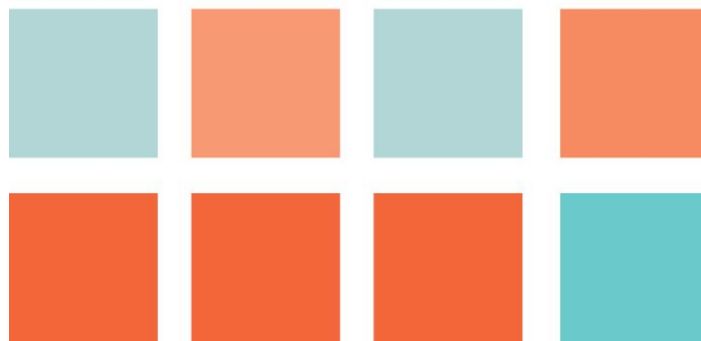


**RNAO
Submission:**

*Protecting Health and the Environment
Promotes Competitiveness*

March 15, 2019



Introduction

The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RN), nurse practitioners (NP) and nursing students in all settings and roles across Ontario. It is the strong, credible voice leading the nursing profession to influence and promote healthy public policy.

RNAO wishes to respond on two levels to Bill 66, the *Restoring Ontario's Competitiveness Act, 2018*.¹ First, we oppose the use of omnibus bills like Bill 66: they bundle together many unrelated legislative changes and that does not allow a reasonable discussion of the different issues that arise. There are 12 very different schedules in Bill 66, and we focus on just two of them in this submission: Schedules 5 and 10. Both present significant threats to health and the environment. In fact, RNAO devoted many years to helping promote the very health and environmental protections which Bill 66 would weaken or eliminate, and we have a great deal invested in those protections. We urge the complete withdrawal of both Schedules 5 and 10.

Schedule 5

Schedule 5 proposes to repeal the *Toxics Reduction Act, 2009* (TRA) and to revoke the implementing regulations made under the Act, on December 31, 2021.² The rationale for the proposal was that the TRA duplicates the federal Chemicals Management Program (CMP),³ but we know better because we actively worked on the TRA with the goal of succeeding where the federal program had failed. The TRA was modeled on the very successful Massachusetts Toxics Use Reduction program. In its first decade (1990 to 2000), even though production rose 45 per cent, that program yielded a 40 per cent reduction in toxics use, a 58 per cent reduction in toxic byproducts, a 47 per cent reduction in toxics shipped in product, and a 90 per cent reduction in on-site releases to the environment. Progress in Massachusetts continues for firms subject to the Toxics Use Reduction Act.⁴ The Ontario TRA requires covered firms to develop toxics reduction plans, but their implementation is voluntary. The program works by reducing the creation and use of toxics, and by informing the public about those toxics. In contrast, the federal CMP merely focuses on reporting of industrial emissions.

As noted above, RNAO invested a great deal of time and effort to address toxics because they cause illness and death, and because Ontario has long been a major emitter of toxic substances. Prior to the implementation of the TRA, Ontario was the second largest emitter of toxics in North America, after Texas.⁵ As we show below, progress since that time has been disappointing at best, so there remains an urgency to act, and to strengthen existing tools to reduce toxic releases. Toxics are pervasive in the environment, and can get into the body through ingestion, absorption, and inhalation. Effects can be both acute and chronic, and the biologic action depends upon the type of toxic material, which could be asphyxiants (e.g., methane), narcotics (e.g., xylene), systemic poisons (e.g., carbon tetrachloride, heavy metals), carcinogens (e.g., benzene), mutagens (substances that change genetic material),⁶ and endocrine disruptors (e.g., Bisphenol A, PBDEs and PCBs).

There is evidence that the provisions of the TRA were starting to work: the amounts of toxics used, created and contained in product declined over the period 2012-2016, particularly with firms that intended to implement a toxics reduction plan.⁷ However, more must be done, as total emissions over the period rose somewhat. Again, facilities that intended to implement reduction plans showed steady drops in emissions over the same period.

There are a number of reasons for this problem, and they can be resolved.

First, important provisions of the TRA are not in force:⁸

- Section 11 (substance of concern report);
- Section 15.1 (inspection of vehicles);
- Section 20.1 (warrantless search);
- Section 26.1 (order for use of tracking devices);
- Section 30 (administrative penalties);
- Section 38 (amount of administrative penalties);
- Section 50(1)(o.1)(o.2) (regulations on toxic substances in products). O.1 allows the prohibition or regulation of the manufacture, sale and distribution of specified toxics or of products containing toxics. O.2 allows prescribing notification required to the public about toxics, including labeling.

Secondly, the cabinet has failed to set targets for toxics reduction, as it is authorized to do under section 50 (1) (d) of the TRA.⁹

Third, the Ministry has failed to establish a list of substances of concern. It has a list from its 2008 toxics discussion paper¹⁰ of about 140 substances of concern¹¹ that did not appear in the National Pollution Release Inventory.

Finally, the government failed to establish an independent toxics use reduction institute of the type that is so essential to the success of the Massachusetts program.¹²

RNAO recommendations:

1. Withdraw Schedule 5 from Bill 66.
2. Do not repeal the Toxics Reduction Act.
3. Do not revoke the TRA regulations or eliminate planning and reporting requirements of the TRA
4. Proclaim into force sections of the TRA that are not currently in force.

5. Set targets related to toxics under O. Reg. 455/09.
6. Establish an independent academically-based institute to build capacity to meet the requirements of the toxics reduction, safe substitution and green chemistry. This would include support to businesses, employees and communities.¹³
7. Ensure public right to know about toxics in their environment, workplaces and products by:¹⁴
 - a. collecting all necessary toxics data and making it available in a readily searchable format;
 - b. making available not only data collected under this Act, but also under all other environmental legislation; and
 - c. identifying toxic content in products through labeling or by other understandable means.

Schedule 10

Schedule 10 would amend the *Planning Act* to enable municipalities to pass “open-for-business planning by-laws.” It would allow municipalities to waive specified sections of the *Planning Act* requiring public notice, comment and appear. It would also exempt those by-laws from specified sections of the *Clean Water Act, 2006, Great Lakes Protection Act, 2015, Greenbelt Act, 2005, Lake Simcoe Protection Act, 2008, Metrolinx Act, 2006, Oak Ridges Moraine Conservation Act, 2001, Ontario Planning and Development Act, 1994, Places to Grow Act, 2005, Resource Recovery and Circular Economy Act, 2016*, and any other prescribed provision. This would exempt the by-laws and related development from the effect of these pieces of legislation and would be a massive threat to health and the environment. The appendix details the sweeping effects of the proposed changes.

On January 23, 2019, Municipal Affairs and Housing Minister Clark announced that Schedule 10 would be removed from Bill 66,^{15 16} and that has been confirmed by other government representatives, including the Premier.^{17 18} We support that step.

RNAO Recommendation

8. Withdraw Schedule 10 from Bill 66.

Appendix

The law firm Aird Berlis posted a summary of Schedule 10 that shows the radical stripping away of environmental and planning protections. The summary is quoted in part below:¹⁹

“Bill 66 would permit a municipality to pass an OFB-ZBL [an “open-for-business planning by-law”] following a truncated planning process. An OFB-ZBL will be exempt from many existing *Planning Act* requirements, as well as land use restrictions set out in various provincial plans and policies. The following sections would not apply to an OFB-ZBL or to development approved pursuant to such a by-law:

- Section 41 of the *Planning Act* (section 114 of the *City of Toronto Act*) – Site plan approval would not be required for development approved pursuant to an OFB-ZBL. However, a municipality may impose any of the site plan conditions listed in subsection 41(7) or 41(8) to an OFB-ZBL
- Subsection 3(5) of the *Planning Act* – An OFB-ZBL need not be consistent with policy statements and need not conform with provincial plans
- Section 24 of the *Planning Act* – An OFB-ZBL need not conform with an Official Plan
- Subsection 34(10.0.0.1) – (34) of the *Planning Act* – *inter alia*, a person can apply for an amendment to the OFB-ZBL during the two-year period following its passage; an OFB-ZBL cannot be appealed to the LPAT; a municipality is not required to hold public meetings with respect to an OFB-ZBL
- Subsection 36(1) of the *Planning Act* – an OFB-ZBL is not affected by a holding provision by-law
- Section 37 of the *Planning Act* – bonusing is not permitted with respect to an OFB-ZBL
- Section 39 of the *Clean Water Act, 2006* – an OFB-ZBL need not conform to significant threat policies and designated Great Lakes Policies, or have regard to any other policy set out in a drinking water source protection plan prepared under the *Clean Water Act, 2006*
- Section 20 of the *Great Lakes Protection Act, 2015* – an OFB-ZBL need not conform to initiatives created under section 11 of the *Great Lakes Protection Act, 2015*, or have regard to any policies set out in Schedule 1 of the *Great Lakes Protection Act, 2015*
- Section 7 of the *Greenbelt Act, 2005* – an OFB-ZBL need not conform to the Greenbelt Plan
- Section 6 of the *Lake Simcoe Protection Act, 2008* – an OFB-ZBL need not conform to nor have regard to policies of the Lake Simcoe Protection Plan
- Subsection 31.1(4) of the *Metrolinx Act, 2006* – an OFB-ZBL need not be consistent with designated policies set out in a transportation planning policy statement
- Section 7 of the *Oak Ridges Moraine Conservation Act, 2001* – an OFB-ZBL need not conform with the Oak Ridges Moraine Conservation Plan
- Section 13 of the *Ontario Planning and Development Act, 1994* – where a development plan is in effect, an OFB-ZBL may conflict with the plan. It also appears that where an OFB-ZBL is in effect, public works need not conform with the development plan
- Subsection 14(1) of the *Places to Grow Act, 2005* – an OFB-ZBL need not conform with the Growth Plan
- Section 12 of the *Resource Recovery and Circular Economy Act, 2016* – an OFB-ZBL need not be consistent with applicable policy statements

Relaxed procedural requirements to pass an OFB-ZBL

In order to pass an OFB-ZBL, a municipal council must first pass a resolution requesting that the Minister of Municipal Affairs approve the OFB-ZBL. The Minister has the power to impose conditions on the approval of an OFB-ZBL. The Minister may modify or revoke an OFB-ZBL at any time before it comes into force.

An OFB-ZBL comes into effect 20 days after it is passed, or alternatively, on such later day as may be specified by the Minister. Unlike other zoning by-laws, a municipality is not required to give notice of or hold a public meeting prior to passing an OFB-ZBL. After passing an OFB-ZBL, the municipality must give notice of the OFB-ZBL to the Minister within three days, and to “any persons or public bodies the municipality considers proper” within 30 days.”

References

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- ² Ibid. P. 13.
- ³ Ontario. (2019). *Toxics Reduction Program: Proposed Changes to the Toxic Reduction Program*. <https://www.ontario.ca/page/toxics-reduction-program>.
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- ⁵ Environmental Defence. (2009). *New Ontario Toxics Law will Clean up Environment and Create Green Manufacturing Jobs*. April 6. <https://environmentaldefence.ca/2009/04/06/press-releases-518/>.
- ⁶ University of Toronto Environmental Health and Safety. (nd). *Health Effects of Toxic Chemicals*. <https://ehs.utoronto.ca/resources/whmis-what-you-need-to-know/health-effects-toxic-chemicals/>.
- ⁷ Ontario. (2018). *2017 Minister's Report on Toxics Reduction*. July 17. <https://www.ontario.ca/page/2017-ministers-report-toxics-reduction>.
- ⁸ Ontario. (2018). *Toxics Reduction Act, 2009, S.O. 2009, c. 19*. March 8. <https://www.ontario.ca/laws/statute/09t19>. Sections not in force are highlighted in this version of the TRA.
- ⁹ Ibid. Section 50 (1) (d).
- ¹⁰ Ontario Ministry of the Environment. (2008). *Creating Ontario's Toxics Reduction Strategy: Discussion Paper*. August. <https://provisioncoalition.com/Assets/Environmental%20Benchmarking%20Tool/Ontario%20Regulatory%20Reference/toxic%20reduction%20strategy%20-%20moe.pdf>.
- ¹¹ RAO count from Schedule 4 of the Discussion Paper. ("Remainder of Non-NPRI Substances List).
- ¹² See recommendation 7 and discussion of a toxics use reduction institute in RAO. (2009). *Time to Show the Money: the Toxics Reduction Act, 2009*. P. 2. https://rno.ca/sites/rno-ca/files/storage/related/5080_Microsoft_Word_-_Bill_167_submission_-_May_13_2009.pdf.
- ¹³ Ibid., p. 2.
- ¹⁴ Ibid, p. 2.
- ¹⁵ Clark, S. (2019). "However, our Government for the People has listened to the concerns raised by MPPs, municipalities and stakeholders with regards to Schedule 10 of Bill 66 and when the legislature returns in February, we will not proceed with Schedule 10 of the Bill." January 23. <https://twitter.com/SteveClarkPC/status/1088171431706484741>.
- ¹⁶ Lindgren, R.D. (2019). *Re: Removal of Schedule 10 of Bill 66*. January 24. <http://www.cela.ca/sites/cela.ca/files/CELA-to-Minister-re-Sch-10-Bill%2066.pdf>.

¹⁷ Benzie, R. (2019). "We heard you loud and clear on Bill 66,' Premier Doug ford assures rural Ontario municipalities. *Le Journal Canadien*. January 28. <https://lejournalcanadien.com/2019/01/28/we-heard-you-loud-and-clear-on-bill-66-premier-doug-ford-assures-rural-ontario-municipalities/>.

¹⁸ Jones, S. (2019). *Ontario government will not proceed with Schedule 10 in Bill 66, Restoring Ontario's Competitiveness Act, 2018*. February 1. <http://sylviajonesmpp.ca/ontario-government-will-not-proceed-with-schedule-10-in-bill-66-restoring-ontarios-competitiveness-act-2018/>.

¹⁹ Foran, P.A., Halinski, T., and Helfand, M. (2018). *Government of Ontario Announces Proposed Changes to the Planning Act*. December 7. <https://www.airdberlis.com/insights/publications/publication/government-of-ontario-announces-proposed-changes-to-the-planning-act>.