

Building Broadband Faster Act, 2021

S.O. 2021, CHAPTER 2 SCHEDULE 1

Consolidation Period: From June 1, 2021 to the [e-Laws currency date](#).

Last amendment: 2021, c. 2, Sched. 1, s. 28.

Legislative History: 2021, c. 2, Sched. 1, s. 28.

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PURPOSE OF THE ACT

Purpose

1 The purpose of the Act is to expedite the delivery of broadband projects of provincial significance by removing barriers and streamlining processes related to infrastructure that may result in delays to the timely completion of these broadband projects, while enhancing co-ordination and engagement with and being fair to public and private sector stakeholders.

DEFINITIONS

Definitions

2 In this Act,

“actual cost” means the prescribed costs; (“coût réel”)

“broadband project” means a project that deploys, or supports the deployment of, broadband infrastructure; (“projet d’Internet à haut débit”)

“business day” means a day from Monday to Friday, other than a holiday as defined in section 87 of the *Legislation Act, 2006*; (“jour ouvrable”)

“designated broadband project” means a broadband project that is designated under the regulations for the purposes of this Act; (“projet désigné d’Internet à haut débit”)

“distributor” has the same meaning as in the *Ontario Energy Board Act, 1998*; (“distributeur”)

“Minister” means the Minister of Infrastructure or such other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

“municipal service and right of way access” means municipal service and right of way access referred to in section 11; (“accès aux services municipaux et par droit de passage”)

“municipal service and right of way access order” means a municipal service and right of way access order made under section 16; (“arrêté d’accès aux services municipaux et par droit de passage”)

“OILC” means the Ontario Infrastructure and Lands Corporation; (“Société”)

“prescribed” means prescribed by regulation; (“prescrit”)

“proponent” means a person who carries out or proposes to carry out or is the owner or person having charge, management or control of a project; (“promoteur”)

“regulation” means a regulation under this Act; (“règlement”)

“transmitter” has the same meaning as in the *Ontario Energy Board Act, 1998*. (“transporteur”)

APPLICATION OF THE ACT

Application

3 This Act applies with respect to designated broadband projects.

DISTRIBUTOR OR TRANSMITTER CO-OPERATION

Notice to distributor and transmitter

4 (1) The Minister may by notice require a distributor or transmitter to complete work if,

- (a) in the opinion of the Minister, the work is necessary for the deployment of a designated broadband project;
- (b) the Minister has 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
- (c) the requirement is prescribed by regulation under this Act for the purposes of this subsection.

Form and service

(2) The notice must be in writing and must be served personally, by registered mail or by email.

Deemed receipt

(3) A notice sent by email is deemed to have been received on the first business day after the day it was sent, unless the distributor or transmitter establishes that it, acting in good faith, did not receive the notice or received it on a later date because of a reason beyond its control, including absence, accident, disability or illness.

Co-ordination

5 After the distributor or transmitter receives the notice, the proponent of the designated broadband project and the distributor or transmitter shall enter reasonably promptly into negotiations to co-ordinate the work required by the notice.

Timelines

6 The notice 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.

Application for additional time

7 (1) 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.

Notice

(2) The distributor or transmitter shall give the proponent such notice of the application as a judge of the Superior Court of Justice directs.

Test and order

(3) If the judge finds that the physical, technical or other difficulties in complying with the notice require additional time, the judge may make whatever order is appropriate.

Apportionment of costs

8 (1) The proponent and the distributor or transmitter may agree on the apportionment of the actual cost of the work.

If no agreement

(2) If no agreement is reached, the actual cost of the work shall be apportioned in accordance with,

- (a) the prescribed rules; or
- (b) such requirements under the *Ontario Energy Board Act, 1998* as are prescribed for the purposes of this clause.

Minister's order or authorization

9 (1) If a distributor or transmitter fails to comply with a notice under section 4 or an order under section 7, the Minister may, on an application made by the proponent,

- (a) order the distributor or transmitter to comply; or
- (b) authorize the proponent to carry out the work described in the notice.

Enforcement through court

(2) An order under clause (1) (a) may be filed in the Superior Court of Justice and then may be enforced as if it were an order of that court.

Requirements if proponent carries out work

(3) A proponent who carries out work as authorized under clause (1) (b) shall carry out the work in accordance with the prescribed requirements.

Compensation

10 (1) A distributor or transmitter shall compensate the proponent for a loss or expense incurred because the distributor or transmitter failed to comply with a notice under section 4 or an order under section 7. 2021, c. 2, Sched. 1, s. 10 (1).

Agreement as to compensation

(2) The proponent and the distributor or transmitter may agree upon the compensation. 2021, c. 2, Sched. 1, s. 10 (2).

If no agreement

(3) If no agreement is reached, a claim for compensation under this section shall be determined by the Ontario Land Tribunal on application by the proponent. 2021, c. 2, Sched. 1, ss. 10 (3), 28 (3).

Amounts not compensable

(4) The compensation that the proponent is entitled to under subsection (1) does not include the actual cost of the work apportioned to the proponent under section 8. 2021, c. 2, Sched. 1, s. 10 (4).

Section Amendments with date in force (d/m/y)

2021, c. 2, Sched. 1, s. 28 (3) - 01/06/2021

MUNICIPAL SERVICE AND RIGHT OF WAY ACCESS**Need for municipal service and right of way access**

11 The Minister may determine that,

- (a) the construction of a designated broadband project requires municipal service and right of way access in the form of 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 construction or operation of a designated broadband project requires municipal service and right of way access in the form of 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.

Notice that municipal service and right of way access required

12 The Minister may notify a municipality that municipal service and right of way access is required.

Contents of notice

13 The notice shall be in writing and include the following information:

1. The particulars of what municipal service and right of way access is required.
2. The date that the municipal service and right of way access is required by.

Negotiation

14 After the municipality receives the notice, the proponent of the designated broadband project and the municipality shall enter reasonably promptly into negotiations to agree on terms for the municipal service and right of way access.

If negotiation fails

15 If, in the Minister's opinion, the proponent and the municipality will not be able to agree on terms for the municipal service and right of way access even though the proponent made reasonable efforts to reach an agreement, the Minister may at any time develop a municipal service and right of way access order as follows:

1. The Minister shall consult with the proponent and the municipality.
2. The consultation shall occur in the manner that, in the Minister's opinion, is appropriate.
3. The Minister may require the proponent and the municipality to produce information that, in the Minister's opinion, the Minister requires to develop the order.
4. The Minister may obtain technical or other advice on the development of the municipal service and right of way access order.

Municipal service and right of way access order

16 (1) The Minister may make a municipal service and right of way access order developed under section 15 requiring the municipal service and right of way access, and the proponent and the municipality shall comply with it.

Terms

(2) The order may require the municipality to provide the municipal service and right of way access set out in the order, and set terms governing the proponent and the municipality in respect of the municipal service and right of way access, which may include the following:

1. Implementation of adequate measures to mitigate the impact on the public of the municipal service and right of way access. As an option, the measures may include notification to the municipality and the public of matters concerning the municipal service and right of way access.
2. Provision of resources and compensation to address the impact on the municipality of the municipal service and right of way access.
3. Measures to address potential municipal liability arising from the municipal service and right of way access.
4. Technical standards that must be met to support the municipal service and right of way access.
5. Dispute resolution provisions.
6. Other terms.

Revising or cancelling order

17 (1) The Minister may determine that a municipal service and right of way access order needs to be revised or cancelled.

Notice that revising or cancelling required

(2) If the Minister determines that the order needs to be revised or cancelled, the Minister shall notify the proponent and the municipality.

Contents

(3) The notice shall be in writing and shall include the following information:

1. The particulars of why the order needs to be revised or cancelled, and if revision is required, what sort of revision is required.
2. The date that the revision or cancellation is to take effect.

Negotiation, development and terms

(4) Sections 14 to 16 apply, with necessary modifications, to the revision or cancellation of the order.

Compensation

18 (1) A municipality shall compensate the proponent for a loss or expense incurred because the municipality failed to comply with section 14 or with a municipal service and right of way access order. 2021, c. 2, Sched. 1, s. 18 (1).

Agreement as to compensation

(2) The proponent and the municipality may agree upon the compensation. 2021, c. 2, Sched. 1, s. 18 (2).

If no agreement

(3) If no agreement is reached, the Minister shall offer non-binding mediation to the proponent and the municipality. 2021, c. 2, Sched. 1, s. 18 (3).

If mediation unsuccessful

(4) If mediation does not occur or is unsuccessful, a claim for compensation under this section shall be determined by the Ontario Land Tribunal on application by the proponent. 2021, c. 2, Sched. 1, ss. 18 (4), 28 (4).

Amounts not compensable

(5) The compensation that the proponent is entitled to under subsection (1) does not include costs apportioned to the proponent under the municipal service and right of way access order. 2021, c. 2, Sched. 1, s. 18 (5).

Section Amendments with date in force (d/m/y)

2021, c. 2, Sched. 1, s. 28 (4) - 01/06/2021

Authorization to do municipality's work

19 (1) If a municipality fails to comply with a municipal service and right of way access order, the Minister may authorize a person to do the work the municipality was required to do under the order. 2021, c. 2, Sched. 1, s. 19 (1).

Compensation

(2) The municipality shall compensate the Minister for the costs incurred by the Minister relating to the authorization of a person under subsection (1). 2021, c. 2, Sched. 1, s. 19 (2).

Agreement as to compensation

(3) The Minister and the municipality may agree upon the compensation. 2021, c. 2, Sched. 1, s. 19 (3).

If no agreement

(4) If no agreement is reached, a claim for compensation under subsection (2) shall be determined by the Ontario Land Tribunal on application by the Minister. 2021, c. 2, Sched. 1, ss. 19 (4), 28 (5).

Amounts not compensable

(5) The compensation that the Minister is entitled to under subsection (2) does not include costs apportioned to the proponent under the municipal service and right of way access order. 2021, c. 2, Sched. 1, s. 19 (5).

Section Amendments with date in force (d/m/y)

2021, c. 2, Sched. 1, s. 28 (5) - 01/06/2021

Enforcement through court

20 A municipal service and right of way access order may be filed in the Superior Court of Justice and then may be enforced as if it were an order of that court.

LOCATION OF UNDERGROUND INFRASTRUCTURE

Location of underground infrastructure

21 (1) This section applies with respect to a notification described in subsection 6 (4) of the *Ontario Underground Infrastructure Notification System Act, 2012* about a proposed excavation or dig that relates to a designated broadband project. 2021, c. 2, Sched. 1, s. 21 (1).

Work to be done within 10 days

(2) The member of Ontario One Call who received the notification shall do the work required under subsection 6 (1) of the *Ontario Underground Infrastructure Notification System Act, 2012* within 10 business days after the day the member received the notification. 2021, c. 2, Sched. 1, s. 21 (2).

Compensation

(3) A proponent of a designated broadband project may claim compensation from a member of Ontario One Call for a prescribed loss or expense incurred because the member,

- (a) failed to accurately mark on the ground the location of its underground infrastructure and provide a written document containing information respecting the location of the underground infrastructure; or
- (b) incorrectly stated that none of its underground infrastructure will be affected by the excavation or dig. 2021, c. 2, Sched. 1, s. 21 (3).

Agreement as to compensation

(4) The proponent and the member of Ontario One Call may agree upon the compensation. 2021, c. 2, Sched. 1, s. 21 (4).

If no agreement

(5) If no agreement is reached, a claim for compensation under subsection (3) shall be determined by the Ontario Land Tribunal on application by the proponent. 2021, c. 2, Sched. 1, ss. 21 (5), 28 (6).

Section Amendments with date in force (d/m/y)

2021, c. 2, Sched. 1, s. 28 (6) - 01/06/2021

ONTARIO INFRASTRUCTURE AND LANDS CORPORATION

Delegation to OILC

22 (1) The Minister may delegate the Minister's functions under this Act in whole or in part to the OILC, subject to any conditions and restrictions set out in the delegation.

Exceptions

(2) Subsection (1) does not apply to the following functions:

- 1. The Minister's authority to make and approve regulations.
- 2. The Minister's authority to issue directives.
- 3. The Minister's authority to make an order under clause 9 (1) (a) or authorize a proponent of a designated broadband project to carry out work under clause 9 (1) (b).
- 4. The Minister's authority to develop, make, revise or cancel a municipal service and right of way access order.
- 5. The Minister's authority to impose administrative penalties.

Ministerial directives

23 (1) The Minister may issue directives in writing to the OILC in respect of any matter under this Act.

Implementation

(2) The OILC's board of directors shall ensure the directives to the OILC are implemented promptly and efficiently.

Directive not a regulation

(3) A directive is not a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

ADMINISTRATIVE PENALTIES

Administrative penalties**Purpose**

24 (1) The purpose of an administrative penalty imposed under this section is,

- (a) to ensure compliance with prescribed provisions of this Act and the regulations and with orders of the Minister under clause 9 (1) (a); or
- (b) to prevent a person or entity from deriving, directly or indirectly, any economic benefit as a result of contravening the prescribed provisions.

Order imposing administrative penalties

(2) If the Minister is satisfied that a person is contravening or not complying with a prescribed provision of this Act or the regulations or an order of the Minister under clause 9 (1) (a), the Minister may, by order, impose an administrative penalty on the person in accordance with this section and the regulations.

Maximum administrative penalty

(3) An administrative penalty shall not exceed a maximum of \$500,000 or such lesser amount as may be prescribed.

Administrative penalty may be imposed with other measures

(4) An administrative penalty may be imposed alone or in conjunction with any other regulatory measure provided by this or any other Act, and may be imposed in conjunction with a fine imposed for the same infraction.

Limitation

(5) An administrative penalty may only be imposed within the prescribed time period.

No right to be heard

(6) There is no right to be heard before an order imposing an administrative penalty is made.

Right to review

(7) A person who receives an order imposing an administrative penalty may request a prescribed individual to review the order by applying to the prescribed individual for a review in a form approved by the Minister,

- (a) within a prescribed number of days after the order is served; or
- (b) within a longer period specified by the prescribed individual, if the prescribed individual considers it appropriate in the circumstances to extend the time for applying.

If no review requested

(8) If a person who has received an order imposing an administrative penalty does not apply for a review under subsection (7), the person shall pay the penalty within 30 days after the day the order was served.

If review requested

(9) If a person who has received an order imposing an administrative penalty applies for a review under subsection (7), the prescribed individual shall conduct the review in accordance with the regulations.

Stay of order

(10) A review commenced under subsection (7) operates as a stay of the order until the matter is finally disposed of.

Prescribed individual's decision

(11) On a review, the prescribed individual may,

- (a) find that the person did not contravene the provision of this Act or the regulations specified in the order imposing the administrative penalty or did not contravene the order of the Minister under clause 9 (1) (a) specified in the order imposing the administrative penalty, and rescind the order imposing the administrative penalty;
- (b) find that the person did contravene the provision of this Act or the regulations specified in the order imposing the administrative penalty or did contravene the order of the Minister under clause 9 (1) (a) specified in the order imposing the administrative penalty, and affirm the order imposing the administrative penalty; or
- (c) find that the person did contravene the provision of this Act or the regulations specified in the order imposing the administrative penalty or did contravene the order of the Minister under clause 9 (1) (a) specified in the order imposing the administrative penalty but that the penalty is excessive in the circumstances or is, by its magnitude, punitive in nature having regard to all the circumstances, and in that case the prescribed individual shall amend the order imposing the administrative penalty by reducing the amount of the penalty.

Decision final

(12) The prescribed individual's decision is final.

Payment after review

(13) If the prescribed individual finds under clause (11) (b) or (c) that a person has contravened the provision of this Act or the regulations specified in the order imposing the administrative penalty or has contravened the order of the Minister under clause 9 (1) (a) specified in the order imposing the administrative penalty, the person shall pay the penalty required by the prescribed individual within 30 days after the day the decision was made.

Enforcement of administrative penalty

(14) If the person fails to pay the administrative penalty within the time required, the order imposing the administrative penalty or the prescribed individual's decision, as the case may be, may be filed in the Superior Court of Justice and then may be enforced as if it were an order of that court.

Postjudgment interest

(15) Section 129 of the *Courts of Justice Act* applies in respect of an order or decision filed in the Superior Court of Justice under subsection (14) and the date on which the order or decision is filed under subsection (14) is deemed to be the date of the order that is referred to in section 129 of the *Courts of Justice Act*.

MISCELLANEOUS

Serving a document

25 (1) Except as otherwise provided under this Act, a notice, order or document that is required to be given or served on a person under this Act is sufficiently given or served if it is,

- (a) delivered directly to the person;
- (b) sent by registered mail to the person's last known address;
- (c) sent by email to the person's last known email address; or
- (d) given by other means specified by the regulations.

Deemed receipt

(2) Subject to subsection (3),

- (a) a document sent under clause (1) (c) is deemed to have been received on the first business day after the day it was sent; and
- (b) a document sent under clause (1) (d) is deemed to have been received on the day specified by the regulations.

Failure to receive document

(3) Subsection (2) does not apply if the person establishes that they, acting in good faith, did not receive the document or received it on a later date because of a reason beyond their control, including absence, accident, disability or illness.

No cause of action

26 (1) No cause of action arises against the persons or entities described in subsection (2) as a direct or indirect result of,

- (a) the enactment, amendment or repeal of any provision of this Act;
- (b) the making, amending or revoking of any provision of a regulation;
- (c) the making, revising or cancelling of any term of an order under clause 9 (1) (a);
- (d) the making, revising or cancelling of any term of an authorization, under clause 9 (1) (b), for a proponent to carry out work; or
- (e) the making, revising or cancelling of any term of a municipal service and right of way access order.

Persons or entities

(2) The persons and entities referred to in subsection (1) are,

- (a) the Crown, any current or former member of the Executive Council and any current or former employee or agent of or adviser to the Crown; and
- (b) the OILC, any current or former director of the OILC and any current or former employee, officer or agent of or adviser to the OILC.

Exception — judicial review

(3) Subsection (1) does not apply to prevent an application for judicial review.

Proceedings barred

(4) No proceeding, including but not limited to any proceeding for a remedy in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, and any remedy under any statute, that is based on a cause of action described in subsection (1) may be brought or maintained against the persons or entities described in subsection (2).

Application of subs. (4)

(5) Subsection (4) applies to any proceeding, including any court, administrative or arbitral proceeding, claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages or any other remedy or relief, and includes a proceeding to enforce a judgment or order made by a court or tribunal outside of Canada.

No expropriation or injurious affection

(6) Nothing done or not done in accordance with this Act, the regulations or a municipal service and right of way access order constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

Not entitled to be compensated

(7) Despite any other Act or law, no person is entitled to compensation, other than compensation under this Act, 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).

Regulations

LGIC

27 (1) The Lieutenant Governor in Council may make regulations,

- (a) designating a broadband project for the purposes of this Act;
- (b) governing administrative penalties that may be imposed under section 24, and, without limiting the foregoing, may make regulations,
 - (i) prescribing provisions of this Act and of the regulations for the purpose of subsection 24 (2), except for sections 11 to 20 or regulations in respect of those provisions,
 - (ii) prescribing individuals for the purpose of subsection 24 (7),
 - (iii) prescribing the amount of a penalty, or a method for calculating the amount of a penalty, and prescribing different penalties or ranges of penalties for different types of contraventions or failures to comply and different penalties or ranges of penalties depending on specified criteria,
 - (iv) authorizing the Minister to determine the amount of a penalty, if the amount of the penalty or method for calculating the amount of the penalty is not prescribed, and prescribing criteria that may or must be considered when making an order under subsection 24 (2), including prescribing that the criteria may include aggravating or mitigating factors,
 - (v) authorizing that a penalty may be imposed for each day or part of a day on which a contravention or failure to comply continues,
 - (vi) authorizing higher penalties for a second or subsequent contravention or failure to comply,
 - (vii) governing the payment of penalties, including requiring that a penalty be paid before a specified deadline, and authorizing the Minister to approve a plan of periodic payments that extends beyond the deadline,
 - (viii) authorizing the imposition of late payment fees respecting penalties that are not paid before the specified deadline, including graduated late payment fees, and providing that such fees are included as part of the penalty for enforcement purposes,
 - (ix) prescribing a lesser maximum penalty and the provisions of this Act or the regulations to which the lesser maximum penalty applies,
 - (x) prescribing and governing procedures for making and serving an order under section 24, including prescribing rules for service, prescribing the day on which an order is deemed to have been received and providing for service on persons outside Ontario,
 - (xi) governing the review of an order under subsection 24 (7), including,
 - (A) establishing procedures for commencing and conducting a review,
 - (B) establishing time limits for the stages of a review and authorizing the person prescribed under subclause (ii) to extend any time limit,
 - (C) prescribing that the review must or may be conducted orally, electronically or in writing or authorizing the person prescribed under subclause (ii) to make that determination, and
 - (D) establishing criteria to be considered and criteria not to be considered by the person prescribed under subclause (ii) when determining what decision to make,
 - (xii) prescribing the form and content of orders under section 24,
 - (xiii) prescribing circumstances in which a person is not required to pay an administrative penalty,
 - (xiv) providing that an administrative penalty is payable to a prescribed person rather than to the Minister of Finance, and is a debt due to the person to whom it is payable,
 - (xv) providing for other matters to carry out the purpose of section 24.

Minister

(2) The Minister may make regulations,

- (a) governing anything that, in this Act, is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations, or as authorized, specified or provided for in the regulations, except for anything with respect to administrative penalties;
- (b) clarifying the meaning of any term or phrase used in this Act that is not defined in this Act;
- (c) exempting an entity from a provision of this Act and setting conditions for the exemption;

(d) providing for other matters to carry out the purpose of this Act.

Adoption of documents in regulations

(3) A regulation made under subsection (2) may adopt by reference, in whole or in part, with such changes as the Minister considers necessary, any document, including a code, formula, standard, protocol or procedure, and may require compliance with any document so adopted.

Rolling incorporation by reference

(4) The power to adopt by reference and require compliance with a document in subsection (3) includes the power to adopt a document as it may be amended from time to time.

Publication

(5) The OILC shall publish documents adopted under subsection (3) on the OILC's website and shall make them publicly available in any other manner the OILC considers advisable.

28 OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT).

29-30 OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

31 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

32 OMITTED (ENACTS SHORT TITLE OF THIS ACT).
