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Bill 93

An Act to amend the Building Broadband Faster Act, 2021 and the Ontario Underground Infrastructure Notification System Act, 2012

The Hon. K. Surma
Minister of Infrastructure

Government Bill

1st Reading March 7, 2022

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

SCHEDULE 1 BUILDING BROADBAND FASTER ACT, 2021

The *Building Broadband Faster Act, 2021* is amended. Among the amendments:

1. Subsection 4 (1), section 6, and subsection 7 (1) are repealed and replaced. The new subsection 4 (1) sets out when the Minister may by notice require a distributor or transmitter to complete work necessary for the deployment of a designated broadband project including in circumstances where the Ontario Energy Board has made an order. The new section 6 requires that such notices specify the date by which the notice must be complied with, except in prescribed circumstances, and provides that modifications may be made to orders of the Ontario Energy Board. The new subsection 7 (1) provides that where a notice specifies a date, an application may be made to a judge of the Superior Court of Justice for an order altering the date.
2. New 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.
3. New section 20.1 includes new requirements relating to data sharing for certain persons or entities. If specified persons or entities receive a request from the Minister for data concerning utility infrastructure owned by that person or entity within 10 metres of a designated broadband project, they are required to disclose the requested data within 15 business days of receiving the request. The Minister may use the Broadband One Window platform to make such a request. The data disclosed may be used to enable construction of designated broadband projects.
4. Section 21 of the Act is repealed and replaced. The new section 21 requires a proponent of a designated broadband project who intends to carry out an excavation or dig for the project to comply with section 7 of the *Ontario Underground Infrastructure Notification System Act, 2012*. The new section 21 also 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.

SCHEDULE 2 ONTARIO UNDERGROUND INFRASTRUCTURE NOTIFICATION SYSTEM ACT, 2012

The Schedule amends the *Ontario Underground Infrastructure Notification System Act, 2012*. Here are some highlights:

Changes are made to the Minister's powers with respect to the members of the board of the Corporation. For example, the Minister may appoint members to the board as long as the appointed members do not constitute a majority of the board. The Minister may also provide that no more than a fixed percentage of members of the board shall be drawn from among the persons or classes of persons specified in the order.

The Minister and the Corporation are required to enter into a memorandum of understanding, which shall include, at a minimum, terms related to certain specified matters.

Various changes are made with respect to locate requests, including the following:

1. A member may receive a standard locate request or an emergency locate request from the Corporation that has been submitted by an excavator, and the member must respond to each type of request within certain time limits.
2. A project owner who intends to carry out a specified excavation or dig project is required to notify the Corporation of the project. The affected members and the project owner must agree in writing on a locator (the "dedicated locator") who will respond to all locate requests by the project owner in respect of the project. Certain requirements are imposed on the affected members, the project owner and the dedicated locator, and additional requirements may be set out in the regulations.
3. A locate is valid for a period of 60 days or such other period as may be prescribed, however the member or dedicated locator may specify that it is valid for a longer period.
4. If a member becomes aware of a change to information that was provided in regards to a locate that is still valid, the member is required to notify certain persons within two business days after becoming aware of the change.
5. Changes are made to the conditions that must be satisfied before an excavator can commence an excavation or dig and new conditions are set out for the continuation of an excavation or dig after the validity period of a locate has expired.
6. Provision is made for excavators to share locate information that they receive with other excavators.
7. Excavators are prohibited from submitting a standard locate request more than 30 days before an excavation or dig is expected to commence and are prohibited from submitting an emergency locate request that does not satisfy the description of such a request.
8. Members and dedicated locators are required to notify the Corporation after responding to a locate request, and to notify the Corporation if there will be a delay in responding to a locate request.

The Corporation is required to make certain information about members' locate performance available to the public on the Corporation's website.

An excavator may claim compensation against a member for certain losses if the member does certain things, such as failing to provide an accurate locate.

A new offence provision provides that it is an offence for a person or entity, other than the Corporation, to contravene or fail to comply with any section of the Act or the regulations. It is also an offence for the Corporation or its directors, officers, employees or agents to knowingly contravene the Act or the regulations.

An assessor appointed by the Corporation is allowed to impose an administrative penalty against a member or excavator if the assessor is satisfied that the member or excavator has contravened or is contravening a prescribed provision of the Act or of the regulations. The member or excavator can appeal the order to the appeal body prescribed by a regulation made by the Minister or to the Ontario Land Tribunal if the Minister has not prescribed a person for that purpose. The Corporation is required to make information about orders imposing administrative penalties available to the public on the Corporation's website, except for orders that are revoked.

**An Act to amend the Building Broadband Faster Act, 2021 and the
Ontario Underground Infrastructure Notification System Act, 2012**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Contents of this Act

1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.

Commencement

2 (1) Except as otherwise provided in this section, this Act comes into force on the day it receives Royal Assent.

(2) The Schedules to this Act come into force as provided in each Schedule.

(3) If a Schedule to this Act provides that any provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.

Short title

3 The short title of this Act is the *Getting Ontario Connected Act, 2022*.

**SCHEDULE 1
BUILDING BROADBAND FASTER ACT, 2021**

1 Section 2 of the *Building Broadband Faster Act, 2021* is amended by adding the following definitions:

“Broadband One Window platform” means the digital platform maintained on behalf of the Minister to support the design, procurement, construction and management of designated broadband projects; (“plateforme Broadband One Window”)

“dedicated locator” has the same meaning as in the *Ontario Underground Infrastructure Notification System Act, 2012*; (“localisateur unique”)

“utility company” means a municipal corporation or commission or a company or individual operating or using communications services, water services or sewage services, or transmitting, distributing or supplying any substance or form of energy for light, heat or power; (“entreprise de services publics”)

“utility infrastructure” means poles, wires, cables including fibre-optic cables, conduits, towers, transformers, pipes, pipelines or any other works, structures or appliances placed over, on or under land or water by a utility company. (“infrastructure de services publics”)

2 Subsection 4 (1) of the Act is repealed and the following substituted:

Notice to distributor and transmitter

(1) The Minister may by notice require a distributor or transmitter to complete work if, in the opinion of the Minister, the work is necessary for the deployment of a designated broadband project, and if,

- (a) the Ontario Energy Board has made an order with respect to any application made by a proponent to the Ontario Energy Board under the *Ontario Energy Board Act, 1998* with respect to the work; or
- (b) no application has been made by the proponent to the Ontario Energy Board under the *Ontario Energy Board Act, 1998* regarding the work and the Minister has,
 - (i) determined that the distributor or transmitter has not met a requirement under the *Ontario Energy Board Act, 1998* or this Act with respect to when something must be done and the requirement is prescribed by regulation under this Act for the purposes of this subsection, or
 - (ii) received written notice from a proponent that there is a disagreement between the proponent and the distributor or transmitter as to whether the distributor or transmitter has met a requirement under the *Ontario Energy Board Act, 1998* or this Act and the requirement is prescribed by regulation under this Act for the purposes of this subsection.

3 Section 6 of the Act is repealed and the following substituted:

Timelines

6 (1) Subject to subsection (2), a notice issued in accordance with section 4 shall specify the date by which the notice must be complied with and the date shall be the date agreed on by the proponent and the distributor or transmitter, or, in default of agreement, shall be at least 60 days after the notice is served, unless a shorter period of time has been prescribed for the purposes of this subsection.

Exception

(2) In the circumstances that are prescribed, a notice issued in accordance with section 4 is not required to specify a date for compliance.

Modifications

- (3) In the circumstances that are prescribed, a notice issued in accordance with clause 4 (1) (a),
- (a) may specify modifications to the order referred to in clause 4 (1) (a); and
 - (b) is subject to any restrictions as may be prescribed.

4 Subsection 7 (1) of the Act is repealed and the following substituted:

Application for additional time

(1) If a notice specifies a date, the distributor or transmitter may apply to a judge of the Superior Court of Justice for an order altering the date specified in the notice to a later date.

5 The Act is amended by adding the following section under the heading “Municipal Service and Right of Way Access”:

Municipal service and right of way access application

10.1 (1) This section applies where a proponent of a designated broadband project makes an application to a municipality for municipal service and right of way access in the form of,

- (a) the use, occupation, modification or temporary closure of a municipal highway, a municipal right of way or real property or an interest in real property that is under municipal ownership or control; or
- (b) the use of, access to or modification of,
 - (i) a municipal highway, a municipal right of way or real property or an interest in real property that is under municipal ownership or control,
 - (ii) infrastructure that is under municipal ownership or control, and
 - (iii) municipal services related to that infrastructure.

Submission on the Broadband One Window platform

(2) For the purpose of subsection (1), an application submitted to the Broadband One Window platform shall be deemed to have been received by the responsible municipality for review on the day it is submitted.

Possible action

- (3) A responsible municipality that receives an application under subsection (1) shall review the application and,
 - (a) permit the required access to municipal service and right of way by issuing the applicable consent, permit or other approval on such conditions as the municipality considers appropriate; or
 - (b) where the municipality believes there is a material deficiency in the submitted application or that there is any material issue preventing the municipality from issuing the required consent, permit or other approval to the proponent, inform the proponent of the deficiency or issue and provide the proponent with an opportunity to address it.

Response

(4) If the application has been submitted to the Broadband One Window platform, the responsible municipality shall take the action described in subsection (3) by submitting the information to the Broadband One Window platform, unless the Minister indicates otherwise.

Timelines

- (5) The responsible municipality shall take the action described in subsection (3) within,
 - (a) 10 business days of receiving the application, where the proponent requires access to 30 kilometres or less of a municipal highway, a municipal right of way or real property or an interest in real property that is under municipal ownership or control for the aggregate of the designated broadband project and any other designated broadband projects proposed by that proponent within the municipality; or
 - (b) 15 business days of receiving the application, where the proponent requires access to more than 30 kilometres of a municipal highway, a municipal right of way or real property or an interest in real property that is under municipal ownership or control for the aggregate of the designated broadband project and any other designated broadband projects proposed by that proponent within the municipality.

Where deficiency, etc.

(6) Where the responsible municipality has informed a proponent of a material deficiency or a material issue under clause (3) (b), the proponent may submit an adjusted application, and this section applies to the adjusted application with necessary modification.

6 The Act is amended by striking out the heading “Location of Underground Infrastructure” and substituting the following heading and section:

DATA SHARING AND UNDERGROUND INFRASTRUCTURE LOCATION PROCESS

Sharing of data

20.1 (1) Any of the following persons or entities that receives a request from the Minister for data concerning utility infrastructure that the person or entity owns or operates within 10 metres of a designated broadband project shall disclose the requested data in the form required by the Minister within 15 business days of receiving the request:

1. A municipality.
2. Hydro One Inc., as defined in the *Electricity Act, 1998*.
3. Ontario Power Generation Inc., as defined in the *Electricity Act, 1998*.
4. A gas distributor or gas transmitter, as those terms are defined in the *Ontario Energy Board Act, 1998*.
5. An operator of a distribution system, as defined in the *Electricity Act, 1998*.
6. A person or entity regulated under the *Oil, Gas and Salt Resources Act*.

7. A person or entity that owns or operates infrastructure that crosses a public right of way or is in the vicinity of a public right of way.

What data may include

- (2) For the purposes of subsection (1),

“data concerning utility infrastructure” includes,

- (a) records of the utility infrastructure and associated rights of way,
- (b) records of communications and agreements related to the utility infrastructure,
- (c) data related to the location for all utility infrastructure that may be affected by a proposed excavation related to a designated broadband project, and
- (d) any other information the Minister considers necessary for the purposes of this Act.

Limitation

- (3) Data concerning utility infrastructure disclosed to the Minister under this section may only be used to enable construction of designated broadband projects.

Broadband One Window platform

- (4) A request under subsection (1) may be made through the Broadband One Window platform.

7 Section 21 of the Act is repealed and the following substituted:

Ontario Underground Infrastructure Notification System Act, 2012

- 21** (1) A proponent of a designated broadband project who intends to carry out an excavation or dig for the project shall comply with section 7 of the *Ontario Underground Infrastructure Notification System Act, 2012*.

Dedicated locator

- (2) Within 10 business days after receiving a notice under subsection 7 (6) of the *Ontario Underground Infrastructure Notification System Act, 2012*, or within a different time limit agreed on in writing by the proponent and the affected members of Ontario One Call,
- (a) the affected members of Ontario One Call and the proponent shall agree in writing on a dedicated locator who will respond to all locate requests by the proponent in respect of the project; and
 - (b) the affected members of Ontario One Call shall give to the dedicated locator mapping information, such as the location of the member’s underground infrastructure, and any other information that the dedicated locator considers necessary.

Doing required work

- (3) The agreed-upon dedicated locator for a designated broadband project who receives a notification from Ontario One Call about a locate request that may affect underground infrastructure owned or operated by an affected member shall do the work required under subsection 7 (10) of the *Ontario Underground Infrastructure Notification System Act, 2012* within 10 business days after the day the dedicated locator received the notification or within a different time limit agreed on in writing by the proponent and the dedicated locator.

8 Subsection 26 (7) of the Act is repealed and the following substituted:

Not entitled to be compensated

- (7) Despite any other Act or law, no person is entitled to compensation, other than compensation under this Act, the *Ontario Energy Board Act, 1998* or regulations under that Act that are prescribed under this Act for the purposes of this subsection, for any loss or damages, including loss of revenues, loss of profit or loss of expected earnings or denial or reduction of compensation that would otherwise have been payable to any person, arising from anything referred to in subsection (1).

Commencement

- 9 This Schedule comes into force on the day the *Getting Ontario Connected Act, 2022* receives Royal Assent.**

SCHEDULE 2
ONTARIO UNDERGROUND INFRASTRUCTURE NOTIFICATION SYSTEM ACT, 2012

1 (1) Section 1 of the *Ontario Underground Infrastructure Notification System Act, 2012* is amended by adding the following definitions:

- “dedicated locator” means a locator described in clause 7 (7) (a); (“localisateur unique”)
- “designated broadband project” has the same meaning as in section 2 of the *Building Broadband Faster Act, 2021*; (“projet désigné d’Internet à haut débit”)
- “emergency locate request” means a locate request described in paragraph 2 of subsection 6 (2); (“demande de localisation d’urgence”)
- “locate” means the identification of a member’s underground infrastructure in accordance with paragraph 1 of subsection 6 (1) or paragraph 1 of subsection 7 (10); (“localisation”)
- “locate request” means a request by an excavator to the Corporation for locates of all underground infrastructure that may be affected by an excavation or dig; (“demande de localisation”)
- “locator” means a person who locates underground infrastructure or states in writing that the underground infrastructure will not be affected by an excavation or dig; (“localisateur”)
- “Minister” means the Minister of Government and Consumer Services or any other member of the Executive Council to whom the responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)
- “prescribed” means prescribed by the regulations; (“prescrit”)
- “project owner” means, in relation to an excavation or dig project or proposed excavation or dig project referred to in subsection 7 (1), an excavator who,
- (a) has or will have charge, management or control of the project, or
 - (b) in the case of a designated broadband project, is the proponent of the project; (“propriétaire de chantier”)
- “proponent” has the same meaning as in section 2 of the *Building Broadband Faster Act, 2021*; (“promoteur”)
- “regulations” means the regulations made under this Act; (“règlements”)
- “standard locate request” means a locate request described in paragraph 1 of subsection 6 (2); (“demande de localisation normale”)
- “Tribunal” means the Ontario Land Tribunal; (“Tribunal”)
- “utility” means water, steam, artificial or natural gas, electrical power or energy, communications, television, internet or a sewer. (“service public”)

(2) Section 1 of the Act is amended by adding the following definitions:

- “administrative penalty” means an administrative penalty imposed under section 16.2; (“pénalité administrative”)
- “appeal body” means the person prescribed by the Minister or, if no person is prescribed by the Minister, the Tribunal; (“organisme d’appel”)
- “assessor” means a person appointed as an assessor under section 16.1 of this Act; (“évaluateur”)

2 Subsection 2 (4) of the Act is repealed and the following substituted:

Composition of the board — Minister’s order

(4) The Minister may, by order, provide that no more than a fixed percentage of members of the board of directors shall be drawn from among the persons or classes of persons specified in the order.

Change in number of directors

(4.1) The Minister may, by order, increase or decrease the number of members of the board of directors.

Appointed director

(4.2) The Minister may appoint at pleasure members to the board of directors for a term specified in the appointment as long as the directors appointed by the Minister do not constitute a majority of the board.

Same

(4.3) The members of the board of directors appointed by the Minister may include representatives of consumer groups, business, government organizations or such other interests as the Minister determines.

3 The Act is amended by adding the following sections:

Memorandum of understanding

2.1 (1) The Minister and the Corporation shall enter into a memorandum of understanding which shall include, at a minimum, terms relating to the following matters:

1. All matters the Minister considers necessary regarding the Corporation's powers and duties under this Act and the regulations.
2. The governance of the Corporation.
3. The maintenance by the Corporation of adequate insurance against liability arising out of its powers and duties under this Act and the regulations.
4. Any other matter related to the Corporation's objects as set out in section 3.

Transition

(2) Despite subsection (1), a memorandum of understanding that is in effect immediately before the coming into force of this section is not required to include the terms set out in subsection (1) until it is otherwise amended.

Powers and duties

2.2 The Corporation shall carry out its powers and duties under this Act and the regulations in accordance with the law, this Act, Minister's orders, the regulations, and the memorandum of understanding under section 2.1.

4 (1) Paragraph 1 of subsection 3 (1) of the Act is repealed and the following substituted:

1. To operate a call system to receive locate requests within Ontario.

(2) Subsection 3 (1) of the Act is amended by adding the following paragraphs:

5. To promote and undertake activities in relation to the matters assigned to the Corporation under this Act and the regulations, including compliance and enforcement.
6. To promote and undertake activities which support timely responses to locate requests.
7. To promote and undertake additional activities in accordance with the memorandum of understanding under section 2.1.

5 Subsection 4 (1) of the Act is repealed and the following substituted:

No fee for request

(1) The Corporation shall not charge a fee to any person making a locate request.

6 (1) Sections 6 to 11 of the Act are repealed and the following substituted:

Duties of members re locate request

6 (1) If a member of the Corporation receives a notification from the Corporation about a locate request made with regard to a proposed excavation or dig that may affect underground infrastructure owned or operated by the member, the member shall do either of the following:

1. Mark on the ground the location of its underground infrastructure and provide a written document containing information respecting the location of its underground infrastructure.
2. State in writing that none of its underground infrastructure will be affected by the excavation or dig.

Types of locate requests

(2) The following are the types of locate requests that a member may receive from the Corporation:

1. Standard locate request: A locate request that does not satisfy the description of a locate request described in paragraph 2.
2. 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.

Time limits for response to locate request

(3) The member shall do the things required by subsection (1) within the following time limit:

1. For a standard locate request, subject to subsection (4), within five business days after the day the member receives notification about the locate request.
2. For an emergency locate request, within two hours after the member receives notification about the locate request.

Different time limit re standard locate request

(4) The time limit set out in paragraph 1 of subsection (3) does not apply and a different time limit shall apply if,

- (a) the member and the excavator agree in writing to a different time limit; or
- (b) the regulations set out a different time limit applicable to the circumstances.

Same

(5) For the purposes of subsection (4), if the member and the excavator agree to a different time limit and the regulations set out a different time limit applicable to the circumstances, the time limit agreed to by the member and the excavator shall prevail.

Locates for certain excavation or dig projects

7 (1) This section applies with respect to the following excavation or dig projects:

- 1. A designated broadband project.
- 2. An excavation or dig project that satisfies such criteria as may be prescribed by the Minister.
- 3. An excavation or dig project for which the project owner chooses to use a dedicated locator.

Notice to Corporation

(2) Subject to subsections (3) and (4), a project owner who intends to carry out a project referred to in subsection (1) shall notify the Corporation of the project at least 90 days before any excavation or dig is expected to commence.

Notice within 90-day period

(3) The Corporation may permit a project owner to give the notice under subsection (2) less than 90 days before any excavation or dig is expected to commence.

Same, designated broadband project

(4) If so directed by the Minister of Infrastructure, the Corporation shall permit a project owner of a designated broadband project to give the notice under subsection (2) less than 90 days before any excavation or dig is expected to commence.

Notice to include information

(5) The notice under subsection (2) shall include such information as the Corporation may require and the project owner shall update the information 90 days after the notice is given and every 90 days thereafter until the conclusion of the project.

Notification of affected members

(6) If the Corporation receives a notice under subsection (2), the Corporation shall notify all affected members of the Corporation of the notice within three business days, or such other time period as may be prescribed by the Minister, after receiving the notice.

Selection of dedicated locator

(7) Within 10 business days after receiving the notice under subsection (6),

- (a) the affected members and the project owner shall agree in writing on a locator who will respond to all locate requests by the project owner in respect of the project; and
- (b) the affected members shall give to the dedicated locator mapping information, such as the location of the member's underground infrastructure, and any other information that the dedicated locator considers necessary.

Same, different time limit

(8) The time limit set out in subsection (7) shall not apply and a different time limit shall apply if the affected members and the project owner agree in writing to a different time limit. For clarity, the agreed upon time limit may relate to either or both the things required by subsection (7).

Notifying Corporation of dedicated locator

(9) After the dedicated locator has been agreed upon in respect of a project, the project owner shall promptly notify the Corporation of the name and contact information of the dedicated locator.

Obligations of dedicated locator

(10) Within 10 business days after a dedicated locator receives a notification from the Corporation about a locate request in respect of a project that may affect underground infrastructure owned or operated by one or more affected members, the dedicated locator shall do either of the following with respect to each affected member's underground infrastructure:

- 1. Mark on the ground the location of the member's underground infrastructure and provide a written document containing information respecting the location of the underground infrastructure.
- 2. State in writing that none of the member's underground infrastructure will be affected by the excavation or dig.

Same

(11) The time limit set out in subsection (10) shall not apply and a different time limit shall apply if the project owner and dedicated locator agree in writing to another time limit and, if a different time limit is agreed to, the project owner shall promptly notify the Corporation of the different time limit.

Cost of dedicated locator

(12) The project owner shall bear the costs of the dedicated locator.

Validity period of locate

8 (1) Subject to subsection (2), a locate provided by a member of the Corporation or a dedicated locator is valid for a period of 60 days or such other period as may be prescribed by the Minister.

Member, dedicated locator may provide for longer validity period

(2) The member or dedicated locator, as the case may be, may specify that a locate is valid for a period that is longer than the period referred to in subsection (1).

Change in information after locate

9 (1) If, before the end of the validity period in respect of a locate, a member becomes aware of any change to information that was provided under paragraph 1 of subsection 6 (1) or paragraph 1 of subsection 7 (10), the member shall notify the following persons of the change within two business days after becoming aware of the change:

1. The Corporation and the excavator, if the information was provided under subsection 6 (1).
2. The Corporation, the project owner and the dedicated locator, if the information was provided under subsection 7 (10).

Notice deemed part of locate

(2) A notice referred to in subsection (1) is deemed to form part of the locate provided by the member or a dedicated locator, as the case may be.

Commencement of excavation or dig

10 (1) An excavator shall not commence an excavation or dig unless either of the following conditions are satisfied:

1. All of the following apply:
 - i. The excavator has submitted a locate request.
 - ii. Each member that owns or operates underground infrastructure that may be affected by an excavation or dig has done the things required by subsection 6 (1) or, if section 7 applies in respect of the excavation or dig, the dedicated locator has done the things required by subsection 7 (10).
 - iii. If locates are provided, the excavator has ensured that the locate markings on the ground do not conflict with the written information provided respecting the underground infrastructure.
2. The excavator,
 - i. has received from another excavator the information referred to in paragraph 1 or 2 of subsection 6 (1) pertaining to the same excavation or dig parameters as the excavator's own excavation or dig, including the geographical limits of the area subject to the locate request, in accordance with section 11, and
 - ii. if locates were provided, has ensured that the markings on the ground do not conflict with the written information provided respecting the underground infrastructure.

Continuation after expiry of validity period

(2) An excavator shall not continue an excavation or dig after the expiry of the validity period of a locate unless any of the following circumstances exist:

1. The excavator has submitted a new locate request and subparagraphs 1 ii and iii of subsection (1) of this section have been satisfied in respect of the new locate request. In the case of a locate request by an excavator that is not a project owner, the locate request must be a standard locate request.
2. The excavator,
 - i. has received from another excavator the information referred to in paragraph 1 or 2 of subsection 6 (1) pertaining to the same excavation or dig parameters as the excavator's own excavation or dig, including the geographical limits of the area subject to the locate request, in accordance with section 11, and
 - ii. if locates were provided, has ensured that the markings on the ground do not conflict with the written information provided respecting the underground infrastructure.
3. Such other circumstances as may be prescribed by the Minister.

Sharing locate information

11 An excavator who submits a locate request is permitted to share with another excavator the information described in paragraph 1 or 2 of subsection 6 (1) that was provided by a member, but only if,

- (a) the other excavator's contact information was included in the locate request that was submitted to the Corporation; or
- (b) if clause (a) does not apply, the excavator who submitted the locate request provides the other excavator's contact information to the Corporation before sharing the locate information.

Prohibitions re locate requests

Standard locate request

12 (1) An excavator shall not submit a standard locate request more than 30 days before an excavation or dig is expected to commence.

Emergency locate request

(2) An excavator shall not submit an emergency locate request if the excavator knows or ought to know that the request does not satisfy the description set out in paragraph 2 of subsection 6 (2).

Prohibition re manner of excavation or dig

13 An excavator shall not excavate or dig in a manner that the excavator knows or reasonably ought to know would damage or otherwise interfere with any underground infrastructure.

Provision of information re locate request

Confirmation of response to locate request

14 (1) Within three business days after a member does the things required by subsection 6 (1) or a dedicated locator does the things required by subsection 7 (10), the member or dedicated locator, as the case may be, shall notify the Corporation that it has done those things.

Notice of delay in response to locate request

(2) If a member or dedicated locator becomes aware that there will be a delay in doing the things required by subsection 6 (1) or 7 (10), as the case may be, the member or dedicated locator shall notify the Corporation of the expected delay as soon as possible.

Additional information

(3) The notices required under subsections (1) and (2) shall include such information as the Corporation may require in such manner and form as determined by the Corporation.

Public information

15 (1) The Corporation shall make the following information available to the public on its website:

- 1. Information about each member's locate performance, including, at a minimum, the number of locate requests received by the member and when these locate requests were completed.
- 2. Any other information about a member's performance providing locates as may be prescribed by the Minister.

Length of publication

(2) Information required to be published on the Corporation's website under subsection (1) shall be removed two years after the day it is published.

Excavator recourse

16 (1) A member shall compensate an excavator for a loss or expense incurred because the member,

- (a) failed to accurately provide a locate;
- (b) incorrectly stated that none of its underground infrastructure will be affected by the excavation or dig;
- (c) failed to provide a locate in accordance with the time limit applicable under section 6; or
- (d) failed to provide the information, or to provide accurate information, to a dedicated locator as required by clause 7 (7) (b), but only if the requirement arises in relation to a designated broadband project.

Loss or expense incurred

(2) A loss or expense referred to in subsection (1) is,

- (a) any economic or financial loss or expense that is caused by the member, including, without being limited to, any loss or expense resulting from any delay in completing an excavation or dig; or

- (b) any other type of loss or expense prescribed by the Minister.

Agreement as to compensation

- (3) The excavator and the member may agree upon the compensation in writing.

If no agreement

- (4) If no agreement is reached, a claim for compensation under subsection (1) shall be determined by the Tribunal on application by the excavator.

Offences — general

17 A person or entity, other than the Corporation, who contravenes or fails to comply with any section of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.

Offences — Corporation

18 (1) The Corporation is guilty of an offence if it knowingly contravenes this Act or the regulations and on conviction is liable to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.

Individuals

- (2) A director, officer, employee or agent of the Corporation who knowingly contravenes this Act or the regulations is guilty of an offence.

Parties to offences

- (3) A director or officer of the Corporation is guilty of an offence who,
- (a) knowingly causes, authorizes, permits or participates in the commission by the Corporation of an offence mentioned in subsection (1); or
 - (b) fails to take reasonable care to prevent the Corporation from committing an offence mentioned in subsection (1).

Penalty

- (4) A person who is convicted of an offence under subsection (2) or (3) is liable to a fine of not more than \$25,000 for each day or part of a day on which the offence occurs or continues.

Regulations — Lieutenant Governor in Council

19 The Lieutenant Governor in Council may make regulations,

- (a) respecting the governance of the Corporation;
- (b) establishing requirements and standards regarding the operations of the Corporation's call system;
- (c) identifying persons or entities, in addition to those listed in subsection 5 (1), who are required to become members of the Corporation and specifying the date by which such persons or entities shall become members;
- (d) specifying times when a member must provide information under subsection 5 (2);
- (e) governing fees to be paid by members of the Corporation.

Regulations — Minister

20 The Minister may make regulations,

- (a) governing any matter that this Act describes as being prescribed by the Minister or provided for in regulations made by the Minister;
- (b) respecting whether a proposed excavation or dig is in the vicinity of underground infrastructure owned or operated by a member;
- (c) respecting whether underground infrastructure crosses a public right of way or is in the vicinity of a public right of way, for the purposes of paragraph 7 of subsection 5 (1);
- (d) respecting situations in which the time limits for locating and marking underground infrastructure is to be shorter or longer than the time limits set out in this Act, and specifying the shorter or longer time limits;
- (e) governing and establishing requirements that apply to project owners, dedicated locators or affected members in addition to those set out in section 7.

(2) Subsection 15 (1), as enacted by subsection (1), is amended by adding the following paragraph:

- 3. Subject to subsection (3), a summary of each order imposing an administrative penalty under section 16.2, unless the order was revoked.

(3) Section 15, as enacted by subsection (1), is amended by adding the following subsection:

Timing of publication, administrative penalties

- (3) A summary of an administrative penalty shall not be published before,
- (a) the time for delivering a notice of appeal under subsection 16.3 (1) expires; or
 - (b) if an appeal is commenced under subsection 16.3 (1), until the appeal body has made a decision.
- (4) Clause 16 (1) (d) of the Act, as enacted by subsection (1), is repealed and the following substituted:**
- (d) failed to provide the information, or to provide accurate information, to a dedicated locator required by clause 7 (7) (b).
- (5) Section 20 of the Act, as enacted by subsection (1), is amended by adding the following clauses:**
- (f) governing administrative penalties that an assessor may order and all matters necessary and incidental to the administration of a system of administrative penalties, including,
 - (i) specifying the amount of an administrative penalty or providing for the determination of the amount of an administrative penalty by specifying the method of calculating the amount and the criteria to be considered in determining the amount,
 - (ii) providing for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty or the time at which the penalty is paid,
 - (iii) specifying information that must be included in an order for payment of an administrative penalty,
 - (iv) governing the procedure for making an order under section 16.2 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the member or excavator against whom the order is made, and
 - (v) governing the appeal of an order for payment of an administrative penalty;
 - (g) specifying the purposes for which the Corporation may use the funds that it collects as administrative penalties.

7 The Act is amended by adding the following sections:

Appointments of assessors

16.1 (1) The Corporation may appoint assessors for the purposes of making an order under section 16.2 imposing an administrative penalty.

Restrictions

- (2) An appointment is subject to the restrictions, limitations and conditions set out in it.

Identification

- (3) An assessor shall produce, on request, evidence of his or her appointment.

Administrative penalties

Order

16.2 (1) An assessor may, by order, impose an administrative penalty against a member or excavator in accordance with this section and the regulations made by the Minister if the assessor is satisfied that the member or excavator has contravened or is contravening a provision of this Act that is prescribed by the Minister or a provision of the regulations that is prescribed by the Minister.

To whom payable

- (2) An administrative penalty is payable to the Corporation.

Purpose

- (3) An administrative penalty may be imposed under this section for one or more of the following purposes:
1. To promote compliance with this Act and the regulations.
 2. To prevent a member or excavator from deriving, directly or indirectly, any economic benefit as a result of a contravention described in subsection (1).

Amount

- (4) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be determined in accordance with the regulations made by the Minister, but the amount of the penalty shall not exceed \$10,000.

Form of order

- (5) An order made under subsection (1) imposing an administrative penalty against a member or excavator shall be in the form that the Corporation determines.

Service of order

(6) The order shall be served on the member or excavator against whom the administrative penalty is imposed in the manner that the Corporation determines.

Absolute liability

- (7) An order made under subsection (1) imposing an administrative penalty against a member or excavator applies even if,
- (a) the member or excavator took all reasonable steps to prevent the contravention on which the order is based; or
 - (b) at the time of the contravention, the member or excavator had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

No effect on offences

(8) For greater certainty, nothing in subsection (7) affects the prosecution of an offence.

Limitation

(9) An assessor shall not make an order under subsection (1) more than two years after the day the assessor became aware of the member or excavator's contravention on which the order is based.

No hearing required

(10) Subject to any regulations made by the Minister, an assessor is not required to hold a hearing or to afford a member or excavator an opportunity for a hearing before making an order under subsection (1) against the member or excavator.

Non-application of other Act

(11) The *Statutory Powers Procedure Act* does not apply to an order of an assessor made under subsection (1).

Appeal of administrative penalty

16.3 (1) The member or excavator against whom an order made under subsection 16.2 (1) imposes an administrative penalty may appeal the order to the appeal body by delivering a written notice of appeal to the appeal body within 15 days after receiving the order.

If no appeal

(2) If the member or excavator does not appeal the order in accordance with subsection (1), the order is confirmed.

Hearing

(3) If the member or excavator appeals the order, the appeal body shall hold a hearing and may, by order, confirm, revoke or vary the assessor's order, and the appeal body may attach conditions to its order.

Parties

(4) The assessor, the appellant and the other persons that the appeal body specifies are parties to the appeal.

Non-application of the SPPA

(5) If the appeal body is not the Tribunal, the *Statutory Powers Procedure Act* does not apply to an appeal made under this section.

Immediate effect

(6) Even if the appellant appeals an order of the appeal body, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

Effect of paying penalty

16.4 If a member or excavator against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the member or excavator cannot be charged with an offence under this Act in respect of the same contravention on which the order is based.

Enforcement re administrative penalty

16.5 (1) If a member or excavator against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court.

Date of order

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order.

Revocation

8 Ontario Regulation 92/14 (Governance of the Corporation), made under the Act, is revoked.

Commencement

9 (1) Except as otherwise provided in this section, this Schedule comes into force on the day the *Getting Ontario Connected Act, 2022* receives Royal Assent.

(2) Subsections 1 (2) and 6 (2) to (5) and section 7 come into force on a day to be named by proclamation of the Lieutenant Governor.