



ANISHINABEK NATION

Anishinabek Nation Submissions on

Bill 5

Protect Ontario by Unleashing the Economy Act

May 2025

An Act to enact the
Special Economic Zones Act, 2025,
to amend the *Endangered Species Act, 2007*,
and to replace it with the *Species Conservation Act, 2025*,
and to amend various Acts and
revoke various regulations in relation to
development and to procurement



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Introduction

“Unleashing the economy” is about reducing species, environmental, heritage, archaeological, and artifact protections to stimulate and attract economic development. Whenever something is “unleashed” there is potential for harm to others. The “unleashed” can be unpredictable with consequences far beyond what is expected. Sometimes, it is hard to get the leash back on once “unleashed”. In fact, there is potential for harm to come to the very thing that is “unleashed”. Generally, there are legal consequences for those unleashing something; however, that too is done away with through new Crown immunities in Bill 5, *Protect Ontario by Unleashing the Economy Act, 2025*.

Anishinabek Nation submits that the history of the development of Canada and Ontario has shown government initiatives, such as Bill 5 to “unleash” an economic force, has resulted in dispossession of our lands, contamination of our waters, destruction of our sacred sites, and relocation of our people. With First Nation reliance on the environment being so intimately unique and with our connection to artifacts and archaeological sites being so personal, we submit that we see Bill 5 as a direct attack on Anishinabek and other First Nations in Ontario.

Overview

It is submitted that the Anishinabek Nation cannot support increasing risk to the environment, the threat to the ill-understood importance of species diversity, and further erasure of historical existence of First Nations on our treaty protected and Aboriginal title lands all in support of benefit to our non-Aboriginal treaty partner while showing no clear benefit for Anishinabek First Nations.

It significantly increases the chances of conflict with Anishinabek First Nations that are continually facing challenges in asserting rights when development projects encroach on traditional and treaty territories.

The prioritization of non-Aboriginal economic growth over First Nation rights leads to further marginalization and creates an imbalance that cannot be supported and was not envisioned by our respective forefathers in the creation of treaties and in lands held by Aboriginal title. The goal must be mutually acceptable, sustainable and inclusive development while ensuring the protections of all animals, plants, water and waterway, historical burial sites and places where historical artifacts are protected.

The Anishinabek Nation submits the following comments and recommendations concerning Ontario’s Omnibus Bill 5, *Protect Ontario by Unleashing our Economy Act*, to find a mutually agreeable path to Mino Bimaadiziwin (a good life), which includes sustainable economic development for both First Nations and non-First Nations.



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Anishinabek Nation Submissions concerning amendments to Ontario *Electricity Act, 1998* (“Act”)

1. The Act provides that the Independent Electricity System Operator (IESO) “may” require Indigenous consultation and “may” facilitate Indigenous participation in the energy sector. See section 25.32 (7) and (8). This should not be discretionary, and these procurement amendments should be mandatory.
2. Section 24.29 (2)(h) of the Act must make the advancement of reconciliation with Indigenous communities mandatory and not discretionary. “First Nation” should be used instead of “Indigenous” or “Aboriginal”.

These two above changes should not be problematic for Ontario given the proposed amendment to add a new section 3.2 concerning Crown immunity for procurement.

3. All references to “Indigenous” community should be changed to “First Nation” community. “Indigenous” is not recognized under the *Constitution Act, 1982*, and is not used under Ontario legislation such as the *Energy Board Act* or its regulations, and it is not used in the *Mining Act*, which uses “Aboriginal”. First Nations are the only historically accurate Aboriginal communities in Ontario.

Anishinabek Nation Submissions concerning amendments to Ontario *Energy Board Act* (“Act”)

1. We propose an amendment that the Act include a legislated requirement to include a First Nation person as one of the five commissioners to the board for the hearing and determination of matters over which the board has jurisdiction. This will add a First Nation perspective and may lead to decisions First Nations can support, meeting the needs of both Ontario and First Nations.
2. The amendments should include a legislated procurement requirement to include interested First Nations as participants in the gas transmitter, distributor, or storage sector activity.
3. These two items above should not be problematic given the proposed amendment to add a new section 134 concerning Crown immunity related to procurement.



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Anishinabek Nation Submissions concerning amendments to *Ontario Mining Act* (“Act”)

1. The proposed amendments to section 2 concerning the purpose of the Act to encourage prospecting to a degree consistent with the protection of Ontario’s economy must not include nor impact the existing wording in this section related to “in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights” in section 35 of the *Constitution Act, 1982*, including the duty to consult and accommodate.
2. Concerning the Minister's authority to suspend or restrict the access to the mining lands administrative system (“MLAS”) section 4.1 and the part of the new section 26.1, Anishinabek Nation does not support amendments that allow the Minister to suspend or restrict the access to the mining lands administrative system that hinders or encumbers land impacting First Nation Land Claims or Additions to Reserve. Nor do we support Ministerial authorities that restrict First Nations from accessing MLAS or impedes their participation in the mining sector. The Anishinabek Nation may have further submissions on this issue.
3. The Anishinabek Nation does support amendments to allow the Minister to suspend or restrict the access to the mining lands administrative system to foreigners and others who indiscriminately encumber land to the detriment of First Nations mining interests, Land Claims, and Additions to Reserve. Mining Claims are also sometimes used to protect sites due to lack of those means. These First Nations interests should be protected and should not be subject to suspension or restrictions.
4. Section 78.3 of the Act concerning applications for an exploration permit and what the Director of Exploration may consider, should change from discretionary to mandatory the consideration of “any arrangements that have been made with Aboriginal communities that may be affected by the exploration”. This would make the Act more consistent with UNDRIP and support smoother operations of the activity.
5. The Anishinabek Nation supports the amendment of adding a new section 176.1 that allows the Minister to cancel or revoke unpatented Mining Claims, or licenses of occupation, or terminate leases of mining lands if it includes “improved First Nation relations” as part of the “protection of the strategic national mining supply chain”, and/or if this protection includes “to support resolution of First Nation land claim issues”.
6. An amendment to this legislation should be made to include the requirement for all applications related to mining, needing the free, prior, and informed consent of



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affected First Nations. This would make the Act more consistent with UNDRIP and support smoother operations of the activity, thereby increasing mutually acceptable economic growth.

Anishinabek Nation Submissions concerning amendments to Ontario Environmental Assessment Act (“Act”)

1. Anishinabek Nation has no comments on the Ontario proposed amendments to the Act.

New recommended Anishinabek Nation proposed amendments:

1. We propose that changes to the Act be made to be consistent with federal environmental assessment legislative amendments whereby agreements can be made to have First Nations or other representative entities be responsible for significant components of environmental assessment on Crown land and it include the application of First Nations laws, as proposed by federal government.
2. We propose that Ontario amend section 40(2) (c) to make consultations and accommodations with First Nation communities mandatory under environmental assessments.
3. We also propose the Act be amended to include that a First Nation and/or Treaty representative be included as a legislated representation on any Environmental Review Tribunal. A First Nation environmental stewardship table, which is led by appointed First Nation and/or Treaty selected representatives, should be created. The table should participate directly in the decision-making process, or at a minimum, provide advice to support decision-making. Provisions must specify that recommendations from the advisory table are to be incorporated into the final document.
4. We are opposed to amendments related to Chatham-Kent waste disposal site and any legislated amendments that support transport of waste from Toronto into our territories.
5. We propose that all references to “Aboriginal” community be changed to “First Nation” community. First Nations are the only historically accurate Aboriginal communities in Ontario.



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Anishinabek Nation Submissions concerning amendments to *Ontario Environmental Protection Act* (“Act”)

1. Anishinabek Nation has no comments on the proposed amendments to the Act, which primarily relate changes to past fee matters.

Anishinabek Nation proposed amendments:

1. To amend the Act consistent with the Ontario *Mining Act* by inclusion of reference to implementing the legislation “in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*, including the duty to consult and accommodate.”
2. To amend the Act, the requirement to provide “notice” to First Nations where there is potential for a spill, discharge, or other “contaminant” that may impact a First Nation or Indian reserve land (s.99 of this Act and others). Currently, there is no legislated requirement for any notice to a First Nation in this Act.

Anishinabek Nation Submissions concerning amendments to *Ontario Endangered Species Act* (“Act”)

1. The proposed amendment is to convert all references to “Aboriginal” to “Indigenous” and the complete deletion of “Aboriginal people” in the definitions at s. 2(1), s.3(4)(b), 5(3), 20.7(3)(c) is rejected by Anishinabek Nation. “Indigenous” is not recognized under the Constitution of Canada and is not used under other Ontario legislation such as the *Energy Board Act* or its regulations, and it is not used in the Ontario *Mining Act*, which uses “Aboriginal”. “Indigenous” simply means occurring naturally in an area. “Aboriginal” is used in the *Constitution Act, 1982*, and is the primary basis for Ontario to make a distinction at all. Case law also supports Aboriginal duty to consult, not Indigenous duty to consult. Preferably, First Nation persons may be more accurate and are the only historically accurate Aboriginal people and communities in Ontario. Alternatively, include a legislated commitment to implement the *United Nations Declaration on the Rights of Indigenous Peoples*.
2. The proposed amendment to add 7(6) should include notice to First Nations concerning any proposed regulation. Proposed amendment to delete notice requirements on Ontario website s. 8(4) – (4.2) only increases the need for First Nation notice and such details. First Nations need to be consulted and accommodated on species and area specific regulation.



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3. Anishinabek Nation does not support amendments that enable the progress of development if a species at risk is identified, despite work in progress on the project or development, including but not limited to the proposed amendment of s.8.
4. Anishinabek Nation does not support any changes that eliminate or reduce recovery strategies or management plans for species at risk. The proposed changes make species at risk more vulnerable and only burden future generations with this responsibility, if that is possible at all (s.17, 47, 51).
5. Anishinabek Nation supports amendments that strengthen the Aboriginal duty to consult and accommodate (e.g., Proposed s.17(6) should be amended to specify Aboriginal people as it is a constitutional imperative).
6. Anishinabek Nation rejects and cannot accept changes to section 19 that diminish the legislated ability for Ontario to enter into agreements with First Nations, Tribal Councils, and organizations concerning species at risk, nor the associated changes or consequential amendment related to that proposed deletion (e.g., under s.20.3, 24, etc.). This includes and protects First Nations' ceremonial use of species.
7. Anishinabek Nation cannot support the amendment to terminate the Advisory Committee under section 48, which incorporates Aboriginal Traditional Ecological Knowledge (TEK). Canada is evolving from incorporating TEK to First Nations laws; this proposed amendment is regressive.

Anishinabek Nation Submissions concerning amendments to *Ontario Heritage Act* ("Act")

1. Anishinabek Nation cannot support amendments that reduce the powers to inspect and address issues concerning artifacts and archaeological sites. Given this is an issue that primarily relates to First Nations as the Original People of this land and Canada being so young, the Anishinabek Nation sees this as another direct attack on First Nations in Canada and further erasure of our existence.
2. Proposed amendments to s. 61.1 must include a copy of the report generated pursuant to the assessment order going to the First Nation closest to the location of the artifact or possible archaeological site.
3. Anishinabek Nation supports the amendments at 66.1 (1), (2), and (6) that authorizes the Minister to deposit an artifact found, or in a collection taken without a license, or in the course of an investigation with an Indigenous community, but request that this change to First Nation community.



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4. Anishinabek Nation does not support amendments related to exemptions under the new s. 66.1 concerning exemptions for the listed provincial priorities, including infrastructure. Often, First Nation artifacts are found in road construction and other construction and we cannot agree with “other priorities as prescribed,” which is too uncertain and general. Canada and its provinces have a long history of First Nation extinguishment. This is another example of how the existence of First Nation people may be erased. Treaty-specific claims and Aboriginal title claims may be supported by artifacts and as a result, may impact Treaty and Aboriginal rights; this evidence cannot be unjudicially destroyed. In our view, s.66.2 crown immunity anticipates the injustice and we also cannot support that.
5. The Anishinabek Nation cannot support amendment to s.66.2 concerning the extinguishment of causes of action as this is the only means by which to hold Ontario accountable and cannot be changed. First Nations cannot rely on good faith and trust relationship with the Crown.
6. Anishinabek Nation recommends that areas within a set proximate of former Indian Residential Schools and other known sites of Aboriginal importance be protected and assessments be supported for these lands.
7. Artifacts and other items of Aboriginal significance in private collections must be returned to First Nations. This is especially significant to holdings of retired archeologists. Archeology should be a regulated profession to hold archeologists to the highest standards expected of people of their profession.

Anishinabek Nation Submissions concerning *Ontario Special Economic Zones Act* (“Act”)

1. The creation of any “special economic zones”, in our view, constitutes the taking up of land under the treaties in Northern Ontario and as a result, any such action triggers a duty to consult because it is reasonable that it may impact our treaty and Aboriginal rights. It is also an unlawful taking of lands from First Nations with Aboriginal title and title claims to those lands, under the *Royal Proclamation 1763*. Therefore, each contemplated creation of such zone will trigger an Aboriginal duty to consult and accommodate.
2. The Anishinabek Nation requires that a clause similar to other provincial legislation related to the interpretation of this Act being consistent with the constitutionally protected Aboriginal and treaty rights. See below as example:

“For greater certainty, nothing in this act shall be construed so as to abrogate or derogate promote from the provision protection provided for existing aboriginal



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treaty rights of aboriginal peoples of Canada as recognized and affirmed in section 35 the constitution act, 1982”;

3. The Anishinabek Nation cannot support provisions related to extinguishment of causes of actions such as section 7, which are inconsistent with Treaty and Aboriginal rights and are of no force or effect in regard to our rights.
4. Amendments must include a significant role for Anishinabek First Nations in creation of Special Economic Zones including the creation of any associated regulations or recognition of “Trusted Proponents” or “Designated Projects”. First Nations cannot rely on “trust”, accountability has only worked for us.
5. This piece of legislation is so general is so vague, and uncertain, it leaves so much to regulations and other designations, we are not sure how any “meaningful” consultation with First Nations can occur on it.

Anishinabek Nation Submissions concerning *Ontario Species Conservation Act* (“Act”)

1. The Anishinabek Nation does not support the use of the word “Indigenous” because it is not reflective of the Constitution of Canada nor is it included in the case law related to rights of Aboriginal people.
2. There is reference to Indigenous traditional knowledge in section 9 (3); this knowledge has evolved in Canada to include Aboriginal traditional law. This clause should be reflective of that and include Aboriginal traditional law.
3. The COSSARO annual report referred to in section 12 (1) should also be sent to First Nations in Ontario. The representative criteria for COSSARO should include traditional Aboriginal knowledge.
4. The Anishinabek Nation supports section 22 (6) concerning consultation; however, it needs to be strengthened to make First Nation consultation mandatory.
5. Section 23 concerning possession of species requires an exception for First Nation use of species for traditional and ceremonial purposes.
6. The Anishinabek Nation proposes that this Act must include an equivalent to section 19 in the *Endangered Species Act*, relating to agreements with First Nations concerning some species. See below:



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19 (1) The Minister may, for the purposes of this Act, enter into an agreement with any of the following persons or bodies that relates to a species specified in the agreement that is listed on the Species at Risk in Ontario List as an extirpated, endangered, or threatened species:

1. A band as defined in the *Indian Act* (Canada).
 2. A tribal council.
 3. An organization that represents a territorially-based Aboriginal community.
- 2007, c. 6, s. 19 (1).

(2) An agreement under subsection (1) may authorize aboriginal persons described in the agreement or a party to the agreement to engage in an activity specified in the agreement that would otherwise be prohibited by section 9 or 10

7. The Anishinabek Nation recommends that the Minister have the power to create an advisory committee under this new Act, similar to the *Endangered Species Act* and that it be inclusive of the traditional First Nation knowledge and law.
8. Section 35 (10) regarding forfeiture of certain species, animals shall not include First Nation people for traditional and ceremonial purposes.

Conclusion

“Unleashing the economy” while sounding positive, dramatic, and encouraging to non-First Nations Ontario is anything but that for First Nations. It is setting First Nation interests back in our estimation by 25 years. Significant changes must be made to Bill 5 or the entire bill withdrawn in order to remain consistent with the visions of our forefathers in development of the treaties and the sharing of the wealth of this land.

In particular, the generality and uncertainty concerning legislation on Special Economic Zones and its reference to future regulations, unabridged decisions concerning designations and trusted proponents. This vagueness renders this particular Act incapable of being meaningfully consulted on as required by the Supreme Court of Canada.

Finally, if Bill 5 is to be acceptable at all, it must have mutual benefit for First Nations. To quote one of our great leaders, the Late Chief Roy Michano-baa of Biigtigong Nishnaabeg, a First Nation on the shores of Lake Superior, who has passed on to the Spirit World: First Nations are all too often left with “ishkwanjigan” - the leftovers. Bill 5 cannot be used to essentially only leave “ishkwanjigan” for First Nations and sadly, “ishkanjigan” for all of Ontario.