

Highway 413 to be exempt from Environmental Assessment Act

Critics call on Ottawa to intervene after bill to speed up construction puts species at risk

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Ontario has tabled legislation that would exempt its marquee proposed Highway 413 project from the need for a full-scale environmental assessment, prompting some critics to renew calls for Ottawa to do more to ensure the protection of endangered species along the 52-kilometre route.

Transportation Minister Prameet Sarkaria's bill this week also includes new measures that would make it easier for government officials or contractors to inspect land they intend to expropriate for the highway. Under the legislation, anyone who tries to block a site inspection along the route of the 413 could face up to \$10,000 a day in fines.

In 2022, Premier Doug Ford's Progressive Conservative government made the planned 413, which would arc through protected Greenbelt land around the

Greater Toronto Area west and north of Toronto, a centrepiece of its re-election campaign.

But efforts since to get shovels in the ground have run into roadblocks, including a now-abandoned move by the federal government to do its own lengthy, detailed environmental evaluation of the project. Despite demands from environmental groups and opposition leaders, Ottawa has so far declined to revive this review.

Ontario's new bill, tabled Monday, would exempt the 413 project from the province's own Environmental Assessment Act, which would have required a lengthy study that considered the highway's impacts and looked at alternative options.

The new bill would still require the government to produce a report on how it intends to mitigate the project's environmental effects. But it would also allow the government to keep any studies that "contain information about sensitive natural or cultural heritage matters" out of the public eye.

Speaking to reporters, Mr. Sarkaria said the legislation would allow construction on early works to start sooner. He also again declined to provide a cost estimate

for the 413, citing the need not to tip off bidders for the contract to build it. The province's Auditor-General pegged the likely bill at \$4-billion in 2022, but critics say the final price tag could be double that.

Tim Gray, executive director of the group Environmental Defence, said that, while the government had long said it intended to streamline the environmental assessment process for the highway, this bill would essentially gut it.

"It's pretty perfunctory window-dressing. They're getting rid of any of the substantive work that they were actually planning on doing and just saying, 'We'll publish a report,'" he said in an interview.

Mr. Gray said the federal government needs to step back in and redesignate the project for more extensive environmental scrutiny under its newly rewritten Impact Assessment Act, an idea supported by Ontario NDP Leader Marit Stiles and Green Leader Mike Schreiner. In an e-mail, Liberal Leader Bonnie Crombie would not say whether Ottawa should step in but said she would investigate the highway if she became premier.

Earlier this year, the federal

government agreed to back off its battle with the province over the 413, after settling a court challenge that had been initiated by Ontario over whether the impact assessment Ottawa had imposed on the highway was overstepping. Last year, the Supreme Court of Canada had ruled that the federal Impact Assessment Act strayed too far into provincial jurisdiction, but Ottawa has since rewritten the legislation to narrow its scope.

The federal government had agreed to set up a working group to deal with Ontario on the 413 and ensure effects on endangered species are mitigated. And to build the highway, the province will still need to seek federal permits under endangered species legislation.

In an e-mail, Ottawa's Impact Assessment Agency said Ontario's bill would not affect the federal-provincial working group. However, the agency also said requests to designate projects for a full federal impact assessment would be addressed on a "case-by-case basis."

Ontario's new legislation also includes changes that would allow the government or its contractors sweeping powers to go

onto land on or near the highway's path to do site inspections, soil sampling or other such work – without any objection from landowners. Anyone who hinders such an activity would face up to a \$50,000 fine for a first offence, plus fines of up to \$10,000 a day. A second offence could cost up to \$100,000.

The government would also be allowed to seek an order from a justice of the peace, rather than a Superior Court judge, authorizing it to enter a property or a dwelling or even take possession of land it "has the right to possess."

Veteran Toronto expropriation lawyer Shane Rayman said the changes will likely speed up preliminary work and the land acquisition process. However, he said, the new powers would be "unusual" in Ontario and give the government more of an upper hand with landowners facing expropriation.

"This act gives the government remarkably broad powers to possess land, to enter properties and to put down resistance," Mr. Rayman said in an interview. He warned that if the new powers are not exercised fairly, it could "be fairly harmful to property owners."