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Brief to the Standing Committee on General Government on Bill 26, *The Savings and Restructuring Act*, 1995

CIELAP Brief 95/6

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1. Introduction.

Bill 26, *The Savings and Restructuring Act*, 1995, is an unusual and extremely complex piece of legislation with major environmental and financial implications. Given the unprecedented scope of the legislation and limited time available for the preparation of its comments, the Canadian Institute for Environmental Law and Policy (CIELAP) has chosen to focus its remarks on the aspects of the Bill amending the *Mining Act*. This is due to their environmental and financial significance. CIELAP will also comment briefly on the proposed amendments to the *Freedom of Information and the Protection of Privacy Act*, *The Municipal Freedom of Information and Protection of Privacy Act*, *The Municipal Act*, *The Conservation Authorities Act*, *The Forest Fires Prevention Act*, *The Lakes and Rivers Improvements Act*, *The Public Lands Act*, and the *Fish and Game Act*.

2. Schedule 0 - Amendments to the *Mining Act*.

i) Introduction

This schedule to Bill 26 introduces major amendments to the *Mining Act* related to the closure of mines, the provision of financial assurances related to closure plans, and the establishment of liabilities in relation to closed or abandoned mines. These proposals are legally complex and have major economic and environmental implications. However, no case as been made by the government as to why the *Mining Act* requires amendment at this time.

Consequently, CIELAP recommends that this schedule be deleted from Bill 26, and be dealt with as a separate piece of legislation. This would permit members of the Legislature, and the public, to undertake a careful examination of the implications of these proposed amendments for Ontario. *The proposed amendments may have the effect of exposing the Crown, and thereby the Ontario taxpayer to major financial liabilities in exchange for marginal economic savings*. In this context, CIELAP wishes to highlight the following provisions of the proposed amendments to the *Mining Act*.

ii) Amendments to Part VII of the *Mining Act*- The Rehabilitation of Mining Lands

Bill 26 introduces major amendments to the *Mining Act's* provisions related to the closure of mine sites and the rehabilitation of mining lands. In particular, it provides for extensive changes to the Act's provisions regarding the development of closure plans for advanced exploration and mine production operations.

Closure Plan Approval and "Certified Closure Plans"

Under the existing provisions of the *Mining Act*, the Director of Mine Rehabilitation of the Ministry of Northern Development and Mines is permitted to require the development of closure plans by the proponents of advanced exploration (*Mining Act*, R.S.O. 1990, s.141(3)) and mine production operations (*Mining Act*, R.S.O. 1990, s.142 (3)). The Director is also permitted to require changes to proposed closure plans before a project can proceed (*Mining Act*, R.S.O. 1990, s.141(3)(a)&(b) and s.142(3(a)&(b)).

The proposed amendments to the *Mining Act* replace these provisions with a requirement that proponents file a "certified closure plan" (Bill 26, Schedule O, Sections 140 and 141) for advanced exploration and mine production activities. According to the Minister of Northern Development and Mines, "a professional engineer, a designated financial officer of the company and the company's board of directors" will certify that the company's mine closing plan and its financial assurance provisions comply with Ontario's standards.[1] The fourteen ministry staff previously responsible for the review and approval of mine closure plans are to be laid off for a savings of $1.3 million per year.[2] Proponents would continue to be permitted to seek formal approvals from the Ministry on a user-pay basis (Bill 26, Schedule O, s.142(4)).

Elimination of Requirements for Annual Reports

In addition to the proposed changes regarding closure plans, Bill 26 would eliminate the existing requirement for the preparation and submission to the Director of Mine Rehabilitation of annual reports regarding the rehabilitation of advanced exploration and mine production operations (*Mining Act* R.S.O.1990, s.144(3)/Bill 26, Schedule O, s.143). The requirement for annual reports is to be replaced by audit inspections and spot checks.[3] However, the Ministry will have only two inspectors to conduct such inspections and spot checks throughout Northern Ontario.[4]

Appeals of Director's Requirements

The proposed amendments would also permit proponents to appeal changes to filed closure plans required by the Director to "independent third parties" (Bill 26,

Schedule O, s.143(4)) or to the Commissioner of Mines (Bill 26, Schedule O, s.143(5)). No such appeals currently exist under the *Mining Act*. The proposed amendments would eliminate the requirement that the Director be informed when a project is altered of expanded (*Mining Act* R.S.O. 1990, s.144(5)) as well.

Financial Assurances

Bill 26 would also significantly alter the Act's provisions related to the provision of financial assurances regarding closure plans. Such assurances are intended to ensure that even if the proponent fails to implement its approved closure plan or becomes bankrupt, sufficient funds will be available to the Crown to implement the plan. The current provisions of the Act require the posting of cash, letters of credit, bonds, or other forms of securities acceptable to the Director (*Mining Act*, R.S.O., 1990, s.145). The director is permitted to realize such securities to carry out rehabilitation measures, or appoint an agent to do so, as the Director considers necessary, if an approved closure plan will not be carried out in accordance with the filed closure plan (*Mining Act* R.S.O., 1990, s.145).

The proposed amendments would permit proponent to provide financial assurance through "compliance with a corporate financial test in the prescribed manner." (Bill 26, Schedule O, s.145(1)(5). *In other words, no actual realizable financial security would be required to be posted*. No remedy is apparent in the proposed amendments in the event that a proponent whose assurance has taken the form of "compliance with a corporate financial test," fails to implement a "filed closure plan." Presumably the Crown would have to pursue a civil action against the proponent, or make an order under the proposed section 151 of Schedule O of Bill 26. However, in the event that the proponent is bankrupt, the implementation of the closure plan would have to be financed by the taxpayers of Ontario, as there would be no realizable financial security available from the proponent.

Freedom of Information and Privacy Act Exemption

Bill 26 also requires that the form of a financial security be kept confidential, along with "all financial and commercial information relating to its establishment" (Bill 26, Schedule O, s.145(10)). This confidentiality requirement would prevail over the requirements of the *Freedom of Information and Protection of Privacy Act* (Bill 26, Schedule O, s.145(11).

iii) Part VII - Section 147 - Mine Hazards, Closure Plans

This provision would permit the Director to order any proponent of any lands on which a mine hazard exists, to file a certified closure plan to rehabilitate the mine hazard, within a specified time. If the proponent does not comply with such an order, the Director may have the Crown or an agent of the Crown enter the lands to rehabilitate the mine hazard.

However, holders of unpatented mining claims with respect to a mine hazard created by others prior to the staking of the claim and that has not been materially disturbed or affected since the proponent's staking would be exempted from such orders. *In effect, liability would not apply to the holder of a mining claim with respect to a pre-existing hazard.*

The exemption of claim holders from Directors remediation orders appears to be intended to facilitate continued prospecting on land where unremediated mine hazards exist. In the event that a proponent is bankrupt, in the absence of a remediation fund, the costs of remediation of an unremediated mine hazard would have to be bourn by the Crown (i.e. the taxpayers of Ontario).

Appeals

The proposed amendments permit proponents to appeal Directors Orders requiring the filing (Bill 26, Schedule O, s.147 Mine Hazard Closure Plans) or amendment of certified closure plans (Bill 26, Schedule O, s.143(3)) and regarding the performance of rehabilitation measures to the Commissioner of Mines (Bill 26, Schedule O, s.145(s)). The Director's Orders are automatically stayed if they are appealed to the Commissioner (Bill 26, Schedule O, s.152(4), until the Commissioner dispenses with the appeal. The Commissioner may remove a stay on request by the Director, if the matter relates to changes to a closure plan, or to amendments to a closure plan, or to the performance of a rehabilitation measure.

These provisions related to the staying of Director's orders under appeal have major implications. Under these provisions requirements for the development of closure plans in relation to mine hazards are stayed until they are dispensed with by the Commissioner of Mines. This may take many months. During that period the hazard would continue to exist unremediated and without a remediation plan.

iii) Part VII - Section 148 - Emergency Powers

This proposed provision would permit the Minister to require proponents to take immediate action to prevent, eliminate or ameliorate, a mine hazard that is likely to cause, an immediate and dangerous adverse effect. An "adverse effect" is defined in the

proposed amendments to include: injury or damage to property; harm or material discomfort to any person; a detrimental effect on any person's health; impairment of any person's safety; and a "severe" detrimental effect on the environment.

CIELAP would welcome this provision, although its application in the case of environmental effects appears to be very limited. In addition, in the absence of a mine remediation fund, in situations where no proponent exists in relation to a mine hazard, the costs of remediation would again rest with the taxpayers of Ontario.

iv) Part VII - Section 149 - Voluntary Surrender of Mining Lands and Rights

These provisions relate to the voluntary surrender of mining lands and rights by proponents. As under the current provisions of the Act, the Minister is permitted to refuse to accept the surrender of mining lands or rights if he or she has reasonable grounds for believing that a proponent has failed to rehabilitate the site in accordance with a filed closure plan, or if no plan has been filed, with the prescribed standards for rehabilitation (Bill 26, Schedule O, s.149). However, the current provisions of the Act permitting the Director to make orders requiring the proponent to comply with the requirements of the accepted closure plan, or to rehabilitate the site in accordance with the prescribed standards (*Mining Act*, R.S.O. 1990, s.150(1)) are to be deleted through Bill 26.

Furthermore, a proponent who surrenders mining lands under the proposed provisions of the Act would be exempted from present and future liability under the *Environmental Protection Act* (Bill 26 s.149.1(4). *In other words, if any environmental problems emerged after the surrender of mining lands, their remediation would be the responsibility of the taxpayers of Ontario, not of the proponent under whose ownership, occupation, care or control the problems originated.*

These provisions have major financial implications for the taxpayers of Ontario. Closed mine sites often require perpetual care and maintenance. In the event of a voluntary surrender these costs would be passed back to the Crown. In addition, if any environmental or other problems arose at surrendered site after the surrender, the responsibility for addressing them would lie with the Crown, not the proponent, even if the problem arose as a result of errors or negligence on the part of the proponent. Such liabilities could amount to hundreds of millions of dollars. It is estimated by the Ministry of Northern Development and Mines that the remediation of existing abandoned mine sites in the province is likely to cost the Ontario taxpayer over the $300 million.[5]

iv) Conclusions

Environmental and Economic Implications

The proposed amendments to the *Mining Act* contained in Bill 26 raise a number of very serious concerns. In particular, they have the potential to expose the public to significant environmental and other hazardous related to the closure of advanced exploration and mine production operations, and to major rehabilitation costs. It is estimated by the Ministry that the cost to the public purse of rehabilitation of <u>existing</u> abandoned mine sites in Ontario will be in the region of $300 million.[6] The projected savings from the proposed changes to the *Mining Act* provisions regarding mine closures are estimated by the Ministry to be less than $1.5 million per year.[7]

The Proposed amendments to the Mining Act would also severely weaken the Ministry's capacity to establish standards for mine closure, and to provide monitoring and oversight of closure activities. Furthermore, the proposed amendments regarding financial assurances could leave the province in situations were there is no actual realizable security to finance the closure of advanced exploration or mine production operations where the proponent fails to do so in accordance with his or her filed mine closure plans. In such situations costs of rehabilitation would revert to the Crown (i.e. the taxpayers of Ontario).

In addition, the proposed amendments would eliminate virtually all of the public accountability mechanisms related to mine closure. The deletion of the requirements for the development of annual reports in relation to advanced exploration and mine production closure plans and the exemption of the financial assurance provisions related to advanced exploration and mine closure plans from the *Freedom of Information and Privacy Act* are particularly important in this context.

Potential Alternative Approaches to Financing of Mine Rehabilitation Programs

CIELAP is surprised that as an alternative to these drastic changes which have the potential to expose the Ontario taxpayer to significant environmental and financial liabilities, the government of Ontario did not consider introducing a full cost recovery, proponent pays approach to the administration of the mine closure provisions of the *Mining Act*. This would be consistent with the principle of polluter pays, transferring the costs of the administration of the program from the taxpayer to the mining industry. The establishment of an abandoned mine site rehabilitation fund, through the application of a surcharge on mine royalties should also be considered by the province.

Recommendation

The amendments to the *Mining Act* proposed through Bill 26 have major economic and environmental implications for Ontario. They are also legally complex, and require careful study. Furthermore, they are only remotely related to the implementation of tax and other financial matters contained in the Minister of Finance's economic statement of November 19, 1995. Rather, Schedule O of Bill 26 constitutes major amendments to the *Mining Act* with serious policy implications. For this reason, CIELAP believes that Schedule O should be deleted from Bill 26, and reintroduced as a separate bill to amend the *Mining Act*. This would permit members of the Legislature, and the public at large, to examine the proposed amendments in detail, and to determine if they are in the long-term public interest.

3. Schedule K - Amendments to the *Freedom of Information and Protection of Privacy Act*, and the *Municipal Freedom of Information and Protection of Privacy Act*

Bill 26 proposes to amend the *Freedom of Information and Protection of Privacy Act* to permit heads of institutions to reject requests for information which he or she is of the opinion, on reasonable grounds, is frivolous or vexatious (Bill 26, Schedule K, Section 1). The Lieutenant-Governor in Council would be permitted to make regulations prescribing standards of what constitutes reasonable grounds for a head to conclude that a request for access to a record is frivolous or vexatious (Bill 26, Schedule K, Section 12). Similar amendments are proposed for the *Municipal Freedom of Information and Protection of Privacy Act* (Bill 26, Schedule K, Sections 13 and 24).

CIELAP is opposed to both of these amendments. Both are open to abuse by institutions wishing to limit public access to records. The concept of "frivolous or vexatious" requests is notoriously difficult to define, and depends to a great degree on judgement. These concerns are further reinforced by the provision that *it will be the Lieutenant Governor-in-Council rather than the Freedom of Information and Privacy Commissioner, who will determine what constitutes a frivolous or vexatious request*. Members of the public are entitled to a fundamental right of access to provincial or municipal records, subject only to what reasonable limitations are required to protect the privacy of individuals.

Recommendation

The proposed amendments to the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* should be deleted from Bill 26.

4. Schedule M - Amendments to the *Municipal Act* and Various Other Statutes Related to Municipalities, Conservation Authorities and Transportation

The amendments to the *Municipal Act*, and the *Conservation Authorities Act* proposed in Bill 26 have major environmental implications. Unfortunately, they are beyond CIELAP's capacity to comment at this time. CIELAP is particularly concerned by the proposed amendments to the *Conservation Authorities Act* which contemplate the dissolution of Conservation Authorities and the sale of their lands (Bill 26, Schedule M, section 41). Such dissolutions and sales would represent a irreplaceable loss to Ontario's natural heritage.

CIELAP is also concerned by the provisions of Bill 26 which would appear to limit Conservation Authorities to raising funds only for the purposes of flood control (Bill 26. Schedule M, Section 46). This ignores the many other functions carried out by Conservation Authorities, and would, in combination with the proposed 70% reduction in provincial funding to Authorities, make it impossible for them to carry out those functions.

Recommendation

The proposed amendments to the *Municipal Act*, and the *Conservation Authorities Act*, should be deleted from Bill 26, and presented to the Legislature as separate Bills. This would facilitate a detailed analysis of their implications.

5. Schedule N - Amendments to Certain Acts Related to Natural Resources

i) Introduction

This schedule proposes major amendments to *The Forest Fires Prevention Act*, *The Lakes and Rivers Improvements Act*, *The Public Lands Act*, and the *Fish and Game Act*. The overall thrust of the amendments to these pieces of legislation (with the exception of the *Game and Fish Act*) is to diminish or eliminate the need to seek approvals for the conduct of certain activities on public lands and forests and with respect to lakes and rivers. The need for permits for activities such as starting a fire, mineral prospecting, tree-cutting and even industrial operations would be wholly eliminated under the proposed amendments. Nor would specific approvals be required for certain undertakings (ie. to construct a dam) should these amendments proceed. There would also be greater ministerial discretion in dealing with activities that contravene statutory requirements, as opposed to leaving this authority with the courts, particularly under the *Public Lands Act*.

In the case of most of the statutory approval requirements that would be repealed

under the proposed amendments, Bill 26 provides for their replacement by regulations made by the Lieutenant-Governor in Council describing when approvals are required. This raises a number of serious questions. Where statutory requirements have been replaced by a reference to regulations, if the regulations do not exist immediately upon the coming into force of the Bill 26 amendments, then the Act, in effect, would provides no prohibition against the activities that would now be governed by regulation.

Furthermore, the savings likely to be achieved by these amendments appear to be marginal at best. One estimate has placed them in the neighbourhood or $1.5 million per year.[8] By comparison, the risk to vital public assets, and risk to public and private property by the elimination of the approvals required by these Acts is enormous.

Finally, the move towards transferring key policy requirements from statutes to regulations made by cabinet contained in Bill 26 is in direct contradiction to the recommendations of committees of both the Ontario Legislature[9] and the federal Parliament dealing with the issue of regulatory reform. Parliamentarians at both levels have expressed serious concern over the implications for the parliamentary and public accountability of the executive branch of this trend.

ii) Amendments to the *Forest Fires Prevention Act*

Bill 26 would amend the *Forest Fires Prevention Act* in a manner that would make certain activities that currently require a permit, automatically permissible. These activities have the ability to threaten the existence of forest areas of the Province of Ontario and, as a consequence, have been designated within the Act as requiring a permit to conduct.

Repeal of Fire Permits Requirements

The proposed amendments would repeal, in its entirety, Section 11 (Fire Permits) of the *Forest Fires Prevention Act*. Section 11 of the Act states that a permit is required to light fires (other than for cooking or warmth) or to ignite fireworks. Such permits serve to reduce the likelihood of mismanaging fire and fireworks by alerting people to the threat to human health and safety, property, as well as the natural environment from fires initiated by humans.

Repeal of Travel Permit Requirements

The entire Section 13 (Travel Permits) of the *Forest Fires Prevention Act* would also be repealed through Bill 26. This section identifies the conditions under which people may enter a restricted travel zone. Currently a forest travel permit is required to enter restricted

travel zones. Travel permits can be used to limit access to areas for the duration of time that human incursion may pose a fire threat. Such restrictions on travel seem perfectly acceptable when human lives and forestry resources are potentially at risk.

Repeal of Work Permit Requirements

Bill 26 would also repeal Section 15 (Work Permits) of the *Forest Fires Prevention Act*. This section details the conditions under which a person may enter a forest or woodland to conduct work related activities. Currently, a work permit is required to carry on logging, mining, industrial operations, clear land, construct a dam, bridge, camp or operate a mill in or within 300 meters of a forest or woodland. Repealing the section without replacement would eliminate this requirement.

Section 24 of the Act, respecting the appeal process for someone refused a work, travel or fire permit would also be repealed through Bill 26. As there would be no requirements for fire, travel or work permits under the Act, there would no longer be a need for an appeal process.

The Making of Regulations Governing the Need for Fire, Travel and Work Permits

The systems for fire, travel and work permits under the *Forest Fires Prevention Act* to be repealed under the Bill 26 amendments, are to be replaced by regulations made by the Lieutenant-Governor in Council (Bill 26, Schedule N, s.36). However, if such regulations are not made, there will be no prohibition against these activities under the Act. Furthermore, conducting an activity which contravenes a regulation of the Act, but not a section of the Act itself, would no longer constitute a statutory offense. This would arise from amendments to Subsection 35(3) (Onus of Proof) of the Act, altering offenses from being a prosecutions under "section(s) of this Act" to prosecutions under "provision(s) of the regulations".

Conclusions

The proposed amendments to the *Forest Fire Prevention Act* give rise to serious concerns. *It seems likely that the system for protecting Ontario's forests and the public from forest fires will be significantly weakened by the proposed amendments*. The requirements for fire, travel and work permits in relation to Ontario's forests were put in place by the Legislature to protect these important public assets and to protect public safety. They should not be weakened or removed. The legislature made a clear decision to require permits for *all* activities of this type. Responsibility for this policy decision should not be transferred from the Legislature to the Lieutenant-Governor in Council.

Any concerns regarding the costs of the administration of the *Forest Fire Prevention Act* permit system could be addressed through the introduction of a full-cost recovery user-pay system. This would be a far more sensible approach than the potentially dangerous course of action proposed by the government.

Recommendation

The proposed amendments to the *Forest Fires Prevention Act* should be deleted from Bill 26. A separate Bill establishing a full-cost recovery user-pay system for the granting of permits under the *Forest Fires Prevention Act* should then be introduced into the Legislature.

iii) Amendments to *Game and Fish Act*

The primary change that Bill 26 would bring to the *Game and Fish Act* would be the establishment of a separate account to hold "All amounts received by the Crown under this Act or the regulations..." This would occur as a result of the amendments to Section 5 of the *Act*.

The monies arising from activities such as fees collected or licenses issued under this *Act* are currently directed to the Treasurer of Ontario. Under the amendments proposed in Bill 26, monies held in this separate account could be directed to the Minister or person specified if it is "used for the management...of wildlife or fish populations..." or if the "payment will be used for a matter related to the activities of people as they interact with or affect wildlife or fish populations..." It could also be used to refund fees or royalties.

The proposed amendments would also establish an advisory committee by the Minister to oversee the account and report on it annually to the Lieutenant-Governor in Council and the Legislature. However, it should be recognized that these amendments would transfer the oversight of a significant source of revenue directly to the responsible Minister. As a consequence, the Legislature's role in the authorization of the raising and expenditure of funds would be significantly weakened. It is also unclear if the provincial Auditor would be able to oversee the administration and expenditure of these funds.

Furthermore, it is uncertain why license fees of this nature are being given such special treatment in relation to the other similar fees charged by the province. If the province wishes to move towards revenue dedication with respect to such fees it should do so in an orderly an systematic manner, which establishes appropriate accountability mechanisms.

A positive development in these amendments from the standpoint of environmental protection could be the proposed broadening of the land acquisition section of the *Game and Fish Act*. Through Bill 26, the power to acquire lands would be expanded from "...for the purposes of management...of the wildlife resources in Ontario." to "...for the purposes of management...of wildlife or fish populations or the ecosystems of which these populations are a part." In other words, wildlife, fish and ecosystems have been added.

Recommendation

The proposed amendments to the *Fish and Game Act* regarding the creation of a dedicated fund should be deleted. In the alternative, the proposed amendments should be amended to establish appropriate accountability structures for the fund to be created through the Bill 26 amendments. This would include oversight of the fund by both the Legislature and the Provincial Auditor.

iv) Amendments to *Lakes and Rivers Improvement Act*

Bill 26 would introduce significant changes to the system of approvals for the building or altering of structures such as dams similar to those proposed for the *Forest Fires Prevention Act*. These proposed amendments continue the pattern of removing statutory requirements for approvals of certain activities, and replacing them with provisions granting the Lieutenant-Governor in Council the power to make regulations prescribing the circumstances under which approvals may be required.

Part I - Construction, Repair and Use of Dams

The proposed amendments would largely remove the requirement of Section 14 of the *Lakes and Rivers Improvements Act* for Ministerial approval of the creation or alteration of dams. Approvals would only be required for those which meet the "circumstances prescribed by the regulations". As with the proposed *Forest Fires Prevention Act* amendments, if regulations are not in place as soon as the proposed amendments are come into force, there would be no prohibition against creating or altering a dam and thereby independently altering a river course or lake level.

Presumably, the regulations would cover the largest and most potentially intrusive alterations or constructions and would therefore maintain their status as being subject to Ministerial approval. All undertakings not designated in the regulations would be immediately permissible. This raises serious concerns, as a multitude of small individual actions could result in adverse or even disastrous consequences for people and property in the vicinity of an altered water course. Enhanced soil erosion, downstream flooding,

wildlife and fish habitat destruction could result from actions arising as a consequence of these amendments.

Part III Timber Slide Companies

Under Bill 26, changes would also be made to Part III (Timber Slide Companies) of the *Lakes and Rivers Improvements Act*. This part outlines the conditions in which a charter may be issued for the purpose of acquiring or constructing and maintaining and operating works upon a lake or river in Ontario. Currently an approval is clearly required for such works. The amendments would make the need for approval much more conditional: "approval of the proposed work" would be amended to "*any necessary* approval of the proposed work".

This changes could lead to an increase in the frequency and occurrence of unregulated and uncoordinated activities taking place on lakes or river courses can only enhance the possibility of adverse impacts to life, property and the environment over time. Such changes could raise concerns and questions about the Province increasing its liability in the case of flooding and its obligation to compensate for flood damage.

Conclusions

The proposed amendments to the *Lakes and Rivers Improvements Act* give rise to serious concerns. *It seems likely that the system for protecting Ontario's lakes and rivers will be significantly weakened by these amendments*. The requirements for, approvals in relation to improvements to lakes and rivers were put in place by the Legislature to protect these important public assets and to ensure orderly development. The legislature made a clear decision to require permits for *all* activities of this type. Responsibility for this policy decision should not be transferred from the Legislature to the Lieutenant-Governor in Council.

Any concerns regarding the costs of the administration of the *Lakes and Rivers Improvements Act* permit system could be addressed through the introduction of a full-cost recovery user-pay system. This would be a more rational approach than the potentially dangerous course of action proposed by the government.

Recommendation

The proposed amendments to the *Lakes and Rivers Improvements Act* should be deleted from Bill 26. A separate Bill establishing a full-cost recovery user pay system for the granting of permits under the *Lakes and Rivers Improvements Act* should then be introduced into the Legislature.

v) Amendments to *Public Lands Act*

The Bill 26 amendments to the *Public Lands Act* continue the pattern of eliminating statutory requirements for approvals of certain activities and their replacement with regulations describing circumstances under which approvals will be required. The proposed amendments to the Act would also limit the capacity of the courts to require the remediation of public lands damaged by unauthorized activities. The power to require remedial action would rest solely with the Minister of Natural Resources.

Removal of Work Permit Requirements

The Bill 26 amendments to the *Public Lands Act* would weaken the Act in three ways:

1) eliminating the need for work permits for work on public lands (although this is not absolutely clear through the wording of the amendments);
2) providing for the making of more general the nature of regulations governing work permits (if in fact they would still exist); and
3) making less specific the conditions for, and requirements of rehabilitating public lands.

The proposed amendments give rise to some confusion over the need for a work permit to conduct work on public lands. This confusion arises when the amendments are introduced into the wording of the legislation. Presumably a work permit will no longer be required for the following outlined activities once the clause "14(1) Except in accordance with a work permit, no person shall,... (a) carry on or cause to be carried on any logging, mineral exploration or industrial operation on public lands;..." is repealed under the amendments. However, sections which remain in the Act (i.e. Section 14(2)) describe the nature of work permits. As well, the amendments to be introduced suggest that the "Lieutenant Governor in Council may make regulations,...(c) governing the issue, refusal, renewal and cancellation of work permits..."

Furthermore, the existence of a work permit seems to suggest that an activity may proceed even in the event that the Lieutenant-Governor in Council makes regulations prohibiting that activity: "The Lieutenant Governor in Council may make regulations, (a) prohibiting an activity specified by the regulation on public lands or shore lands unless the activity is carried on in accordance with a work permit;..." In such a cases the undertaking appears to be legitimate. Fines in subsection 14-(4) and 14-(6) would arise as a violation of the regulations but if no regulations exist then there would be no means by which they could be violated.

The unamended act states that "Every person who contravenes any provision of subsection (1)...is liable to a fine of not more than $5000." The amendments would

change it to "A person who contravenes any provision of subsection (1)...is liable to a fine of not more than $5000." Therefore, presumably not every person that contravened a provision of subsection (1) would be liable to a fine.

Rehabilitation of Public Lands Damaged by Unauthorized Activities

Through the proposed Bill 26 amendments section 14(7) of the *Public Lands Act*, which deals with order to rehabilitate public lands damaged by unauthorized activities, would become, less precise and provide much more discretion to the Minister. The clauses of the *Act* specifying that fill might have to be removed, buildings dismantled or dredged materials replaced would be deleted. These actions could still be ordered by the Minister. However, it would no longer be possible for a sentencing court to require such actions as part of its sentence for damage to public lands.

Conclusion

The proposed amendments to the *Public Lands Act* give rise to serious concerns. *It seems likely that the system for protecting Ontario's public lands will be significantly weakened by these amendments*. The requirements for, approvals in relation to activities on public lands were put in place by the Legislature to protect these important public assets and to ensure orderly development. The legislature made a clear decision to require permits for *all* activities of this type. Responsibility for this policy decision should not be transferred from the Legislature to the Lieutenant-Governor in Council.

Any concerns regarding the costs of the administration of the *Public Lands Act* permit system could be addressed through the introduction of a full-cost recovery user pay system. This would be a far more sensible approach than the potentially damaging course of action proposed by the government.

The proposed amendments to the *Public Lands Act* regarding deletion of the provisions permitting a court to specify remediation actions in cases where public lands have been damaged by unauthorized activities should be deleted from Bill 26.

vi) Conclusions

CIELAP is deeply concerned by the amendments proposed in Bill 26 to the *Forest Fires Prevention Act*, the *Lakes and Rivers Improvements Act*, and the *Public Lands Act*. In each case the government proposes to replace the current statutory requirements for specific approvals for all activities regulated under these Acts with provisions permitting

the Lieutenant-Governor in Council to make regulations describing the circumstances under which approvals will be required. In effect, the Legislature's previous judgement that approvals should be required for all activities governed by these Acts in order to protect public forests, lakes, rivers, and lands, is to be repealed and replaced by requirements for approvals formulated at the discretion of the cabinet.

The primary motivation for these proposals appears to be to save financial resources. It is estimated that the proposed amendments would result in a reduction of the number of approvals granted by the Ministry of Natural Resources under these Acts from over 50,000 per year to less than 5,000 for a savings of $1.5 million per year.[10] This seems a remarkably marginal saving in relation to the potential damage to the public's forests, lands, and waterways which would result from these proposed amendments.

As a alternative, CIELAP recommends that the government withdraw the proposed amendments to the *Forest Fires Prevention Act*, the *Lakes and Rivers Improvements Act*, and the *Public Lands Act* from Bill 26. Amendments to each of these Acts should then be introduced establishing a full-cost recovery, user-pay system for permits under each Act. This would permit the maintenance of the protection of the public's forests, lands, and waterways, in a manner consistent with government's desire for cost recovery.

6. Conclusions

CIELAP is deeply concerned by the implications of many of the amendments to existing provincial statutes proposed in Bill 26. Many have major economic and environmental implications and should be examined carefully before being enacted by the Legislature. The current structure of Bill 26 does not permit such consideration. Therefore the schedules of the Bill amending *The Mining Act*, *The Municipal Act*, *The Conservation Authorities Act*, *The Forest Fires Prevention Act*, *The Lakes and Rivers Improvements Act*, and *The Public Lands Act*, should be deleted from Bill 26 and reintroduced as separate legislation.

The proposed amendments to the *Freedom of Information and Protection of Privacy Act* and the *Municipal Freedom of Information and Protection of Privacy Act* should be deleted from Bill 26 as well, and not reintroduced, due to their serious implications for the public accountability of government.

CIELAP is also concerned that the proposed amendments to *The Mining Act*, *The Forest Fires Prevention Act*, *The Lakes and Rivers Improvements Act*, and *The Public Lands Act* would expose the taxpayers of Ontario to potentially major liabilities, and endanger critical public assets, such as forests, lands, lakes and rivers for marginal savings. The total savings arising from these amendments have been estimated by the government to be less than $3 million per year. The potential public liabilities related to the *Mining Act* amendments for the remediation of abandoned mine sites alone have

been estimated at over $300 million.

In each of these cases, the proposed amendments to the approval systems established by these Acts should be withdrawn. These should be replaced by amendments to each of these Acts providing for the establishment of full-cost recovery, user-pay systems for the approvals in question. This would address the question of the costs of the existing approval processes, while ensuring the continued protection of the public from liability and the protection of public assets.

Finally, the Institute is concerned by the overall pattern repealing policy decisions by the Legislature to require approvals for specified activities under the Acts in question, and replacing these requirements with provisions enabling the Lieutenant-Governor in Council to make regulations describing when approvals may be required. This transfer of policy-making authority from the Legislature to the Executive raises serious questions of democratic process and accountability.

The trend towards the use of framework legislation of this nature has been criticized many times by committees of both the federal Parliament and Ontario Legislature on numerous occasions. Members of the Legislature should approach requests by the executive for sweeping powers such as those contained in Bill 26 with the utmost caution, and consider carefully their implications for the accountability of the government to them, and to the people of the province.

Endnotes

1.The Hon. C. Hodgson, Minister of Northern Development and Mines, quoted in "A. Robinson, "Ontario to shut mine-closing arm," The Globe and Mail October 25, 1995.

2.Ibid.

3.Ibid.

4.Personal Communications, Ministry of Northern Development and Mines Staff, December 12, 1995.

5.Robinson, "Ontario to shut mine-closing arm."

6.Ibid.

7.Ibid.

8.M.Mittelstaedt, "Ontario starts scrutiny of power shift," The Globe and Mail, December 18, 1995.

9.Standing Committee on Regulations and Private Bills, Second Report, (Toronto: Legislative Assembly of Ontario, 1988), and Standing Committee on Finance, Regulations and Competitiveness (Ottawa: House of Commons, January 1993).

10.Mittelstaedt, "Ontario starts scrutiny of power shift."