

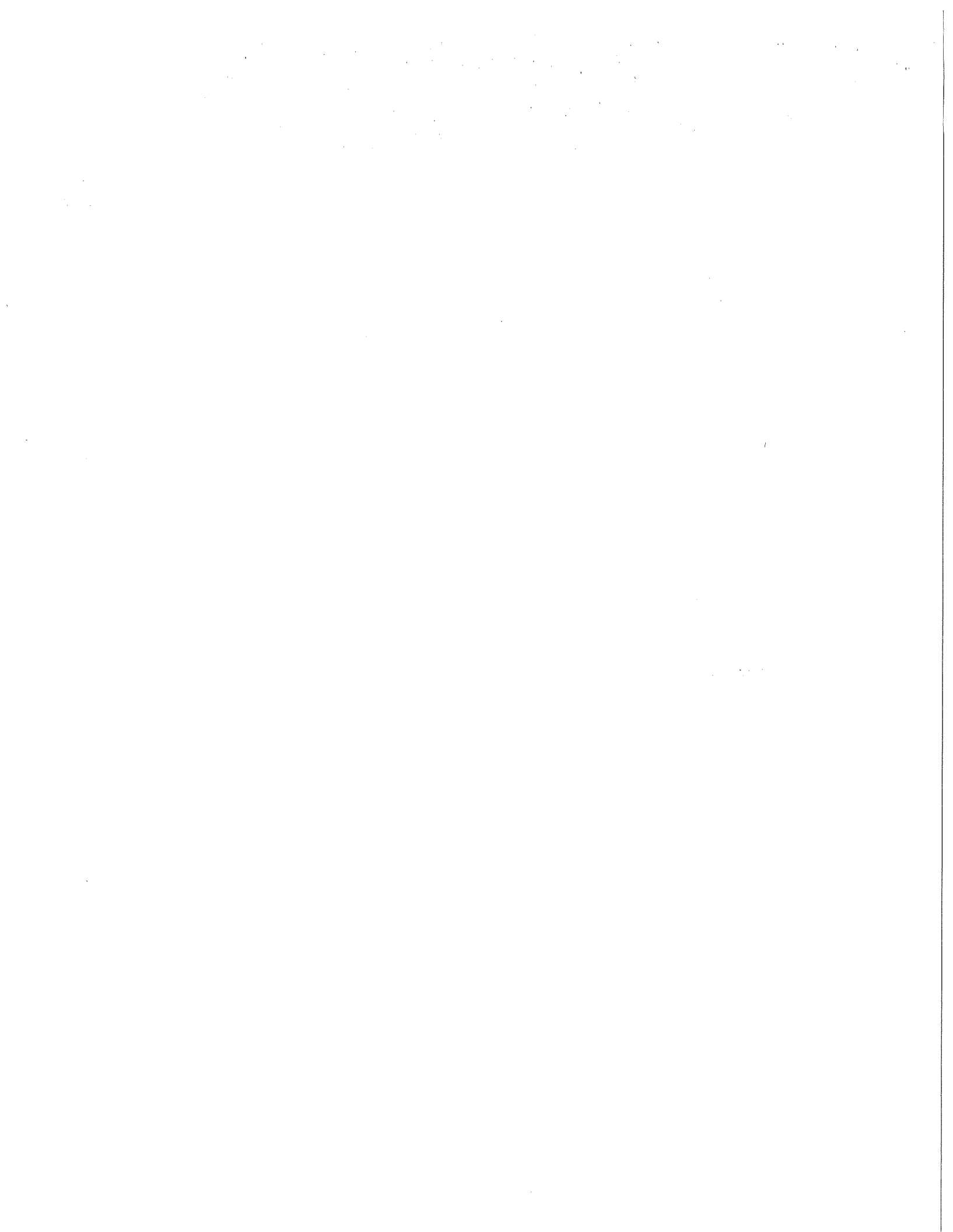
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AMENDMENTS TO
BILL 14
(Second Reading)

RECOMMENDED BY
THE
CANADIAN ENVIRONMENTAL LAW ASSOCIATION



BILL 14

1975

The Environmental Assessment Act, 1975

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

PART I

INTERPRETATION AND APPLICATION

1. In this Act,

Interpre-
tation

- (a) "air" includes enclosed air;
- (b) "Board" means the Environmental Assessment Board established under Part III;
- (c) "environment" means,
 - (i) air, land or water,
 - (ii) plant and animal life, including man,
 - (iii) the social, economic and cultural conditions that influence the life of man or a community,
 - (iv) any building, structure, machine or other device or thing made by man,
 - (v) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of man, or
 - (vi) any part or combination of the foregoing and the interrelationships between any two or more of them,

in or of Ontario;

- (d) "environmental assessment", when used in relation to an undertaking, means an environmental assessment submitted pursuant to subsection 1 of section 5;
- (e) "land" includes enclosed land, land covered by water and subsoil;
- (f) "Minister" means the Minister of the Environment;

(d) "environmental assessment", when used in relation to an undertaking, means an environmental assessment submitted pursuant to subsection 1 of section 5;

(e) "land" includes enclosed land, land covered by water and subsoil;

(f) "Minister" means the Minister of the Environment;

(g) "Ministry" means the Ministry of the Environment;

(h) "municipality" means the corporation of a county, metropolitan area, regional area, district area, city, town, village, township or improvement district and includes a local board as defined in *The Municipal Affairs Act* and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory;

R.S.O. 1970,
c. 118

(i) "person" includes a municipality, Her Majesty in right of Ontario, a Crown agency within the meaning of *The Crown Agency Act*, a public body, a partnership, an unincorporated joint venture and an unincorporated association;

R.S.O. 1970,
c. 109

(j) "proceed" includes "carry on";

(k) "proponent" means a person who,

(i) carries out or proposes to carry out an undertaking, or

(ii) is the owner or person having charge, management or control of an undertaking;

(l) "provincial officer" means a person designated by the Minister as a provincial officer under Part IV;

(m) "public body" means a body other than a municipality that is defined as a public body by the regulations;

(n) "regulations" means the regulations made under this Act;

(o) "undertaking" means,

(i) an enterprise or activity or a proposal, plan or program in respect of an enterprise or activity by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities, or

(ii) a major commercial or business enterprise or activity or a proposal, plan or program in respect of a major commercial business enterprise or activity of a person or persons other than a person or persons referred to in sub-clause i that is designated by the regulations;

(p) "water" means surface water and ground water, or either of them.

2. The purpose of this Act is the betterment of the people ^{Purpose of Act} of the whole or any part of Ontario by providing for their right to the protection, conservation and wise management in Ontario of the environment.

3. This Act applies to,

Application
of Act

(a) enterprises or activities or proposals, plans or programs in respect of enterprises or activities by or on behalf of Her Majesty in right of Ontario or by a public body or public bodies or by a municipality or municipalities on and after the day this Act comes into force;

(b) ~~only on and after a day to be named in a proclamation of the Lieutenant Governor,~~ major commercial or business enterprises or activities or proposals, plans or programs in respect of major commercial or business enterprises or activities of a person or persons other than a person referred to in clause a, designated by the regulations, within 180 days

of the coming into force of this Act.

4. This Act binds the Crown.

The Crown

PART II

ACCEPTANCE, AMENDMENT, APPROVAL

Submission
of environ-
mental
assessment

5.—(1) The proponent of an undertaking to which this Act applies shall submit to the Minister/

written notice of an intention to carry out an environmental assessment of the undertaking prior to commencing the environmental assessment and shall submit to the Minister

an environmental assessment of the undertaking and shall not proceed with the undertaking until,

- (a) the environmental assessment has been accepted by the Minister; and
- (b) the Minister has given his approval to proceed with the undertaking.

Exception

(2) Subsection 1 does not prohibit a feasibility study, including research, or any action necessary to comply with this Act before the approval of the Minister is given to proceed with an undertaking.

Content of environmental assessment

(3) An environmental assessment submitted to the Minister pursuant to subsection 1 shall consist of,

(a) a description of the purpose of the undertaking;

(b) a description of and a statement of the rationale for,

(i) the undertaking,

(ii) the alternative methods of carrying out the undertaking, and

(iii) the alternatives to the undertaking;

(c) a description of,

(i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,

(ii) the effects that will be caused or that might reasonably be expected to be caused to the environment and the rate and duration thereof;

(iii) the actions necessary or that may reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment,

(iv) the degree to which the effects on the environment may be irreversible and the extent to which energy will be consumed and non-renewable resources will be used,

by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and

(d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking.

6.—(1) Where a proponent is required under this Act to submit to the Minister an environmental assessment of an undertaking, Where licences, etc., not to be issued

- (a) a licence, permit, approval, permission or consent that is required under any statute, regulation, by-law or other requirement of the Province of Ontario, an agency thereof, a municipality or a regulatory authority, in order to proceed with the undertaking shall not be issued or granted; and
- (b) if it is intended that the Province of Ontario or any agency thereof will provide a loan, a guarantee of repayment of a loan, a grant or a subsidy with respect to the undertaking, the loan, guarantee, grant or subsidy shall not be approved, made or given,

unless,

- (c) the environmental assessment has been submitted to and accepted by the Minister; and
- (d) the Minister has given approval to proceed with the undertaking.

(2) Subsection 1 does not apply to,

Exception

- (a) a licence, permit, approval, permission or consent;
- (b) a loan, guarantee, grant or subsidy,

in relation to a feasibility study, including research, or for any action necessary to comply with this Act before the approval of the Minister is given to proceed with the undertaking.

6A. Where the Minister has received written notice of an intention to carry out an environmental assessment of an undertaking, the Minister shall give notice to the proponent, the Clerk of each municipality in which the undertaking is being or will be carried out, to all persons on a register to be established under s. 7(1)(c), to all persons who are the registered owners as that term is defined in The Expropriations Act of land upon which the undertaking will take place, and of such other land as will be reasonably affected by the undertaking.

7.—(1) Where an environmental assessment of an undertaking is submitted by a proponent to the Minister, the Minister, ^{Preparation of review and notice}

- (a) shall cause a review of the assessment to be prepared; and
- (b) shall give notice of,

(i) the receipt of the assessment,

(ii) the completion of the preparation of the review

(iii) the place or places where the assessment and review may be inspected,

and copied at nominal cost and where the record is more than a reasonable distance from the residence of the requestor the copies of such documents will be mailed to the requestor upon payment of a nominal fee for copying, and

(iv) such other matters as the Minister considers necessary or advisable,

to the proponent, the clerk of each municipality in which the undertaking is being or will be carried out/

and to those persons in 6A,

and, to the public and to such other persons as the Minister considers necessary or advisable.

(c) The secretary of the Board shall, for purposes of giving notice pursuant to s. 6A and 7, establish a register containing the names and addresses of each person who requests to have his or her name and address placed on the register. Persons so listed shall receive notice of undertakings proposed for their locality.

Inspection of environmental assessment

(2) Any person may inspect an environmental assessment of an undertaking and the review thereof in accordance with the terms of the notice referred to in subsection 1 and may make written submissions to the Minister with respect to the undertaking, the environmental assessment and the review thereof, and may require a hearing by the Board with respect thereto within thirty days of the giving of the notice or within such longer period as may be stated in the notice.

Withdrawal of environmental assessment

(3) A proponent may (withdraw/amend) an environmental assessment at any time prior to the day on which notice is given under subsection 1 and thereafter may withdraw or amend an environmental assessment with the consent of the Minister and subject to such terms and conditions as the Minister may by order impose.

Matters to be considered by the Minister

8. The Minister, in determining whether to accept or to amend and accept an environmental assessment shall consider the purpose of this Act, the environmental assessment submitted to him, the review thereof, the written submissions, if any, made with respect thereto, any reports required by and submitted to him, and any further review that the Minister has caused to be prepared.

Notice of acceptance of environmental assessment

9. Where, after considering the matters set out in section 8 and subject to section 12, the Minister is of the opinion that the environmental assessment is satisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall accept the assessment and give notice thereof to the

✓

amended

proponent and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7.

10.—(1) Where, after considering the matters set out in section 8, the Minister is of the opinion that the environmental assessment does not comply with this Act or the regulations, is inconclusive or is otherwise unsatisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister shall give notice to the proponent and in such manner as the Minister considers suitable to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 that the Minister proposes to amend the environmental assessment, together with written reasons therefor including particulars of the amendments that the Minister proposes to make in the environmental assessment and the Minister shall, after considering the written submissions of the proponent and of any person who has made a written submission to the Minister pursuant to subsection 2 of section 7, if any, require the Board to hold a hearing pursuant to section 12 or, where no hearing is required pursuant to section 12, the Minister shall accept or amend and accept the environmental assessment.

Notice of proposal to amend environmental assessment

(2) The Minister shall give notice of the acceptance or the amendment and acceptance of the environmental assessment pursuant to subsection 1 to the proponent, and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7, and where the assessment is amended a copy of the assessment as amended and accepted together with written reasons therefor, to the proponent.

Notice of amendment and acceptance of environmental assessment

11. Where, before accepting an environmental assessment, the Minister is of the opinion that the environmental assessment as submitted does not comply with this Act or the regulations, is inconclusive or is otherwise unsatisfactory to enable a decision to be made as to whether approval to proceed with the undertaking with respect to which the environmental assessment is submitted should or should not be given or should be given subject to terms and conditions, the Minister may by order require the proponent to carry out such research, investigations, studies and monitoring programs related to the undertaking in respect of which the environmental assessment is submitted and to submit such

Minister may order research, etc., and reports

reports thereon as the Minister considers necessary, and the Minister shall, in such manner as the Minister considers suitable, give notice of the order to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7, and upon submission of the reports to the Minister they shall be incorporated as part of the environmental assessment and the review thereof that the Minister caused to be prepared may be revised accordingly.

Notice

12.—(1) A notice that the Minister proposes to amend an environmental assessment shall state that the proponent or any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 may, by written notice delivered to the Minister within fifteen days after the giving of the notice of proposal to amend, require a hearing by the Board and the proponent or the person may so require such a hearing.

Hearing

requirement

(2) Upon receipt of a notice requiring a hearing pursuant to subsection 1, or a written submission requiring a hearing pursuant to subsection 2 of section 7, the Minister shall, unless in his absolute discretion the Minister considers that the ~~proposal~~ is frivolous or vexatious or that a hearing ~~is unnecessary or~~ may cause undue delay, by notice in writing, require the Board to hold a hearing with respect to,

- (a) the acceptance or amendment and acceptance of the environmental assessment;
- (b) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and
- (c) whether the approval mentioned in clause b should be given subject to terms and conditions and, if so, the provisions of such terms and conditions.

Idem

(3) Upon receipt of notice from the Minister, the Board shall appoint a time for the hearing, shall give reasonable notice thereof to the proponent and to the Minister and in such manner as the Minister may direct, notice to the public, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 and to such other persons as the Minister considers necessary or advisable, and such other notice as the Board considers proper, and shall hold the hearing and decide the matters referred to it in the notice of the Minister.

Parties

(4) The proponent, any person, other than the Minister, who has required the hearing and such other persons as the Board may specify are parties to any proceedings before the Board in respect of the undertaking.

COMMENT; ALTERNATIVELY, if the Minister retains the discretion to refuse a right of hearing on these grounds, the Minister should have to give reasons.

ALTERNATIVELY, The Board should decide these matters.

13. Where a hearing has not been held pursuant to section 12, the proponent of an undertaking to which this Act applies or a person who has made a written submission pursuant to subsection 2 of section 7 may, by written notice delivered to the Minister within fifteen days after the giving of the notice mentioned in section 9 or the notice mentioned in subsection 2 of section 10, require a hearing by the Board with respect to,

Other
hearings

- (a) whether approval to proceed with the undertaking in respect of which the environmental assessment was submitted should or should not be given; and
- (b) whether the approval mentioned in clause a should be given subject to terms and conditions and, if so, the provisions of such terms and conditions,

and the Minister upon receipt of the notice of the proponent or the person shall, unless in his absolute discretion the Minister considers that the request is frivolous or vexatious or that a hearing is unnecessary or may cause undue delay, by notice in writing, require the Board to hold the hearing and the Board upon receipt of the notice of the Minister shall appoint a time for the hearing, shall give reasonable notice thereof to the proponent and to the Minister and in such manner as the Minister may direct, notice to the public, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 and to such other persons as the Minister considers necessary or advisable, and such other notice as the Board considers proper, and shall hold a hearing and decide the matters referred to it in the notice of the Minister

requirement

COMMENT: Same as after section 12.

13A.

- (1) The Minister of the Environment shall establish a fund to be known as the Hearing Assistance Fund.
- (2) In addition to any fees required from proponents as specified in regulations under this Act, every proponent shall pay into the Hearing Assistance Fund a sum equal to 1/100 of 1 per cent (.0001) of the estimated capital cost of the undertaking.
- (3) Where a person may be affected, directly or indirectly, by a proposed undertaking, financial assistance shall be made available to such person from the Hearing Assistance Fund in order to have his position on each issue before the Board fully articulated and in order to have the submissions and evidence of other persons fully discussed and cross-examined.
- (4) The funds provided pursuant to the above subsection shall be available for all legal fees and disbursements, conduct money and necessary witness fees for expert witnesses and relevant reports and studies, and other fees and the disbursements necessary to each person entitled to assistance by the provisions of the above subsection. Nothing in this section shall prevent or prejudice an application for financial assistance under the Legal Aid Act, R.S.O. 1970, c. 239, or any other special or general Act of the Legislative Assembly of Ontario.

.01(?)
= 1%

(5) Prima facie, financial assistance to persons shall be limited to the amount contributed by the proponent of the undertaking in question, but in the event that the amount is not adequate for the purposes of this section, the Minister may, in his discretion, increase the amount to be paid out of the Fund.

(6) If several persons having identical or substantially similar interests apply for assistance from this Fund with regard to the same undertaking, the Board shall have the discretion to issue one sum to all such persons.

14.—(1) Where the Minister has accepted an environ-^{Approval}mental assessment of an undertaking, the Minister may, ^{to proceed}with the approval of the Legislative Assembly,

(a) give approval to proceed with the undertaking, subject to compliance with all or any of the provisions of the environmental assessment as accepted by the Minister;

(b) give approval to proceed with the undertaking subject to such terms and conditions as the Minister considers necessary to carry out the purpose of this Act and in particular requiring or specifying,

(i) the methods and phasing of the carrying out of the undertaking,

(ii) the works or actions to prevent, mitigate or remedy effects of the undertaking on the environment,

(iii) such research, investigations, studies and monitoring programs related to the undertaking, and reports thereof, as he considers necessary,

(iv) such changes in the undertaking as he considers necessary,

(v) that the proponent enter into one or more agreements related to the undertaking with any person with respect to such matters as the Minister considers necessary,

(vi) that the proponent comply with all or any of the provisions of the environmental assessment as accepted by the Minister that may be incorporated by reference in the approval,

(vii) the period of time during which the undertaking, or any part thereof, shall be commenced or carried out; or

(c) refuse to give approval to proceed with the undertaking.

Matters to be considered by the Minister

(2) In determining whether to give approval, give approval subject to terms and conditions or refuse to give approval to proceed with an undertaking in accordance with subsection 1, the Minister shall consider,

- (a) the purpose of this Act;
- (b) the environmental assessment of the undertaking as accepted by the Minister;
- (c) the submissions, if any, made to the Minister with respect to the environmental assessment;

~~(d) where the Minister has required the Board to hold a hearing or hearings in respect of the undertaking, the report or reports of the Board to the Minister.~~

Notice of approval

(3) The Minister shall give notice, together with written reasons therefor, of his approval, approval subject to terms and conditions or refusal to give approval to proceed with the undertaking to the proponent, and in such manner as the Minister considers suitable, to any person who has made a written submission to the Minister pursuant to subsection 2 of section 7 and to such other persons as the Minister considers necessary or advisable.

COMMENT: The reason for our recommended deletion of section 14(2)(d) is that the Board now has the power of decision. (If section 18 is amended as suggested.)

15. An approval by the Minister pursuant to this Act to proceed with an undertaking does not preclude any proceeding in relation to a contravention of any provision of *The Environmental Protection Act, 1971*, *The Ontario Water Resources Act* or the regulations made under either of those Acts.

Proceeding under other Acts
1971, c. 86
R.S.O. 1970, c. 332

16.—(1) No person shall proceed with an undertaking contrary to any term or condition imposed by the Minister in giving approval to proceed with the undertaking.

Effect of approval

(2) No person shall give, make, issue, interpret or apply any licence, permit, approval, permission, consent, loan, guarantee of repayment of a loan, grant or subsidy that is required in order to proceed with an undertaking contrary to any term or condition imposed by the Minister in giving approval to proceed with the undertaking.

Idem

17. Where a proponent of an undertaking proposes to make a change in the undertaking,

Where proponent proposes to change undertaking

- (a) before the Minister has given approval to proceed with the undertaking, that does not conform to the environmental assessment of the undertaking as accepted by the Minister; or
- (b) after the Minister has given approval to proceed with the undertaking, that does not conform to any term or condition imposed upon the approval to proceed with the undertaking,

this Act applies to the proposal to make the change in the undertaking as though the proposed change were itself an undertaking to which this Act applies.

PART III

ENVIRONMENTAL ASSESSMENT BOARD

18.—(1) A board to be known as the Environmental Assessment Board is established.

~~and shall have all the powers and duties of a court of record~~

and shall be composed of not fewer than five persons who shall be appointed by the Lieutenant Governor in Council and shall not be employed

or have been employed in the public service of Ontario or have been on contract to any Ministry within the two years previous to their appointment, nor shall any person who is a sitting member of the Legislative Assembly be appointed to the Board. All persons who are appointed to the Board shall be persons who are competent in matters of environmental control and conservation.

COMMENT: The Camp Commission Report stated that no sitting member of the Legislature should sit as a member of an administrative tribunal or board.

Chairman and vice-chairman

(2) The Lieutenant Governor in Council shall designate a chairman and one or more vice-chairmen from among the members of the Board.

Acting chairman

(3) In the case of the absence or inability to act of the chairman or of there being a vacancy in the office of the chairman, a vice-chairman shall act as and have all the powers of the chairman and, in the absence of the chairman and vice-chairman or vice-chairmen from any meeting of the Board, the members of the Board present at the meeting shall appoint an acting chairman who shall act as and have all the powers of the chairman during the meeting.

Term of members

(4) The members of the Board, other than the chairman, shall be appointed for a term of one, two or three years so that as nearly as possible one-third of the members, other than the chairman, shall retire each year.

Term of chairman

(5) The chairman of the Board shall be appointed to hold office during pleasure.

Vacancies

(6) Every vacancy on the Board caused by the death, resignation or incapacity of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the remainder of the term of such member.

Quorum

(7) Three members of the Board constitute a quorum.

Employees R.S.O. 1970, c. 386

(8) Such employees as are necessary to carry out the duties of the Board shall be appointed under *The Public Service Act*.

Expert assistance

(9) The Board may appoint from time to time one or more persons having technical or special knowledge of any matter to inquire into and report to the Board and to assist the Board in any capacity in respect of any matter before it.

Remuneration

(10) The members of the Board shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

Exercise of powers

(11) The powers of the Board shall be exercised by resolution and the Board may pass resolutions governing the calling of and the proceedings at meetings and specifying the powers and duties of employees of the Board and generally dealing with the commission of its functions.

Practice and procedure 1971, c. 47

(12) ~~Notwithstanding anything in The Statutory Powers Procedure Act, 1971,~~ the Board may determine its own practice and procedure in relation to hearings and may, subject to the approval of the Lieutenant Governor in Council, make rules governing such practice and procedure and the exercise of its powers in relation thereto and prescribe such forms as are considered advisable.

(13) The chairman may, in writing, authorize less than a quorum of the Board to conduct a hearing and the member or members conducting the hearing shall have all the powers of the Board for the purposes of the hearing.

Conduct of hearings by less than quorum

(14) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

Only members at hearing to participate in decision

(15) For the purpose of proceedings before the Board, the Board may appoint from among a class of parties to the proceedings having in the opinion of the Board, a common interest, a person to represent that class in the proceedings, but any other member of the class for which such appointment was made may, with the consent of the Board, take part in the proceedings notwithstanding the appointment.

Board may appoint class representative

(16) The Minister is entitled, by counsel or otherwise, to take part in proceedings before the Board.

Minister entitled to take part in proceedings

(17) The Board shall give a copy of its decision together with written reasons therefor to the Minister, to the parties, or where an appointment has been made pursuant to subsection 15, to the appointee on behalf of the class, and to such other persons as have made written submissions pursuant to subsection 2 of section 7.

Giving of decision

(18) No decision of the Board is effective until it becomes final pursuant to section 24.

When decision is effective

(19) No decision, order, direction, resolution or ruling of the Board shall be questioned or reviewed in any court and no proceeding shall be taken in any court by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, application for judicial review, quo warranto, or otherwise to question, review, prohibit or restrain the Board or any of its decisions, orders, directions, resolutions or rulings.

Decisions, etc., of Board not subject to review

Application of 1971, c. 47

(20) Except as otherwise provided in this Act, *The Statutory Powers Procedure Act, 1971* applies to the proceedings of the Board.

Hearings
to be
public,
exceptions

19. (1) A hearing conducted by the Board or a member or members of the Board shall be open to the public except where the Board or the member or members of the Board conducting the hearing is or are of the opinion that intimate financial or personal matters or other matters may be disclosed at the hearing that are of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public, in which case, the Board or the member or members of the Board conducting the hearing may hold the hearing concerning any such matters *in camera*.

(2) Where the Board decides that a hearing shall be held in camera pursuant to subsection (1), it shall give written reasons for its decision, in which it shall identify those matters to be the subject of the in camera session or sessions and the need for conducting the hearings in camera.

Effect of
decision of
Board

20. Subject to section 24, where the Board makes a decision pursuant to subsection 3 of section 12 or section 13 as to,

- (a) acceptance or amendment and acceptance of an environmental assessment;
- (b) approval to proceed with an undertaking;
- (c) refusal of approval to proceed with an undertaking;
or
- (d) approval to proceed with an undertaking subject to terms and conditions and the provisions of such terms and conditions,

the decision of the Board shall be deemed to be the decision of the Minister or of the Minister with the approval of the Lieutenant Governor in Council or of such Ministers of the Crown as the Lieutenant Governor in Council may designate in respect thereof.

Testimony
by member,
employee or
appointee
of Board

21. No member, employee or appointee of the Board shall be required to give testimony in any proceeding with regard to information obtained by him in the discharge of his duties as a member, employee or appointee of the Board.

Hearings
under
R.S.O. 1970,
c. 332

1971, c. 86

22. Where the Environmental Hearing Board, established under *The Ontario Water Resources Act*, proposed to hold or commenced but did not complete a public hearing or did not report thereon under *The Ontario Water Resources Act* or *The Environmental Protection Act, 1971*, immediately

before this section came into force, the hearing shall be held or continued or the report may be made by the Environmental Assessment Board or, where it is necessary or advisable in the opinion of the chairman of the Environmental Assessment Board, the Environmental Assessment Board may hold a fresh hearing and any action or notice taken or given by the Environmental Hearing Board shall be deemed to have been taken or given by the Environmental Assessment Board.

23. For purposes relevant to the subject-matter of a hearing, the Board, its employees and appointees may enter and inspect any land or premises other than a dwelling at any reasonable time. Inspection
of premises

24.—(1) Within twenty-eight days after receipt by the Minister of a decision of the Board of any matter referred to it by notice of the Minister pursuant to subsection 2 of section 12 or section 13 or within such longer period as may be determined by the Minister within such twenty-eight day period, the Minister, with the approval of the Lieutenant Governor in Council or such Ministers of the Crown as the Lieutenant Governor in Council may designate, may, ^{Variation or rescission of decision.}

(a) vary or rescind the whole or any part of the decision; or

(b) require the Board to hold a new hearing of the whole or any part of the matter referred to the Board by the notice of the Minister.

(2) Subject to subsection 3, a decision of the Board is ^{Idem} final after the expiration of the period or periods mentioned in subsection 1 unless the decision is varied or rescinded or a new hearing is required pursuant to subsection 1.

(3) A decision of the Board that has been varied pursuant ^{Idem} to clause *a* or made pursuant to clause *b* of subsection 1 is final.

(4) The Minister shall give notice, together with written ^{Idem} reasons therefor, of any variation, rescission or requirement of a new hearing pursuant to subsection 1, to every person entitled to receive a copy of the decision of the Board pursuant to subsection 17 of section 18.

PART IV

PROVINCIAL OFFICERS

Designation
of provincial
officers

25.—(1) The Minister may designate in writing one or more employees of the Ministry or other persons as provincial officers for the purposes of any section or Part of this Act or any regulation or section of any regulation made under this Act that is referred to in the designation and in a designation may limit the authority of a provincial officer in such manner as the Minister considers necessary or advisable.

Certificate of
designation

(2) The Minister shall issue to every provincial officer a certificate of his designation and every provincial officer, in the execution of his duties under this Act and the regulations, shall produce his certificate of designation upon request.

Powers of
provincial
officer

26.—(1) Where a provincial officer has reasonable grounds for believing that it is necessary, for the purpose of the administration of this Act and the regulations, he may, upon production of his certificate of designation, enter at any reasonable time any building, other than a dwelling, or any structure, machine, vehicle, land, water or air and make or require to be made such surveys, examinations, investigations, tests and inquiries, as he considers necessary, including examinations of books, records and documents and may make, take and remove or may require to be made, taken or removed samples, copies or extracts.

Order authorizing

(2) Where a provincial judge is satisfied, upon an *ex parte* application by a provincial officer, that there is reasonable ground for believing that it is necessary to enter any building, including a dwelling, structure, machine, vehicle, land, water or air for the administration of this Act or the regulations, the provincial judge may issue an order authorizing a provincial officer to enter therein or thereon and to make or require to be made such surveys, examinations, investigations, tests and inquiries and to take the other actions mentioned in subsection 1 but every such entry, survey, examination, investigation, test, inquiry and other such action shall be made or taken between sunrise and sunset unless the provincial judge authorizes the provincial officer, by the order, to so act at another time.

Obstruction of provincial officer

27. No person shall hinder or obstruct a provincial officer in the lawful performance of his duties or knowingly furnish a provincial officer with false information or refuse to furnish him with information required for the purposes of this Act and the regulations.

28.—(1) Every provincial officer shall preserve secrecy in respect of all matters that come to his knowledge in the course of any survey, examination, test or inquiry under this Act or the regulations and shall not communicate any such matter to any person except,

Matters confidential

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to his counsel; or
- (c) with the consent of the person to whom the information relates.

(2) Except in a proceeding under this Act or the regulations, no provincial officer shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of any survey, examination, test or inquiry under this Act or the regulations.

PART V

ADMINISTRATION

29. The Minister, or any person, in addition to any other remedy and to any penalty imposed by law, may apply to the Divisional Court for an order,

Application to Divisional Court

- (a) enjoining any act to proceed with an undertaking contrary to this Act; or
- (b) invalidating any licence, permit, approval, permission or consent issued or granted contrary to subsection 1 of section 6,

and the court may make the order on such terms and conditions as the court considers proper.

Exemption

30. Where the Minister is of the opinion that it is in the public interest, having regard to the purpose of this Act and weighing the same against the injury, damage or interference that might be caused to any person or property by the application of this Act to any undertaking, the Minister, with approval of the Legislative Assembly,

may by order,

- class of undertakings
- (a) exempt the undertaking, or the proponent of the undertaking from the application of this Act or the regulations or any matter or matters provided for in this Act or the regulations subject to such terms and conditions as the Minister may impose; in whole or in part
 - (b) suspend or revoke an exemption referred to in clause a;
 - (c) alter or revoke any term or condition of an exemption referred to in clause a.

subsection (1) (2) Notwithstanding subsection 1, a regulation made under ^{idem} (a)-(e) of section 41 is effective whether the enterprise or activity, or class of enterprises or activities, or proposal, plan or program or class of proposals, plans or programs in respect of any of them is commenced, carried on, made or proposed before or after the coming into force of this Act.

Disclosure

31. Notwithstanding any other provision of this Act, where the Minister is of the opinion that compliance with any provision of this Act is causing, will cause or will likely cause the disclosure of intimate financial, personal or other matters that are of such a nature that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of disclosing such matters to the public, the Minister may make such order for the protection of such person or the public interest as he considers necessary or advisable.

(2) Where the Minister decides that matters shall not be disclosed pursuant to subsection (1), he shall give written reasons for his order, in which he shall identify the matters not to be disclosed and the need for making such order.

Record

32.—(1) The Minister shall cause to be maintained a record of every undertaking in respect of which an environmental assessment has been submitted under this Act that, subject to any order of the Minister pursuant to section 31, shall consist of the environmental assessment, the review of the environmental assessment that the Minister caused to be prepared, any written submissions, any decision of the Board or the Minister together with written reasons therefor, if any, made under this Act, any notice under section 9, subsection 2 of section 10, subsection 3 of section 14, subsection 4 of section 24 and section 39 and any order of the Minister pursuant to this Act together with the written reasons, if any, therefor.

Inspection

(2) The Minister shall, upon the request of any person, make available for the inspection of such person any record referred to in subsection 1 including any document forming part of the record as soon as practicable after issuance or receipt of the document.

Powers and duties of Minister

33. The Minister, for the purposes of the administration and enforcement of this Act and the regulations may,

- (a) conduct research with respect to the environment or environmental assessments;
- (b) conduct studies of the quality of the environment;
- (c) conduct studies of environmental planning or environmental assessments designed to lead to the wise use of the environment by man;
- (d) convene conferences and conduct seminars and educational and training programs with respect to the environment or environmental assessments;

- (e) gather, publish and disseminate information with respect to the environment or environmental assessments;
- (f) make grants and loans for research or the training of persons with respect to the environment or environmental assessments in such amounts and upon such terms and conditions as the Minister, subject to the approval of the Lieutenant Governor in Council, may determine;
- (g) appoint committees to perform such advisory functions as the Minister considers advisable;
- (h) make such investigations, surveys, examinations, tests and other arrangements as he considers necessary; and
- (i) with the approval of the Lieutenant Governor in Council, enter into an agreement with any government or person with respect to the environment or environmental assessments.

34.—(1) Except in the case of an application for judicial review or an action or proceeding that is specifically provided for with respect to a person referred to in this subsection in any Act or in a regulation under this or any other Act, no action or other proceeding for damages or otherwise lies or shall be instituted against an employee of the Ministry, a member of the Board or a Crown employee within the meaning of *The Public Service Act* who is a provincial officer or is acting under the direction of an employee of the Ministry, or such member or provincial officer, for any act done in good faith in the execution or intended execution of any duty or authority under this Act or for any alleged neglect or default in the execution in good faith of any such duty or authority.

Protection
from
personal
liability

R.S.O. 1970,
c. 386

(2) Subsection 1 does not, by reason of subsections 2 and 4 of section 5 of *The Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by an agent or servant of the Crown to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection 1 had not been enacted.

Crown not
relieved of
liability
R.S.O. 1970,
c. 365

35. Where a proponent is required under this Act not to proceed with an undertaking until an environmental assessment of the undertaking has been accepted by the Minister and a public hearing is required or permitted under *The Environmental Protection Act, 1971* or *The Ontario Water Resources Act* other than by the Environmental Appeal

Hearings
under
other
Acts

1971, c. 31
R.S.O. 1971,
c. 332

Board or the Ontario Municipal Board with respect to the undertaking, the Minister shall order,

- (a) that the public hearing under such other Act may be proceeded with and that this Act or the regulations or any matter or matters provided for in this Act or the regulations that is specified in the order does not apply to the undertaking or proponent; or
- (b) that this Act applies to the undertaking and proponent and the public hearing under such other Act shall be deemed not to be required or permitted.

False
information

36. No person shall knowingly give false information in any application, return or statement made to the Minister, the Board, an employee or appointee of the Board, a provincial officer or any employee of the Ministry in respect of any matter under this Act or the regulations.

Certificates,
etc., as
evidence

37. In any prosecution, proceeding or hearing under this Act or the regulations, the production of,

(a) a certificate or report of an analyst in the employ of the Crown in right of Ontario designated by the Minister as to the analysis, ingredients, quality, quantity or temperature of any material, whether solid, liquid or gas or any combination of them; or

(b) any document under this Act purporting to be signed by the Minister or by or for the Board, or any certified copy thereof,

is *prima facie* evidence of the facts stated therein and of the authority of the person making the document without any proof of appointment or signature.

Service

38.—(1) Any notice, order, approval or other document under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the Ministry.

Idem

(2) Where notice is given or service is made by registered mail, the giving or service shall be deemed to be made on the seventh day after the day of mailing unless the person to whom notice is given or on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice, order, approval or other document until a later date.

(3) Where the Minister or the Board is of the opinion that because the persons who are to be given any notice or document under this Act are so numerous, or for any other reason it is impracticable to give the notice or document to all or any of the persons individually, the Minister or the Board, as the case may be, may instead of doing so, cause the notice or reasonable notice of the contents of the document to be given to the persons by public advertisement or otherwise as the Minister or the Board may direct, and the date on which such notice or reasonable notice of the contents of the document is first published or otherwise given as directed, shall be deemed to be the date on which the notice or document is given.

Public
notice

(4) The making available by the Minister of a copy or reproduction made by any means of a document is compliance with the provisions of this Act authorizing the inspection of the document.

Inspection of
documents

(5) Notwithstanding any provision of this Act, a document may be destroyed by or under the authority of the Minister when it has been completely recorded or copied and the recording or copy is retained for the purpose of inspection under this section.

Destruction
of certain
documents

39(1) Where a proponent of an undertaking in respect of which an environmental assessment has been accepted by the Minister or for which approval has been given by the Minister receives notice of any fact, situation, event, order, proceeding or application the result of which or compliance with which has affected, affects or may affect the ability of the proponent to proceed with the undertaking in accordance with any term or condition to which the approval of the Minister to proceed with the undertaking is subject, the proponent shall forthwith give notice thereof to the Minister.

Where
notice
to be
given to
Minister

(2) The Minister shall upon receipt of such notice order the proponent to make sufficient copies of the notice and of supporting material which fully sets out in what respects the ability of the proponent has been affected to the Minister. The Minister shall forthwith mail copies of the notice and supporting material to each of the persons notified under s. 7(2).

40. Every person, whether as principal or agent, or an employee of either of them, who contravenes any provision of this Act or the regulations or fails to comply with an order or a term or condition of an approval issued or given under this Act is guilty of an offence and on summary conviction is liable on a first conviction to a fine of not more than \$10,000 and on a subsequent conviction to a fine of not less than \$10,000 and not more than \$25,000

for every day or part thereof upon which the offence occurs or continues.

40A. Any person who has reasonable and probable grounds to believe that anyone has been, is, or is about to contravene any provision of this Act or has failed, is failing, or is about to fail to comply with an order or term or condition of any approval issued or given under this Act, may lay a charge under this Act where the Minister of the Environment has not confirmed his intention of prosecuting within 30 days of being notified. Upon the payment of any fine assessed under this Act, the Treasurer of Ontario shall cause half of the fine so assessed to be paid out to any person who has brought the prosecution upon the completion of which a fine was assessed.

PART VI

REGULATIONS

Regulations 41. The Lieutenant Governor in Council may make regulations,

- (a) defining any enterprise or activity as a major commercial or business enterprise or activity;
- (b) defining enterprises or activities as classes of major commercial or business enterprises or activities;
- (c) defining any body other than a municipality as a public body;
- (d) designating any major commercial or business enterprise or activity or class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(c) designating any proposal, plan or program or any class of proposals, plans or programs in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies;

(f) exempting any person, class of persons, undertaking or class of undertakings from the provisions of this Act, the regulations or any section or part of a section thereof and designating any enterprise or activity or class of enterprises or activities or any proposal, plan or program or any class of proposals, plans or programs in respect of any of them by or on behalf of Her Majesty in right of Ontario, by a public body or public bodies or by a municipality or municipalities as an undertaking or class of undertakings to which this Act applies notwithstanding any exemption under this clause;

(g) prescribing additional information that shall be contained in environmental assessments submitted to the Minister;

(h) prescribing forms for the purposes of this Act and providing for their use.

(2) No regulation pursuant to subsections (1) (a)-(e), shall be effective unless prior public notice of the proposed regulation has been given, and where the public demonstrates interest and intention to participate, a public hearing by the Board for the purposes of considering the proposed regulation has been held.

Class of undertakings

42. A class of undertakings under this Act or the regulations may be defined with respect to any attribute, quality or characteristic or combination thereof and may be defined to include any number of undertakings under one ownership or more than one ownership and whether or not of the same type or with the same attributes, qualities or characteristics.

43. Any regulation may be general or particular in its application and may be limited as to time or place or both. Scope of regulations

44. Any regulation may adopt by reference, in whole or in part, with such changes as the Lieutenant Governor in Council considers necessary, any code, formula, standard or procedure, and may require compliance with any code, standard or procedure so adopted. Adoption of codes in regulations

45.—(1) A regulation is not effective with respect to an enterprise or activity that is commenced before the regulation comes into force. Application of regulations

(2) Notwithstanding subsection 1, a regulation is effective with respect to, Idem

(a) any major commercial or business enterprise or activity that is commenced after the coming into force of this Act and that is being carried on or is not completed when the regulation comes into force;

(b) a significant change made in any major commercial or business enterprise or activity after the coming into force of this Act and that is being carried on or is not completed before the regulation comes into force; or

(c) any proposal, plan or program in respect of any major commercial or business enterprise or activity or any class of major commercial or business enterprises or activities proposed or made before the coming into force of the regulation whether the proposal, plan or program is proposed or made before or after the coming into force of this Act.

subsection (1) (a)-(e) Notwithstanding subsection 1, a regulation made under ^{idem} (a)-(e) of section 41 is effective whether the enterprise or activity, or class of enterprises or activities, or proposal, plan or program or class of proposals, plans or programs in respect of any of them is commenced, carried on, made or proposed before or after the coming into force of this Act.

PART VII

MISCELLANEOUS

Commence-
ment

46. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

47. This Act may be cited as *The Environmental Assessment Act, 1975*.