator based on project scope.
- **Large Project Locate Request:** A locate requested for a dig area that either (i) spans a distance greater than 500 meters in an urban environment or 1000 meters 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, Ontario One Call ought to have the flexibility to require that a large project locate request use a dedicated locator based on project scope.

We appreciate that Ontario One Call 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 at a later date as part of Phase 2 or otherwise.

Since MPBSD's proposed 10 business day timeline for large project locates is less than the 15–30-day timelines proposed through the OEA's June 2023 submission, we would encourage the Ministry 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 (AMPs) be postponed from the current target of April 2024 to April 2025. This would allow firms and developers of all sizes the time needed to comply with the proposed changes and ensure the proposal aligns with the timing of Phase 1 in the Ministry's Proposal. If the Ministry acknowledges the need to provide longer timelines for completing project locate requests, it would be premature to implement AMPs while project locates remain subject to the 5 business day delivery requirements.

### **Remaining Priorities to Address for the Cost-Effective and Timely Delivery of Locates**

1. Amend the Ontario Underground Infrastructure Notification System Act (the Act) to focus on compliance instead of penalties.
  - Bill 93 created absolute liability offences for failing to meet locate delivery timelines by removing language that required companies to make “reasonable attempts” to deliver locates on time.
  - The Government should remove the absolute liability language from the Act while working with industry partners and Ontario One Call to allow for enforcement of the requirements of the Act when required.
  - Unless the absolute liability provisions are removed from the Underground Infrastructure Notification System Safety Act (the Act), utility infrastructure owners will need to continue increasing incremental investments into their locating capabilities until locate delivery timelines set out in Bill 93 can be met.
2. The member and excavator recourse provisions should be removed from the Act. An alternate approach of having Ontario One Call mediate disputes of this nature is preferable and would reduce the burden placed on the Ontario Lands Tribunal in adjudicating these issues.
3. Mandate the adoption of dedicated locators.
  - Mandate that the province's top 25 largest infrastructure owners use dedicated locators on all their own dig projects, except for single address projects, by April 2025. This proposal would create significant efficiencies and cost savings for locate delivery while giving utilities time to adapt to this model.

- Alternatively, if deemed necessary, MPBSD can delegate authority to Ontario One Call to mandate that projects meeting certain criteria use dedicated locators.
- The Government could also directly mandate the more targeted adoption of dedicated locators by expanding the list of projects contained in section 7(1) of the Act through Regulation. While dedicated locators are already mandated for designated broadband projects, this could be expanded to also cover other large infrastructure projects identified in other legislation (e.g., transit, etc.) and/or by excavation size (e.g., 500m or more). The Government could also introduce exemptions for certain projects.
- MPBSD should continue working with industry and Ontario One Call to establish a consultation process to inform this decision.

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

Sincerely,



Rocco Rossi  
*President and CEO*  
*Ontario Chamber of Commerce*

CC: The Hon. Prabmeet Singh Sarkaria, Minister of Transportation

The Hon. Kinga Surma, Minister of Infrastructure

The Hon. Todd Smith, Minister of Energy

The Hon. David Piccini, Minister of Labour, Immigration, Training and Skills Development

The Hon. Lisa M. Thompson, Minister of Agriculture, Food and Rural Affairs

Doug Jones, Deputy Minister, Ministry of Transportation

Carlene Alexander, Deputy Minister, Ministry of Infrastructure

Jason Fitzsimmons, Deputy Minister, Ministry of Energy

Greg Meredith, Deputy Minister, Ministry of Labour, Immigration, Training and Skills

Development

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