

Torys' Video Podcast Series

March 2009

Ontario Introduces Green Energy Legislation: A Streamlined Approval Process

By [Dennis Mahony](#)

Dennis Mahony discusses the streamlined environmental approval process outlined in Ontario's proposed *Green Energy and Green Economy Act, 2009*.



Edited transcript

There has been lots of speculation about what was going to be in the *Green Energy and Green Economy Act*, Bill 150, which was introduced recently. In fact, there were weeks of speculation with respect to how the environmental improvement process, and the approval process generally, would be streamlined. Minister Smitherman described streamlining the process as one of the pillars of the new initiative. What was in the bill itself was part of the equation we have been hearing about, and that part is with respect to what I would describe as subordinate approvals under the *Environmental Protection Act*. There are really two categories: the *Environmental Assessment Act* approval, which is the overarching approval necessary before all other approvals are issued; and then there are the subordinate approvals — still very important — but those come, in order, really second in the process.

What we got in this bill was a one-window process for the subordinate approvals but no mention of whether the *Environmental Assessment Act* approval would be included in that window. That was a surprise because, as I said, a lot of the speculation was that we would have a genuine one-window process for environmental approvals in the province. And to leave out the *Environmental Assessment Act* would have been a significant gap under the circumstances. So if the bill continues in its current form and there are no additional announcements, for example, about a regulation that would include the *Environmental Assessment Act* approval, then I would describe the improvements to the process as being evolutionary, rather than fundamental or revolutionary. If the *Environmental Assessment Act* is included, and then there really is only one window for environmental approvals for these kinds of projects (renewable energy projects), that would be a significant advancement and I think there will be more information to come on that front.

There is more clarity with respect to municipal approvals. And when you look at the current version of the bill, that's one thing that really stands out. It appears that the intention is to remove from the municipality and upload to Queen's Park several approvals that were the source (not currently, but historically have been the source) of some delay. The mechanism by which that would be achieved is exempting renewable energy projects from municipal by-laws and related planning approvals, and that would then be included in (and this isn't clear yet) legislation to be passed in the future that would provide for standardized setbacks, for example, for a wind farm. And to the extent, we're assuming, that there are any issues with a project needing a variance, that would then go through a provincial process, not through town council. So that's very significant. That is perfectly consistent with what both Minister Smitherman and the Premier have been saying in recent weeks. Particularly the Premier, who has said that they will no longer tolerate NIMBYism with respect to renewable energy projects. And, in particular, he said that municipalities will

no longer be in a position to reject a project because they don't like it. At the same time, what he said is that municipalities would still have the opportunity to participate in environmental processes and appeals in order to have their views heard on environmental issues. And it's worth noting that simply because municipalities may no longer have the ability to exercise influence through their own town council process, they will have an opportunity through the environmental process. In fact, I would expect that if the bill goes through as is, there will be more municipal participation in that process.

So it looks like we've made some progress, or will be making some progress, from a streamlining perspective with respect to municipal approvals. And there's also some speculation that we'll be making real progress with respect to environmental approvals. But for anybody who fantasized that we might get one single permit dealing with one single bureaucracy — clearly that's not happening. We, in fact, have an office specifically being set up in the bill to facilitate the coordination of approval processes for these kinds of projects and it specifically continues to contemplate multiple approval processes. So that's the reality for any large project. The hope here is [that] in Ontario we [will] have maybe fewer windows than other jurisdictions and if the service guarantee actually holds up (and the devil will be in the details on that one), we'll have one of the fastest processes for renewable energy projects. **1**