

Bill 150: Is it green? Is it democratic?

Careful examination is required for a bill which nullifies so much existing legislation

When a government proposes a piece of legislation, it is critical that it be reviewed meticulously in committee to discover all the implications for existing legislation, its conformity to societal values, the probable net effect it will have on communities and the economy. Parliamentarians have also to be on the look out for the claims made by those proposing the legislation and the discrepancies found in the small print. Any act of parliament which nullifies certain functions of already existing legislation should be examined very carefully indeed.

With all the fanfare and the well publicized spin that has preceded Bill 150 in an attempt to sell to the public, one would have thought at least this would be a memorable document, eloquently written, outlining ideals and long term objectives, and full of new ideas and practical innovations that would both inspire Ontarians to commit themselves to conservation and environmental custodianship and provide long term direction for cleaning up the planet. Instead, we have been presented with a distorted, scrappy bit of legislation, most of which is left to undisclosed procedural decisions by the Minister at a later date. What is amply clear is that the Minister of Energy and Infrastructure wants to have the final say in anything that affects electricity projects, town planning, conservation and environmental legislation and citizen participation in decision making. A more cynical observer might even suggest that it is an aggressive move by the Deputy Premier/Minister of Energy/Infrastructure to take over essential aspects of the Environment, Natural Resources, and Municipal Affairs and Housing portfolios.

Danger of this type of piecemeal legislation undoing checks and balances

The danger in this, of course, is that the checks and balances built into our system of governance through these four separate ministries are essential to our democratic values and the practical functioning of government. Need to verify the purported aim and the foreseeable effects Any proposed legislation has to be scrutinized to make sure that its purported aim is the same as its foreseeable effect. Self-contradictions can indicate motives that are not in the public interest. For example, the government seems to have given little thought about the actual ability of wind turbines to allow Ontario to become less reliant upon fossil-fuel generated electricity. The bill states that one of its purposes is "to fund conservation or renewable energy programs aimed at decreasing the consumption of two or more of the following fuels:" and the list includes coal, and natural gas. The Ministry of Energy is proposing removing all barriers to the rapid and widespread installation of industrial wind turbines across the province. But what has not been discussed is whether the massive installation of commercial wind energy will actually have the claimed effect in lowering greenhouse gas emissions. While the minister never tires of holding up Denmark and Germany as great environmental successes with more wind turbines than anywhere else, there are disturbing reports coming out of both of these countries. Need to examine the real facts What the public is seldom told is that because of the intermittency and unpredictability of wind, fossil fuel back-up generation is required to maintain grid stability. In effect, this means that electricity consumers pay twice for wind energy. In addition an enormous public subsidy is required to build the new transmission lines from so many widely dispersed wind energy sites. • A 2008 study published in the journal Energy Policy by Jim Oswald of Coventry University in the U.K. concluded: "not only is wind power far more expensive and unreliable than previously thought; it cannot avoid using high levels of natural gas, which not only will increase costs but in turn will mean far less of a reduction in carbon dioxide emissions than has been claimed."

- Der Spiegel recently reported that despite all the wind turbines in Germany (more than 20,000) "German CO2 emissions haven't been reduced by even a single gram" and even the Green Party has recognized the problem.
- The Wall Street Journal explained last September: "Germany's gas consumption for power generation more than doubled between 1990 and 2007."
- In the U.K., the newly installed wind technology is also backed up by gas. Figures released in November by the OECD indicate that "in the past year alone, prices for electricity and natural gas in the U.K. have risen twice as fast as the European Union average".
- Tony Lodge of the U.K Centre for Policy Studies notes that Denmark, with the most wind turbines in Europe has not closed a single conventional power plant in the period that Danish wind farms have been developed. The "Danes

have found that it is not practical for large base load plants to be turned on and off as the wind dies and rises; base load stations have to keep running so that they can 'shadow' wind turbines due to their intermittency. So when the wind is blowing perfectly for the turbines, the power they generate is usually a surplus and sold to other countries at an extremely discounted price." • "According to the Copenhagen newspaper Politiken, the Danish grid used 50% more coal-generated electricity in 2006 than in 2005 to cover wind's failings. The increase in the demand for coal, needed to plug the gap left by underperforming wind farms, meant that Danish carbon emissions rose by 36% in 2006. This has undermined the "green" credentials of Danish wind farms. Meanwhile Danish electricity costs are the highest in Europe. The Danish experience suggests wind energy is expensive, inefficient and not even particularly green." • Now the British Wind Energy Association has been forced by the Advertising Standards Authority to stop exaggerating by double the amount of carbon dioxide emissions eliminated by using wind turbines.

Yet in Ontario, according to a recent report by the Fraser Institute, "the Ontario Power Authority failed to conduct economic analyses to determine the most cost-effective mix of future energy supplies."

Silencing public criticism

The government has publicly stated that citizens who object to their "policy" must be silenced. This bill certainly achieves that objective. The surprisingly untidy organization of the act— large sections being no more than a series of amendments to existing legislation-- appears to be the result of a random search by government lawyers to disable every statute that might be used to oppose government policy. The result is an unacceptable dismantling of real environmental protection in this province.

Municipalities and counties asking for moratoriums and health studies on wind turbines

To refuse public input raises serious questions about the true motivations of the government. Health and safety issues for rural residents living close to wind turbines have arisen in every jurisdiction where they have been installed. Wouldn't it be expected that a minister overseeing such installations should follow up on the request from a number of Ontario municipalities and county councils for a moratorium on the deployment of industrial wind energy pending proper health studies? The Province of Nova Scotia is now insisting on 1.44 km setbacks from non-participating properties, and 1.2 km for project participants. Why are no similar setbacks mentioned in this bill?

How much detail should be left to ministerial procedural decisions?

One major shortcoming of the bill is that too many essential details are vaguely left to ministerial decisions on procedure. When government claims that it will make adequate setbacks from peoples homes and regulations to avoid placing wind turbines near sensitive natural habitats, we should be insisting on seeing what those regulations are before passing this bill. The current procedure of rubber stamping proponent dictated environmental assessments and denying public requests to escalate environmental reviews for all 19 wind turbine projects in Ontario has led to inept and destructive siting in important international migratory bird corridors and stopovers.

Should costs required for private company profits be passed on to taxpayers?

Nicely buried in the bill is the provision that electricity consumers will be expected to pay for the huge additional transmission lines required for renewable energy projects. These additions will cost billions of dollars, not a modest increase on the monthly hydro bill as the minister claims. Undoubtedly, the priority will be to facilitate the transmission of so-called green energy from the widely dispersed rural settings where it is produced to the cities where it is consumed, not to restore the aging infrastructure to homes and businesses across the province.

In this way, the bill ensures that private and business electricity consumers will be subsidizing the already heavily subsidized for-profit wind energy producers (often huge oil and gas concerns). Given the doubtful likelihood that commercial wind energy will even substantially cut greenhouse gas emissions, this can hardly be in the public interest. Many critics have asserted that it also creates an uneven playing field for conventional energy producers.

In fact, pushing reliance on an unpredictable, intermittent, non-base load electricity source will inevitably lead to the same enormous consumer electricity cost increases that have already occurred in other countries which have

embarked on such a strategy. Industrialists in Germany are very concerned about their decreasing competitiveness brought about by skyrocketing electricity costs.

Danish business is similarly concerned. Jytte Kaad Jensen, chief economist for ELTRA, Denmark's biggest electricity distributor laments: "In just a few years we've gone from some of the cheapest electricity in Europe to some of the most costly." And the Danish Member of Parliament, Aase Madsen who chairs energy policy admits: "For our industry it has been a terribly expensive disaster".

In October 2005, Robert M. MacIntosh, past president of the Canadian Bankers Association, wrote in the Financial Post: "It's time for reality to replace ideology in energy policy". Before parliament passes this bill, it must insist on some realistic cost/benefit accounting. We should also be asking how many more jobs will be lost in Ontario because of non-competitive electricity costs.

The McGuinty government claims that 50,000 jobs will be created by the Green Energy Act. "Wind farm" maintenance requires only 7 permanent jobs per 199.5 MW, according to Enbridge. Skilled installers are normally supplied by the turbine manufacturers and involve temporary workers often from outside Canada. We have no turbine manufacturing facilities. These jobs are jealously guarded by Germans, Danes, Americans and Spanish industries. However, even these long-established capital intensive manufacturers are now experiencing serious financial setbacks with stagnating order books and the banking system reluctant to supply credit to wind energy projects. Of course we could build the steel towers in Ontario and even the blades, but they are useless without the turbine equipment. Once again, it would be helpful to see some realistic details of the government's optimistic estimates.

Contradictory claims in the bill

But the most serious concerns about Bill 150 relate to duplicitous presentation: it alleges that it is promoting environmental values and postures its concern for the greater good, while in fact, undermining many of the environmental safeguards already in place and removing the right of citizens to have input. It should sound an alarm for everyone interested in maintaining civil rights and anyone genuinely interested in protecting the environment.

For environmentalists, there are some very disturbing aspects. In its present form, the bill disables the Conservation Authorities Act, making it impossible for a conservation authority to refuse permission for a renewable energy project except when it "is necessary to do so to control pollution, flooding, erosion or dynamic beaches"; (It scarcely conceivable that this would ever be the case for a wind turbine development). In fact, a conservation authority would no longer be able to impose conditions on the project. This in effect, removes one of our most important safeguards for the protection of Ontario's sensitive wildlife habitats. Recent long term studies by European biologists have warned of the danger of habitat fragmentation and long term degradation when wind turbine developments are placed near sensitive Natural Heritage Systems and migratory bird and bat corridors. The government makes the vague claim that it will not allow wind turbine developments to be sited near sensitive environmental areas. But their credibility is stretched when Environment Minister Gerretsen's ministry has already denied citizen requests to escalate environmental reviews for all 19 Ontario wind energy projects—with the result that some of them are already jeopardizing sensitive natural habitat functionality.

Do we want to dismantle the Niagara Escarpment Plan?

Even more shocking for a bill that claims to protect the environment is the devious redefinition of the term "utility" in Appendix 2 of the Niagara Escarpment Plan. Not only does it allow for gas and oil pipelines, wind turbines and other "renewable energy projects commercial or otherwise" along with all their associated infrastructure" to deface and degrade this unique world biosphere; it also opens it up for "the generation, transmission and distribution of steam or hot water; telegraph and telephone lines and other cabled services; a public transportation system; licensed broadcasting, receiving and transmitting facilities; or any other similar works or systems necessary to the public interest". Would any other country even contemplate so hideous a violation? How could the argument ever be made that such irreversible degradation to one of Ontario's most outstanding natural assets was "necessary to the public interest"?

Threat to civil rights

But by far the most odious section in the bill is the one which removes the rights of local authorities and individual citizens to appeal decisions of the Ministry of Energy when it allows developments in their communities. All residents of this province should be very worried at this aggressive removal of one of our most precious our civil rights—the entitlement of citizens to determine how our local communities will be planned and to challenge the destruction of our natural heritage assets.

Under the new act, an Ontario resident would be entitled to a hearing by the Tribunal with respect to “a decision of the Director under section 139 in relation to a renewable energy approval only on the grounds that engaging in the renewable energy project in accordance with the renewable energy approval will cause serious and irreversible harm to plant life, animal life, human health or safety or the natural environment.” Excluded from this list are all the other reasonable claims that might be made such as depreciation of property values, loss of marketability of a house, loss of enjoyment of peace and quiet, loss of quality of recreational facilities etc. “In the case of a hearing required under section 142.1, the holder of the renewable energy approval is a party to the hearing.” This stipulation would inevitably mean the presence of a high powered lawyer acting for the developer with the intent to intimidate and trivialize any complaint. (The OMB hearing at Kincardine required citizens to spend \$75,000 of their own money on “experts” in a fruitless attempt to defend their homes. They were not able to afford the fees of a lawyer comparable to that hired by the proponent and their testimony was for the most part belittled by the corporate lawyer as well as the judge).

However, just to make any public criticism impossible, the McGuinty government has added an ominous clause: “Onus of proof (3) “The person who required the hearing has the onus of proving that engaging in the renewable energy project in accordance with the renewable energy approval will cause serious and irreversible harm to plant life, animal life, human health or safety or the natural environment”. The irresponsible inclusion of such a principle in an act of parliament would set a totally unacceptable precedent for environmental law in this province. The 1996 Provincial Policy Statement under the Planning Act (which gives Ontario municipalities the responsibility for protecting natural heritage features and areas within a land use planning context) as amended in 2005 insists on quite the reverse principle. It more wisely stipulates that the proponent must demonstrate that a development will have no negative impact on the ecological functions of the habitat. “2.1.6 Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.” But the present bill would make it impossible for an individual citizen or group of citizens to mount any legal defense against a developer who happens to move into their area. Certainly by now the government has been told enough times that badly sited wind turbine developments have a negative impact on human and animal health. But even if a rural resident could afford legal representation, the contest would be lost before it began since it is very difficult (and costly) to prove long term irreversible medical cause and effect as everyone knows from watching years of litigation against the tobacco industry. Isn't the place of our government to protect the vulnerability of its citizens? In its present form, Bill 150 has many other shortcomings. Communities would not even be allowed to learn the proposed location of wind turbines which would be kept “a trade secret or scientific, technical, commercial, financial or labour relations information supplied by the proponent to the Facilitator in confidence, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization.” (This line sounds as if it were written by CANWEA). And another civil right is denied in the phrase: “In the event of a conflict between this Act and the Freedom of Information and Protection of Privacy Act, this Act prevails.” The premier and the deputy premier are undoing even the Freedom of Information Act!

Undeniably the “green dressing” of this bill requiring government facilities to “ensure the efficient use of energy” at government facilities is positive. But could this not have been done more efficiently in an inter-office memo rather than the expense of an act of parliament? Again, the emphasis on conservation of energy is a reasonable enough goal, but such programs are already in place, although judging from our ever growing energy greed, they certainly need more emphasis. And just what will be the functions of yet another costly bureaucratic operation, the “Renewable Energy Facilitation Office”. What exactly will be the duties of the Ministry employee, the “Renewable Energy Facilitator” other than providing more government jobs? Will she (or more likely he) be looking after the needs of citizens or just developers? Bill 150 is flawed and would work against the public interest

It is sad to see so seriously flawed a piece of legislation even being presented to the House for approval. Clearly, it was put together in a rush, and the rush to get it passed into law is intended to prevent public scrutiny. Given the

current invective of the government against criticism of its wind energy policy and the regular use of derogatory and belittling terms such as NIMBY for those brave citizens who have the courage to speak out, this bill looks a lot like a vengeful act aimed especially at silencing opposition.

When one is aware of the vigorous lobbying that has been done by the wind energy industry explicitly to silence public discussion, and the fact that at least one prominent member of the governing party is himself a wind energy CEO, it is difficult to regard Bill 150 as non-partisan and in the public interest. It should be returned to the government and completely rewritten after wide public consultation, public hearings, health studies on the effects of wind turbines, impact studies on the environment by the turbines themselves and their back up fossil-fuel generation. Information needs to be gathered diligently from the experience of other jurisdictions, especially those in Europe where better protective laws have been passed at the demand of affected citizens. A complete professional cost/benefit analysis on the feasibility of the addition of the proposed amounts of wind energy to the Ontario grid is also a prerequisite before a balanced judgment can be made. The present economic climate requires more than ever, well thought out plans based on more than wind energy proponents' spin.