

Submission on ERO 019-9265 and ERO 019-9213
Reducing Gridlock, Saving You Time Act, Building Highways Faster Act
Highway 413 Act and Highway Traffic Act

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FRIENDS OF THE GOLDEN HORSESHOE

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The Friends of the Golden Horseshoe is a group who have a vision for healthy and prosperous communities. We are writing to express our serious concerns with Bill 212.

Summary

We find the Acts proposed under Bill 212 to be an affront to enshrined processes for the appropriate assessment of major infrastructure undertakings like provincial scale 400 series highways - and proposed Highway 413 in particular - that has existed for good reason in Ontario for many decades.

The streamlined process proposed in its place inappropriately narrows the scope of environmental impact assessment both in regard to geographic scale and breadth of impact – including major matters such as need/justification, public health, climate change, endangered and threatened species, and cost/long-term fiscal implications - while vesting substantive criteria identification and scale of change decisions solely with the Minister.

It wrongly exempts early works in their entirety while exempting the entirety of this watered - down process from the Planning Act and its provisions for decisions to be consistent with the Provincial Policy Statement and conform to the Greenbelt Plan.

Bill 212 invokes authoritarian elements on landowners in relation to expropriation and site inspections/physical investigation of private property while doing the same to privately owned utilities – all under the threat of making non-compliance an offense and mobilizing police to enforce the Government's bidding.

It caps this undemocratic process off by exempting the entirety of proposed Highway 413 from the Environmental Bill of Rights – thereby further restricting public participation while also removing the ability to seek referral of the streamlined assessment to the Ontario Land Tribunal.

It closes the book by shrouding the entire process in a veil of secrecy as it shields any information the Government does not see fit to release from scrutiny.

Bill 212 continues the Government's pattern of inappropriate behavior – as seen most recently with the Rebuilding Ontario Place Act – to simply pass legislation to exempt its pet project of the day from all existing environmental laws while stripping citizens of their democratic rights under a veil of complete secrecy.

It makes proposed Highway 413 a fait accompli and makes a mockery of Ontario's Environmental Assessment Act.

And while inappropriately pushing gridlock inducing highways, the Bill then strays completely out of the Provincial realm to dictate rules and permission on municipalities authority to establish bicycle lanes – a matter for which it has shown no evidence and which is a local matter to be determined by duly elected municipal councils.

Context

The Environmental Assessment Act (EAA) defines environment very broadly:

“environment” means,

- (a) air, land or water,
- (b) plant and animal life, including human life,
- (c) the social, economic and cultural conditions that influence the life of humans or a community,
- (d) any building, structure, machine or other device or thing made by humans,
- (e) any solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from human activities, or
- (f) any part or combination of the foregoing and the interrelationships between any two or more of them”

Bill 212 proposes to enact a series of inappropriate exemptions, exceptions and limitations which severely narrow this definition and the Environment Assessment processes – including public consultation, and review/referral rights set out in the EAA and the Environmental Bill of Rights. It also limits landowners rights and institutionalizes secrecy of information regarding a major public infrastructure proposal involving untold billions of public dollars.

Exempt proposed Highway 413 and proposed extensions of Hwy 410 and 427 from the EAA

Fait Accompli – Part 1

The Bill 212 exemptions essentially make proposed Highway 413 a fait accompli. The Bill is structured to make the highway a “done deal” as it avoids any of the requisite analyses of need, justification and alternatives for a major facility which is and has been the foundation of the EAA since its inception.

This end around is of critical importance as the Government has not demonstrated the need for this facility. Travel demand is not high from Milton to King Township and a 400 series highway dead-ending at Highway 400 in the east is a road to nowhere. Transportation needs for this small regional area (essentially Halton Hills and Caledon) can easily be addressed by municipal road systems. In contrast, demand is high for traversing the Greater Toronto Area and the alternative clearly at hand is Highway 407 which was designed over 50 years ago to serve this very purpose but which is not fulfilling this role due to privatization by the Harris government. This cross GTA demand is reflected in the Premier’s recent statements about a potential tunnel under Highway 401 from Brampton to Scarborough.

Fiscal analysis reveals subsidizing tolls on Highway 407 would be far more financially prudent while avoiding all the other social and environmental impacts of proposed Highway 413. Prior analysis of the Advisory Committee on Highway 413 also demonstrates the lack of need.

Recommendation: require a needs justification and fiscal analysis - including consideration of alternatives (ie. subsidized tolling on Highway 407)

Minister is now the substantive gatekeeper

In place of the EAA the government is proposing a so called “streamlined” process. Substantively, rather than the broad impact analysis called for under the EAA for major new infrastructure – in the case of proposed Highway 413 - a massive new 60 km provincial 400 series highway traversing thousands of acres of Class 1 farmland and large/major environmentally sensitive portions of the Greenbelt – Bill 212 proposes a limited assessment focussed on “local environmental conditions” with the “criteria for assessment of impacts” now vested solely with the Minister.

This is but one of numerous instances where the substantive analysis requirements and assessment is vested with the Minister rather than being subject of robust, comprehensive impact identification and analysis currently required for infrastructure proponents under the EAA – with another example leaving the determination of whether a change is minor or major solely up to the Minister.

In regard to limiting the streamlined assessment to “local environmental conditions” – it is abundantly clear that proposed Highway 413 is a massive facility of intra-provincial and intra-regional scale that has far reaching implications for permanent impacts and long-term implications for the planning and resource management of the Greater Golden Horseshoe. The \$60 billion Regional Transportation Plan is an obvious part of this as is the lack of transit supportive densities in proposed new suburban urbanization along the proposed route. Limiting the assessment to local conditions inappropriately omits the consideration of the intra-regional and sub-provincial implications and potential impacts of proposed Highway 413.

Recommendation: include a broad, comprehensive definition of “environmental conditions” as envisioned by the EAA and remove discretion of Minister to interfere in criteria selection for impact assessment

Narrowed Definition of Environment

In addition to the ambiguity and narrowing of only looking at “local environmental conditions” the “streamlined” process narrows the definition of “environment” further by limiting the requisite studies to the following:

“The studies referred to in paragraph 8 of subsection (2) includes studies related to,
(a) fish and fish habitat;

- (b) terrestrial ecosystems;
- (c) archaeological resources;
- (d) air quality;
- (e) agriculture;
- (f) noise;
- (g) socio-economic conditions; and
- (h) drainage and stormwater management.

These confined terms omit multiple matters and potential impacts. Public health, climate change, endangered and threatened species, cost and long-term fiscal implications, planned and potential urbanization adjacent and nearby, watershed management, and modal split/transit supportiveness are amongst the obvious ones. Further, even the limited list can be further circumscribed by the Minister's power to define impact criteria.

Recommendation: *Broaden the list of studies to include the above and other relevant matters*

By-passing the Planning Act

Environmental assessments consider all applicable legislation, policies and regulations at federal, provincial and municipal levels – including those of conservation authorities – in order to address the definition of environment and the conditions that influence the life of humans or a community.

Laws, plans, policies and regulations inform the identification of the entire suite of considerations that should be assessed in EAs for major infrastructure and contain detailed policy directions, metrics and/or thresholds for identifying, avoiding, and/or addressing impact mitigation assessment.

The streamlined process is absolutely silent on reference to any of these. It institutionalizes this silence by specifically exempting the streamlined process from the Planning Act provisions that decisions shall be consistent with the Provincial Policy Statement and conform to the Greenbelt Plan – while also overriding a variety of municipal by-law requirements (which includes official plans which are adopted by by-law).

The Greenbelt Plan for instance contains specific definitions of key natural and hydrologic features along with various policies for infrastructure yet these will not be used as the basis for impact assessment or decision making.

Recommendation: *remove the exemptions from the Planning Act from having to be consistent with the Provincial Policy Statement and conform to the Greenbelt Plan, and remove the exemption of municipal official plans*

Activities Before Process Completed – Fait Accompli Part II

The proposal allows “early works” projects to proceed - including obtaining various types of permits – prior to release of the draft “environmental assessment impact report” (EIAR) (the shortcomings of which are discussed above). It also allows additional early works to be added prior to release of the EIAR.

Early works includes bridges, ramps, berms etc and the expropriation of land. These all inform the design of a highway as alignments – including curves – are designed to accommodate speeds well above the posted limit. The location of ramps and bridges therefore predetermine the alignment of the highway supposedly being assessed under the streamlined process. If there is any natural feature which could be avoided through a comprehensive, simultaneous design approach – this opportunity will/may be lost if the feature is located in proximity to a “early work” ramp, bridge or other element.

The proposal then goes further to state that any “early works” do not need to undergo any environment impact assessment – which bifurcates the comprehensive approach to infrastructure facilities mandated by the EAA and is a complete affront to the principles and laws of Ontario’s environmental assessment process.

Recommendation: do not exempt early works from, or allow them prior to, the completion of the streamlined environmental assessment

Silencing the Public Again

In exempting the proposed highway from the EAA, the Bill also removes the consultation requirements prescribed under the EAA – replacing them with a single consultation opportunity while also removing the requirement to demonstrate how comments on a preliminary environmental impact assessment report have been addressed.

Bill 212 further exempts Highway 413 from the Environmental Bill of Rights thereby removing the opportunity for the public to review and comment on even this inappropriately streamlined assessment proposed by Bill 212 – while also avoiding the requirement for a description of how this highway is consistent with the Ministry/Government’s Statements of Environmental Values.

Further, this exemption removes the ability for commenters to request the Minister to refer the impact assessment to the Ontario Land Tribunal (formerly Environmental Review Tribunal) thereby removing yet another safeguard for public questioning of this massive facility.

Recommendation: Do not exempt proposed Highway 413 from the Environmental Bill of Rights

Keeping the Public in the Dark and Trampling People's Rights

Bill 212 allows the government to keep any information it wishes secret – thereby depriving the public from having a true idea of what is going on. The Government's pattern of secrecy in relation to matters of public interest and public financing is outrageous and indefensible.

The Bill also removes landowners' rights from challenging expropriations in court and mandates direct access to properties at the whim of government including the installation of works on people's property - while instituting severe offense/penalty provisions for non-compliance and expressly authorizing the mobilization of police to enforce the governments' draconian stripping of people's rights.

It proposes a similar authoritarian approach to private utility companies.

Essentially the Government is once again – as it did with Ontario Place – simply passing legislation to exempt its pet project from all existing environmental laws while stripping citizens of their democratic rights under a veil of complete secrecy.

Recommendation: Delete the provisions of Bill 212 that allow the government to keep information secret, that remove people's rights to challenge expropriations in court, that forces site inspections and works on landowners and that mobilizes police to do the government's bidding.

Keep out of the Municipal Kitchen – Bicycle Lanes

While inappropriately pushing gridlock inducing highways, the Bill then strays completely out of the Provincial realm by amending the Highway Traffic Act to dictate rules and provincial permission requirements on municipalities authority to establish bicycle lanes - while also invoking the right to remove existing lanes.

This is an inappropriate mandate creep into local matters to be determined by duly elected municipal councils. It is an insult to taxpayers – both municipal and provincial – who have and will foot the bill for both the installation and then removal of such lanes. Moreover, the Government has not provided any evidence to back up its rhetoric while misusing GTAH wide Board of Trade gridlock impacts to justify its position on specific City of Toronto bike lanes – despite the gridlock informing those metrics predominantly arising within the 905 area.

Recommendation: remove the proposed amendment to the Highway Traffic Act