

CONSTRUCTION LAW CHANGES IN ONTARIO

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Provincial Government Bills

Bill 118 Countering Distracted Driving and Promoting Green Transportation Act, 2008

(Jim Bradley, Minister of Transportation).

This Bill bans the use of hand held cell phones, hand held GPS devices and certain other handheld devices while operating a motor vehicle. Prosecutions under the new law will be minimal until February 1, 2010 as police forces will focus on driver education during that time. The other purpose of the Bill re Green Transportation is to legalize certain forms of carpooling , including those where the driver is reimbursed by other passengers for gas costs.

- Royal Assent April 23, 2009
- The key provisions re mobile devices came into force on October 26, 2009

Bill 119 Workplace Safety and Insurance Amendment Act, 2008

(Peter Fonseca, Minister of Labour).

This Bill makes WSIB coverage compulsory instead of optional for independent operators and most company executives in the construction industry but independent operators and others who do not employ workers if their only construction work is home renovation work performed in specified circumstances would still be able to opt out. The person who directly retains the contractor or subcontractor to perform the construction work may be held liable for unpaid WSIB premiums under the Act.

- Royal Assent November 27, 2008
- Draft Regulations circulated but not expected to come into force until after 2011

Bill 150 Green Energy and Green Economy Act, 2009

(George Smitherman, Minister of Energy and Infrastructure).

This Bill repeals the Energy Conservation Leadership Act, 2006 and the Energy Efficiency Act and moves many of their provisions into the new statute and amends other statutes such as the Ontario Energy Board Act and the Environmental Protection Act to allow the government to remove certain regulatory barriers for designated projects, such as specific wind powered generators.

- Royal Assent May 14, 2009
- Most of the Act has been proclaimed in force as of September 9, 2009 with some provisions such as the mandatory disclosure of home efficiency not yet proclaimed.

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- Bill 163** **Metrolinx Act, 2006 (formerly known as the Greater Toronto and Hamilton Area Transit Implementation Act, 2009)**
(Jim Bradley, Minister of Transportation).
This Bill amended various statutes, including the Greater Toronto Transit Authority Act, 2006 to combine GO Transit and Metrolinx into a single corporation and that the board of directors of Metrolinx will no longer be populated by delegates from local municipal councils, but would be comprised of 15 directors recommended by the Minister of Transportation.
- Royal Assent May 14, 2009
 - Most of the provisions have been proclaimed in force, section 7 dealing with unified fares has not yet been proclaimed.
- Bill 167** **Toxics Reduction Act, 2009**
(John Gerretsen, Minister of the Environment).
This Bill would require manufacturers and processors to do an inventory of the toxic substances that they use to manufacture their products in Ontario and prepare and implement a toxic substance reduction plan as prescribed by the regulations. The key term “toxic substance” is not defined in the Bill but would be those substances prescribed in the regulations. Under the statutory language any material can be designated as a toxic substance whether or not it has an adverse impact on workers or the natural environment.
- Royal Assent June 5, 2009
 - Most of the Act will come into force as of January 1, 2010 including the requirement to prepare toxics reduction plans, but the balance, including the filing of the report with the MOE and the certification requirements for the plans, have not yet been proclaimed in force.
- Bill 168** **Occupational Health and Safety Amendment Act (Violence and Harassment in the Workplace) 2009**
(Peter Fonseca, Minister of Labour).
This Bill is similar to Bill 29, a private member’s bill that was introduced on December 13, 2007 but has not progressed since that time. The term ‘harassment’ is similar in both bills, meaning an unwelcome vexatious comment or conduct against a worker, and ‘workplace violence’ in Bill 168 is limited to attempted or actual force while the Bill 29 definition also includes ‘threats’. Both Bills require that the employer establish a written policy against violence and harassment. Bill 29 also provided an extra ‘right to refuse to work’ whereas Bill 168 allows the passage of regulations to address a right to refuse work due to harassment and/or violence. ***The amendments come into force on June 15, 2010.***
- Royal Assent December 15, 2009.

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- Bill 175** **Ontario Labour Mobility Act, 2009**
(John Milloy, Minister of Training, Colleges and Universities).
The Bill will prohibit Ontario regulatory authorities from requiring individuals to reside in Ontario as a condition of certification, if the applicants reside in a province or territory that is a party to the Agreement on Internal Trade. The Canada Agreement on Internal Trade (AIT) dates back to 1994. An Ontario regulatory authority that is a municipality is also prohibited from requiring individuals to reside within the geographic area of the municipality as a eligibility criteria for employment by the municipality, if the individuals reside in a province or territory that is a party to the AIT. ***The Act came into full force on the day that it received Royal Assent.***
- Royal Assent December 15, 2009.
- Bill 183** **Ontario College of Trades and Apprenticeship Act, 2009**
(John Milloy, Minister of Training, Colleges and Universities).
Part II of this Bill prohibits a person from engaging in the practice of a trade designated under the Act unless the person is a member of the College. This Part also contains prohibitions relating to failing to employ sufficient journeypersons in relation to the number of apprentices as determined under the Act. Part IX deals with establishing journeyperson to apprentice ratios and with the classification of trades as compulsory trades (i.e. trades in which you must be a member of the College to practise) or voluntary trades (i.e. trades in which you can practise without being a member of the College).
- Royal Assent October 28, 2009 however most of the Act is not yet proclaimed and no proclamation date has been posted.
- Bill 185** **Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading), 2009**
(John Gerretsen, Minister of the Environment).
This Bill would require re-enact section 176.1 of the Act to authorize the making of regulations for emissions trading for greenhouse gases.
- Royal Assent December 15, 2009 ***however the key provisions have not yet been proclaimed in force.***

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- Bill 187** **Technical Standards and Safety Statute Law Amendment Act, 2009**
(Harinder Takhar, Minister of Small Business and Consumer Services).
- This Bill would the legal structure of the TSSA from a designated authority that is a not for profit corporation to a statutory authority corporation and thereby makes it subject to review and reports by the Provincial Auditor.
- Royal Assent December 15, 2009 ***however the key provisions have not yet been proclaimed in force..***

- Bill 212** **Good Government Act, 2009**
(Chris Bentley, Attorney General).
- This Bill amends more than 80 separate statutes ranging from the Arts Council Act and the Ontario Water Resources Act to the Electricity Act and the Municipal Act. The Bill would also repeal 16 other acts such as the Grain Corn Marketing Act, the Charitable Gifts Act, the Public Inquiries Act, the Marriage Amendment Act, 2002, the Community Psychiatric Hospitals Act, the Mental Hospitals Act, the Municipal Health Services Act, the Tourism Act, the Commuter Services Act and the Law Reform Commission Act. This Bill would also require the Attorney General, in the first five days of each calendar year that the Legislature is sitting, to list all statutes that are more than 9 years old and have not yet been proclaimed in force, and those statutes will be automatically repealed on the following December 31st, unless the specific statute is proclaimed in force or otherwise resurrected during the interim.
- Royal Assent December 15, 2009.

- Bill 218** **Ontario Tax Plan for More Jobs and Growth Act, 2009**
(Dwight Duncan, Finance Minister).
- This Bill amends several statutes to implement the 2009 provincial spring budget, most notably the Harmonized Sales Tax, which comes into effect as of July 1, 2010.
- Royal Assent December 15, 2009.

Private Members' Bills

- Bill 6** **Employment Standards Amendment Act (Wage Security), 2007.**
(Paul Miller, NDP - Hamilton East - Stoney Creek)
- Bill 6 would amend the Employment Standards Act to establish a new regulatory body to provide an alternate source of revenue for unpaid wages. Employers would be required to fund the program through mandatory premiums and file reports on wages paid and outstanding on

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a regular basis. A similar bill was introduced by Peter Kormos of the NDP in May 2006 but did not progress beyond first reading. Under this Bill, construction workers who are entitled to the protection of a lien under the Construction Lien Act would only be eligible for compensation if they have used their best efforts to preserve their lien claim.

- Second Reading December 6, 2007 and referred to Standing Committee on General Government December 6, 2007.

Bill 84 Occupational Health and Safety Amendment Act (Workplace Death, Critical Injury and Occupational Illness Registry), 2008 (Andrea Horwath, NDP -Hamilton Centre).

This Bill would create a registry accessible to workers and potential workers for the purpose of identifying health and safety risks associated with specific workplaces.

- First Reading June 2, 2008.

Bill 121 Red Tape Reduction Policy Act, 2008 (Norm Miller, PC - Parry Sound--Muskoka).

This Bill would introduce a new requirement for passage of a government bill. Upon introducing a Government bill or moving second or third reading of a Government bill, a Minister is required to attach a statement to the bill confirming that the Government has reasonably considered and addressed any associated regulatory burdens.

- Second Reading November 20, 2008
- Ordered referred to Standing Committee on General Government November 20, 2008

Bill 189 Employment Standards Amendment Act, 2009 (Cheri DiNovo, NDP - Parkdale High Park).

This Bill has 3 main purposes, 1) to make each and every member of a group of employers, jointly and severally liable for unpaid wages; 2) prohibit employment agencies from charging a fee for employing or obtaining employment for a person or providing information about employers seeking employees; and 3) increasing the priority of unpaid wages over unsecured creditors from a maximum of \$10,000 per employee to a maximum of \$25,000 per employee.

- First Reading June 1, 2009.

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- Bill 206** **Labour Relations Amendment Act (Replacement Workers), 2009**
(France Gelin, NDP - Nickel Belt).
This Bill is almost identical to Bill 86 which was lost at second reading on October 8, 2009. It would restore the ban on hiring replacement workers that was in force until 1995, and would ban the hiring of replacement workers unless the strike mandate by the union was less than 60%. The employer would bear the burden of proof in most complaint scenarios.
- First Reading October 6, 2009
- Bill 211** **Municipal Amendment Act (Green Roofs), 2009**
(Tony Ruprecht, Liberal - Davenport).
This Bill would amend the Municipal Act, 2001 to expressly authorize municipalities to pass by-laws requiring and governing the construction of green roofs. The City of Toronto passed its green roof bylaw through separate powers under the City of Toronto Act.
- First Reading October 21, 2009
- Bill 214** **Fire Protection and Prevention Amendment Act (Fire Sprinkler Retrofitting), 2009**
(Mario Sergio, Liberal - York West).
This Bill would amend the Fire Protection and Amendment Act, 1997 to require that certain care occupancy facilities, such as old age nursing homes constructed before March 16, 1998 be retrofitted with fire sprinklers by January 1, 2015.
- Second Reading December 3, 2009
 - Ordered Referred to Standing Committee on General Government
- Bill 233** **Trades Qualification and Apprenticeship Amendment Act, 2009**
(Robert Bailey, PC, Sarnia -- Lambton).
This Bill would amend the Trades Qualification and Apprenticeship Act to specify that no more than one person may be apprenticed to each journeyman of an employer in a trade and to remove the power to make regulations respecting the ratio of apprentices to journeymen who may be employed by an employer in a trade.
- First Reading December 8, 2009
- Bill 237** **Sustainable Water and Waste Water Systems Improvement and Maintenance Act, 2009**
(David Caplan, Liberal, Don Valley East).
This Bill not only repeals the Sustainable Water and Waste Water Systems Act, 2002, it would establish an Ontario Water Board and

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require municipalities to transfer water related assets to a new corporate entity so that the overall regulatory structure would be very similar to that for electrical distribution utilities. The Board, as an economic regulator would likely be required address major water capital projects such as water treatment plants and waste water treatment plants which may ultimately be the subject of tenders, RFPs and RFQs from OGCA members. This is a private members bill, not a government. Mr. Caplan may at some point in the not too distant future re-assume ministerial responsibilities for infrastructure related matters.

- First Reading December 8, 2009

Bill 239 Employment Standards Amendment Act (lay-offs), 2009 (Paul Miller, NDP, Hamilton East - Stoney Creek).

This Bill would alter the Employment Standards Act so that the duration of a lock out would not be excluded from the time used to calculate severance and termination pay requirements under that Act.

- First Reading December 10, 2009

Regulations

Ontario Regulation 47/09 Workplace Safety and Insurance Act, 1997

This regulation, providing the criteria for exempting of executive officers in the construction industry is not expected to come into force until January 1, 2012. Only one officer per partnership or corporation is eligible, that person must not perform 'any' construction work (visiting a construction site is not deemed as construction work). The officer must file a written declaration in prescribed form and provide copies of the form to his or her partnership or corporation.

Ontario Regulation 366/09 Highway Traffic Act

Together with the Countering Distracted Drivers and Green Transportation Act, 2009 a new regulation came into force on October 26, 2009 providing an exemption until January 1, 2013 for drivers in transport industries and public service who rely on the use of certain wireless devices and display screen technologies for day-to-day operations. The exemption provides time for the phase-out of commercial use of two-way radios, including mobile and CB radios. The new law will not affect mobile data terminals, logistical tracking devices and dispatching devices. They will be exempt for commercial and public service vehicle drivers who are engaged in the performance of their duties. Hand-mikes (push-to-talk systems) and walkie-talkies may be used in a hands-free mode.

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Ontario Regulation 443/09 Occupational Health and Safety Act

This Regulation amends Regulation 213/91, the Construction Projects Regulation by changing some standards and requirements related to fall arrest systems, guardrails, stilts and also imposes new criteria in terms of any buried utility services at the worksite. This amending regulation comes into force as of January 1, 2010.

Ontario Regulation 511/09 Environmental Protection Act

This Regulation (118 pages in length) amends Regulation 153/04, the Records of Site Condition Regulation, by imposing new conditions and restrictions on the placement of soil on any lands that is the subject of a Record of Site Conditions. The restrictions apply to "fill" excavated from any construction site, (whether from public or privately owned lands) even if the soils are what most observers would characterize as uncontaminated. The bottom line is that placement of soil will likely be subject to much more onerous analytical testing which will drive up construction costs, and the number of sites that can accept soil not meeting the stringent table 1 criteria will be significantly reduced. Some land owners may start to apply the more onerous criteria before the new regulation comes into force. The amending Regulation will come into force in various phases with the first phases, primarily definitions, coming into force on July 1, 2010 and most of the regulation coming into force on the later of July 1, 2011 and the date on which certain other statutory provisions in the Environmental Protection Act and the 2007 Budget Measure and Interim Appropriation Act, 2007 come into force.