LEGISLATION AND REGULATIONS COMMITTEE: MINISTRY APPROVAL FORM

+LRC Tracking #: (DLEG-847)
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Ministry of Energy

Ontario Fair Hydro Act, 2017
Legislation

Profile at a Glance

Priority: Key
Public Interest: Very High
Key Stakeholder Interest: High
New Costs/Burdens: Yes for Government, Yes for Stakeholders
New Savings/Opportunities: Yes for Stakeholders; No for Government

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Proposed Items for Review

1. New legislation titled the Ontario Fair Hydro Act, 2017

Approvals required prior to LRC

	Committee and date	Cabinet Date
Policy	Cabinet approval received March 1	
TB/MBC	TB/MBC approval received March 9	

Deputy Minister ______________________ Date ________

Minister ______________________ Date ________

s. 1 **Proposal and Context**

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), intended to lower bills on average by 25% for a typical residential consumer, starting in the summer of 2017. About half a million small businesses and farms are also expected to benefit.

- Any rate increases for residential consumers over four years would be held to the rate of inflation.

- These measures include the 8% rebate introduced in January and builds on previously announced initiatives to deliver broad-based rate relief on electricity bills.

- The OFHP also announced enhancements to a number of existing programs targeted at more vulnerable electricity consumers, including funding some or all of the costs of these programs from the tax base rather than the electricity ratebase.

- OFHP is part of a significant system restructuring that will address long-standing policy challenges and ensure greater fairness.

- To implement OFHP, the Ministry has prepared the Fair Hydro Act, 2017 in close collaboration with key ministries (i.e., Treasury Board, Finance, Attorney General, Cabinet Office), agencies (i.e., OEB, IESO, OPG) and third party financial advisors and local distribution companies (LDCs).
    - The proposed Fair Hydro Act, 2017 would be an omnibus bill with 2 schedules: the Ontario Fair Hydro Plan Act, 2017 and amendments to the Ontario Energy Board Act, 1998 and Electricity Act, 1998.

- The proposed OFHP legislation, supporting regulations and amendments to existing legislation (e.g., Electricity Act and Ontario Energy Board Act) will, if passed, enable implementation of the following key components of the Plan:

    A. Refinancing the Global Adjustment (GA) – The proposed legislation outlines how costs would be fairly allocated among eligible consumers over time.

    B. Helping Vulnerable Electricity Consumers – The proposed legislation broadens the Rural or Remote Rate Protection Program (RRRP) by creating a new distribution rate protection component, expands the Ontario Electricity Support Program (OESP) and establishes a new On-Reserve First Nations Delivery Credit. The legislation also allows for these programs to be funded (partially for RRRP) through the tax-base.

A. GA Refinancing

- The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of investments in clean energy initiatives are allocated fairly among present and future generations of consumers.

- Refinancing the Global Adjustment (GA) would be achieved through the proposed stand-alone legislation, regulations and amendments to existing legislation and regulations.

- Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

- The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the GA. These mechanisms are described below.

B. Social Programs

- The proposed Ontario Fair Hydro Plan would help vulnerable electricity consumers by enhancing electricity support programs and shifting program costs onto the tax-base:
  - Enable Rural or Remote Electricity Rate Protection (RRRP) costs to be funded through provincial revenues;
  - Enhance Rate Protection through creation of new tax-base funded Distribution Rate Protection (DRP);
  - Enable Ontario Electricity Support Program (OESP) costs to be moved to tax base;
  - Create a new First Nation On-Reserve Delivery Credit, funded through provincial revenues

s. 2 Approach and Intended Outcomes

A. GA Refinancing

- The Fair Hydro Act, 2017 attempts to balance several key factors including financeability, accounting requirements and legal considerations.

- Following an extensive consultation process with internal and external experts, the proposed legislation strikes a balance between these three factors by:
  - Supporting financeability through a number of features, including enabling a provincial guarantee and provisions intended to provide certainty to investors in order to reduce borrowing costs and attract a wide investor base;

- Addressing the necessary accounting requirements through mechanisms to record funding, interest and the transfer of regulatory assets to avoid a fiscal impact to the province; and
- Mitigating legal risk by developing a methodology that attempts to fairly aligns costs and benefits.

- The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of clean energy initiatives are allocated fairly among present and future generations of consumers.
  - Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

- The proposed legislation would outline:
  - Roles and responsibilities for the OEB, IESO, OPG and the Province;
  - A detailed Preamble, Purpose and Definitions;
  - Details with respect to cost allocation, rate reduction methodology, implementation and financing;
  - Scope of provincial undertaking and enabling the Province to provide guarantees and indemnities to back stop that undertaking; and
  - Amendments to other acts.

- The associated amendments to existing legislation and regulations include:
  - Electricity Act, 1998: amendments to provide OPG with the authority to establish a special purpose vehicle (SPV) for the investment asset and Ontario Energy Board Act, 1998: amendments to allow for OEB to set rates recognizing GA refinancing.

Preamble and Purpose

- The preamble of the proposed legislation establishes the rationale for the allocation of "clean energy costs" over time. That is, the development of a clean, modern and reliable electricity system has increased costs for ratepayers.

- The purpose of the proposed legislation is to support the Government of Ontario's commitment to ensure that the costs of these investments are allocated fairly among present and future generations of consumers.
  - Costs to be allocated include clean and renewable generation facilities, conservation, demand management, energy efficiency programs.

- The supporting legislation defines the mechanisms and framework that would achieve the refinancing of the Global Adjustment. Note: These mechanisms are described below.

- The legislation also restricts the OEB, Minister of Energy and the Crown from reducing, impairing or ending Clean Energy Adjustments in the future:
  - The Lieutenant Governor in Council may authorize the Ministers of Finance and Energy to enter into guarantees and indemnities related to the Act.

- The proposed legislation aligns eligibility with the Ontario Rebate for Electricity Consumers Act, 2016.

Fair Adjustment

- Sets out the mechanism for the Ontario Energy Board (OEB) to determine the "relief", including the initial decrease in rates to achieve the 25% decrease, for a typical residential consumer, and to achieve comparable bill reductions for other eligible consumers, for the period July 1, 2017 to April 30, 2018.
  - Under the legislation, the OEB must determine the amount within 15 business days of the legislation receiving Royal Assent.

- The Fair Adjustment also allows the LGIC to make regulations prescribing electricity rates after April 30, 2018.

Clean Energy Adjustment

- The Clean Energy Adjustment is the mechanism to recover the under-collection of GA from eligible consumers during the recovery period.

- The proposed Act outlines:
  - The process for determining the total Clean Energy Adjustment amount;
  - The obligation on individual ratepayers for the repayment of the amount; and
  - The inability to offset or bypass re-collection of the amount.

Fair Allocation Amount

- The Fair Allocation Amount is a calculation and allocation of clean energy costs and clean energy benefits over time.
  - The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager. Subsequent calculations may be undertaken by other agents as prescribed by the Minister.
  - It is expected that the calculation would lead to decreased rates in the near term with upward pressure on rates in the long term.

- Under the legislation the calculation of the Fair Allocation Amount is guided by the principles and purposes of the Act including the proportional allocation of clean energy costs and benefits.

Financial Services Manager

- The legislation appoints OPG as the Financial Services Manager.

Financing Plan

- The Fair Allocation Amount is a calculation and allocation of clean energy costs and clean energy benefits over time.

- The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager. Subsequent calculations may be undertaken by other agents as prescribed by the Minister.
- It is expected that the calculation would lead to decreased rates in the near term with upward pressure on rates in the long term.

- Under the legislation the calculation of the Fair Allocation Amount is guided by the principles and purposes of the Act including the proportional allocation of clean energy costs and benefits.

Regulatory Asset

- IESO will have a funding deferral resulting from the reduction in amounts collected during the first four years.

- The legislation enables IESO to record the under-collection of GA in a variance account, and deems the rights associated with this under-collected amount to be a Regulatory Asset.
  - OEB would determine rates to allow IESO to recover under-collection recorded in its variance account in the event the Regulatory Asset is not sold.

- IESO is authorized to sell all or a portion to the OPG Special Purpose Vehicle (SPV)/Trust.

Investment Asset

- The sale of the regulatory asset from IESO to the OPG Special Purpose Vehicle (SPV)/Trust creates an “Investment Asset”.

  - The legislation establishes property rights for the Investment Asset such as the right to collect principal and interest and financing costs in the form of the clean energy adjustment from eligible consumers.

- The Investment Asset may in turn be sold to other investors or group of investors.

- Through the legislation, the Board, Minister and Crown undertake not to hinder the charging and remittance or collection of clean energy adjustments.
  - The Province, through the Minister of Finance and the Minister of Energy may agree to guarantee performance, any debts and obligations and backstop its undertaking.

Amendments to Other Acts

- The legislation stipulates required amendments to existing legislation such as:
  - The Electricity Act, 1998 – to expand the objects of IESO and OPG to enable them to perform their rights and obligations in the proposed Act

- The Ontario Energy Board Act, 1998 – to address license conditions and the determination of regulated payments.

B. Social Programs

- The proposed legislation provides the authority to implement two new rate mitigation programs and expands upon two existing programs.

- To date, a number of electricity support programs are funded through the electricity rate-base. There is opportunity to provide support to a more targeted subset of customers who are disproportionately affected by increased electricity costs and to shift these costs to the tax base.

- The proposed legislation is intended to provide rate relief and assistance for:

  - **High Distribution Cost Customers**: Some customers in rural areas where the cost to distribute electricity is high can experience difficulty in reducing their electricity bill through conservation, particularly when reliant on electric heating.
  - **Low-Income Customers**: Rising electricity costs make up a disproportionally large amount of the household expenditures for low-income households.
  - **First Nation On-Reserve Customers**: On-Reserve First Nations customers experience challenges with energy affordability and are seeking to address historical grievances associated with electricity system infrastructure.

Proposed Changes to the Ontario Energy Board Act, 1998 ("OEBA" or "Act")

- The Ontario Energy Board Act, 1998 would be amended to facilitate the roll out, expansion or change in funding of the following programs.

i. Rural or Remote Rate Protection (RRRP)

- RRRP is an existing program currently funded by ratepayers through the regulatory line of the electricity bill. Currently costs $1.58/month for a 750kWh consumer.
- Part of the program helps fund the costs of Hydro One customers classified into the "R2" residential rate class. There are approximately 330,000 R2 customers across the Province. These customers have some of the highest distribution costs in the Province. For R2 customers the enhanced RRRP, or Distribution Rate Protection (DRP), is provided in addition to the RRRP the customers are already eligible for under the existing RRRP.

- Section 79 would be amended to provide the government the ability to fund a portion of the Rural or Remote Rate Protection Program through the tax base by prescribing certain classes of consumers who will be funded through a legislative appropriation.

  - This includes the ability to pass regulations respecting the making of rules for the compensation of distributors with the money appropriated flowing from the legislature through the IESO to the various LDCs who would then provide the rate relief directly on consumers' bills.
  - Should the legislation pass, Energy proposes to amend O. Reg 442/04 to enable provincial funding to compensate Hydro One for provision of RRRP to its R2 customers.

ii. Expanded RRRP - Distribution Rate Protection

- While the RRRP helps mitigate some of the higher distribution costs for Hydro One R2 customers, there is an opportunity to provide further relief to consumers in relatively high-distribution cost outlier LDCs. This relief would be financed from the tax base.
- Mitigation would be provided by harmonizing distribution rates for prescribed LDCs, as set by the Ontario Energy Board. The mechanism for determining this rate would be set out in regulation.

- The new section 79.3 of the Act would enable Distribution Rate Protection, which satisfies the commitment to expand RRRP.
  - The section includes the power to pass regulations prescribing LDCs, the classes of consumers or consumers designated as distribution rate protected consumers, the maximum amount of the monthly base distribution charge, limitation periods, and the type of information required by the Board and Ministry to implement and administer the program, including financial transactions.

iii. Ontario Electricity Support Program (OESP)

- Section 79.2 would be repealed and replaced in order to provide the government with the ability to shift funding for the OESP (once existing rate-based pooled funding has been depleted) from the rate base to the tax base, and the ability to share information with MCSS to coordinate OESP and social assistance programs. The Ministry has already completed a regulatory amendment that, effective May 1, 2017:
  - Increases the existing OESP credit scales by an additional 50%; and
  - Expands the categories of OESP credits.
  - Provides for OESP to be funded from the tax-base once the IESO's OESP variance account has been depleted.

- The legislative amendments would provide authority to make regulations to replace existing O. Reg. 314/15 to implement these changes.

- The total fiscal impacts to the province from the newly enhanced OESP will amount to: $140 million in 2017-18, $261 million in 2018-19, $325 million in 2019-20 and $375 million in 2020-21.

- Schedule 2 amends the OESP provisions by prescribing the ability to fund the program from the tax base.
  - The section also provides that the Ontario Energy Board or any other entity prescribed in legislation would be responsible for administering the program.
  - In addition, the licenses of LDCs, the IESO, unit-sub meter providers or electricity retailers are deemed to include anything which is necessary to administer and implement the program as may be set out in regulations or by the Board.
  - The section also requires that the Ontario Energy Board continue funding the program using the amounts previously accumulated in the IESO's OESP variance account which is the difference between funds collected through the regulatory charge and expended on OESP to date, until these amounts are depleted and the program shifts to the tax-base.
  - The section provides for broad regulation making power and includes the provision for the creation of different classes of rate assisted consumers and establishing rules for the calculation of the rate assistance to be provided.
  - New provisions also provide the necessary authority to allow the OEB and the Ministry of Community and Social Services (MCSS) to share data on customers in the future to support increased participation in the OESP program among social assistance clients.

- Note: the intended approach involves proclaiming s.79.2 into force on a future date to be named by proclamation. This would allow time for the funds accumulated in the IESO's OESP variance account to be more fully expended prior to the repeal and replacement of s.79.2.
  - However, the MCSS data sharing provisions, along with ss. Amendments to s. 79.2.1, the new sections 79.3 and 79.4, would come into force upon Royal Assent.
  - The OESP charge has been removed from electricity bills, however a surplus account has been accumulated which the OEB will continue to use until depleted.

iv. First Nations On-Reserve Delivery Credit

- On June 27, 2016, following discussions on Hydro One shares and rates at COO's All Chiefs Conference, the Minister of Energy issued a letter directing the OEB to prepare a report providing "*advice on options for an appropriate electricity rate (or rate assistance) for on-reserve First Nations electricity consumers*".

- The program is premised around the findings in the OEB report on a First Nations Delivery Rate Assistance. The proposed program features include:
  - Eliminating the delivery charge, or monthly service charge for those customers served by LDCs that do not have a delivery charge, from the bills of prescribed on-reserve customers. Regulations would then prescribe those on reserve consumers which are eligible for the on reserve credit.

- Continue to provide eligibility to OESP while not disturbing eligibility for the Low Income Energy Assistance Program (LEAP) currently funded by distributors outside of these amendments to the OEBA; and
- The program would be carried out by the 11 affected LDCs serving on-reserve consumers identified by the OEB in its report, including; Algoma Power Inc., Attawapiskat Power Corporation, Bluewater Power Distribution Corporation, Cat Lake Power Utility Ltd., Cornwall Electric Distribution, Hydro One Networks Inc. Hydro One Remote Communities Inc., PUC Distribution Inc., and Thunder Bay Hydro Electricity Distribution.

- The program is anticipated to have a fiscal impact on Government of $20 million, as estimated by the Ontario Energy Board, to implement.

- The new section 79.4 of the Act would establish the First Nation On-Reserve Delivery Credit. The section provides that for all prescribed consumers, living on-reserve, the entirety of their delivery line items will be removed from their bill as a delivery credit.
  - The program would be entirely funded through the tax base.
  - The section includes the power to make regulations prescribing further program details such as eligibility and funding parameters.

v. Ministry of Finance Accountability Provisions

- The social programs all involve the expenditure of tax money to fund the partial or entire program costs. As a result, the Ministry of Finance and Treasury Board Secretariat require that such money be tracked and accounted for throughout the process.

- Therefore, the OEBA has been amended to include new provisions between ss. 79.5 to 79.11 as follows
  - Section 79.5 – imposes information sharing and auditing requirements for the Ministry of Finance.
  - Section 79.6 – Defines the Finance Minister as the Minister responsible for ss. 79.7 to 79.11.
  - Section 79.7 – mandates record keeping, retention and content requirements.
  - Section 79.8 – enables the Minister of Finance to appoint inspectors who may carry out inquiries
  - Section 79.9 – sets out the regime for the recovery of overpayments
  - Section 79.10 – imposes confidentiality requirements on Ministry staff for the collection of information
  - Section 79.11 – creates offences for false or deceptive statements, fraud and the unlawful destruction of records.

s. 3 Direction and Urgency

A. GA Refinancing

- On March 2, 2017, the government announced Ontario's Fair Hydro Plan (OFHP), which will lower bills for residential consumers as well as most small businesses and farms. The initiative was announced as starting in the summer of 2017.

- The legislation for GA refinancing requires the OEB to make further rate adjustments no later than fifteen business days after the legislation receives Royal Assent for Regulated Price Plan (RPP) consumers to achieve the full 25% for a typical residential consumer, and for other eligible consumers to also receive a comparable bill reduction.

- The full reduction from the OFHP is expected to be addressed through a July 1st RPP rate adjustment.

B. Social Programs

- The direction for the creation and implementation of the social programs is found in a variety of sources including the Cabinet Minute, throne speech given on the government's efforts to mitigate the high price of electricity in Ontario, and public commitments made by the Minister and other key government spokespeople.

- The program has been announced to commence as of July 1, 2017. This includes both local announcements and organized speeches and press conferences.

s. 4 Impact Assessment and Costs

A. GA Refinancing

- The Ministry has worked closely with third-party financial advisors in advance of and throughout the drafting process to help to ensure that the proposed legislation enables refinancing of the GA.
    - The proposed legislation enables the province to provide assurances in the form of a "provincial guarantee" to OPG and investors regarding the permanence of the GA Refinancing framework and the authority of the legislature to pass the legislation. The intent is to ensure that the full value of any investment is recovered.
    - The legislation also enables the Province to guarantee borrowing of the trust in the event of a market disruption to mitigate OPG's financing risk. Specifics of these guarantees will be determined in agreements to be negotiated later this year.

- It is still possible that the full value of the Regulatory Asset may not be purchased.
  - In such cases, IESO may be able to retain the unsold amounts recorded in its variance account for a short period of time.

- In order to provide financing, OPG would develop a special purpose vehicle (SPV) which will use 100% debt financing to purchase the regulatory asset, financing 51% through capital markets as senior debt, with the remaining 49% being provided by OPG as subordinated debt.
  - The 49% subordinated debt from OPG will be financed through debt OPG issues in its own capacity, through capital markets (up to 5%) with the remainder (44-49%) financed through equity injections from the Province. This will help to ensure OPG's capital structure remains in line.
  - The Ministry of Energy has received an appropriation for $1.1 billion operating asset to support these injections for the fiscal year 2017/18, and will report back through PRRT for future funding. Based on the final fair allocation amount calculation, the equity injections would be required until the period of recovery begins.
  - The injections will be fiscally neutral for the province as they will be offset with the value of shares purchased from OPG.

- OPG will seek to achieve the highest possible credit rating (AAA is possible) in order to reduce borrowing costs and attract a wide investor base. Credit ratings will depend on provisions in legislation, regulation and agreements as well as the capital structure of the SPV/Trust. Despite these factors, rating agencies may see the Province's rating forming a ceiling given the contingent guarantees that the Province will provide (described above).

B. Social Programs

i. Social Programs

Government Impact

- As approved in the TB/MBC submission of Mach 1st, 2017 and confirmed in Vote-Item 2905-1, the financial impacts on Government of the social programs for the period July 1 2017- March 31 2018 are anticipated to be as follows:

Program	2017-18 Budget
Rural or Remote Rate Protection	344,000,000
Ontario Electricity Support Program	140,000,000
On-Reserve First Nations Delivery Credit	15,000,000

- ENERGY will report back to TB/MBC in fall 2017-18 with an update on out-year projections following analysis on rate applications before the Ontario Energy Board.

Stakeholder Impact

The Schedule 2 social programs will impact Local Distribution Companies and their consumers.

- For example, the Distribution Rate Protection program would involve 8 LDCs, the First Nations On-Reserve Delivery Credit will involve 11 LDCs and the only impacted LDC from the changes to the legacy RRRP program is Hydro One Networks Inc. (the R2 rate class).
- There may be modest impacts on unit sub-meter providers and retailers, due to the requirement to flow financial assistance through to consumers served such entities.

- The compliance costs for LDCs will involve the expenditure of money to alter their billing systems in order to carry out the program. This includes costs to alter the bill presentment and to include a new line on the bill that highlights the First Nations On-Reserve Delivery Credit.

Agency Impact

- The Ontario Energy Board would have a role in continuing to administer the OESP and in setting the harmonized monthly base distribution charge for the purposes of the Distribution Rate Protection Program.

- The Independent Electricity System Operator would be responsible for for flowing the funds used to reimburse/compensate LDCs for the costs of delivering the social programs from the money appropriated for such purposes from the legislature. This requires the IESO to monitor program specific variance accounts and flow the amounts necessary to compensate LDCs for the costs incurred in carrying out the programs.

- The proposal advances the government's overarching goal of reducing the cost of electricity paid by residential customers, especially those facing the highest costs of delivery.

s. 5 Implementation

A. GA Refinancing

- On April 20, 2017, the Ontario Energy Board (OEB) announced new Regulated Price Plan (RPP) rates effective May 1 that include a portion of the bill reduction proposed under the OFHP.

- These new RPP rates will include 50% of the estimated reduction in GA. This reduction in RPP rates, along with the removal of the OESP charge and the existing 8% rebate, will mean that May bills will be 17% lower than they would otherwise have been for an average consumer (15% lower for the typical Toronto Hydro consumer).

- The legislation for GA refinancing requires the OEB to make further rate adjustments no later than fifteen business days after the legislation receives Royal Assent for RPP consumers to achieve the full 25% for a typical consumer and for other eligible consumers to receive a comparable bill reduction.

- The full reduction from the OFHP is expected to be addressed through a July 1st RPP rate adjustment.

- Regulations will be required to supplement the framework of the legislation to ensure that the OEB can make the required rate adjustments and to enable the financing contemplated by OPG SPV/Trust.

- The regulations are anticipated to be brought forward in mid and late June.

B. Social Programs

- The social programs would be implemented through subsequent regulations to follow that will expand upon the legislative framework to provide actual program specifications.

- The regulations are anticipated to be brought forward by late June, to allow for a July 1st program implementation.

- The efforts required to implement the programs would primarily fall upon the impacted LDCs who would need to adjust their billing systems in order to carry out the program.
    - For the OESP, the legislation contains transitional retroactive application of the provisions to offset any potential lapses in implementation.
    - The transitional retroactivity powers mitigate the risk of LDCs being unable to actualize the necessary OESP-related changes to their billings systems in time for the July 1st roll out and provides the utilities an extra prescribed time period (anticipated to be in the range of three months) to sort out any billing system alterations.
    - For the high-cost distribution rate protection and the on-reserve credit, there are more limited transitional provisions provide distributors with a prescribed time by which they must have adapted their billing systems while maintaining program eligibility for the rate assistance being provided.

C. Legal Considerations

- In principle, refinancing the Global Adjustment (GA) to spread the costs of generation and conservation assets over the useful life of the assets presents only a “low” risk of being an unconstitutional tax, as each cohort of consumers pays for a proportion of the GA cost roughly equal to the proportion of the benefit they receive from the useful life of the assets.

- Legal risk arises if it becomes apparent that the Government is not spreading cost so that it is shared proportionately by future consumers who cause a need for or benefit from the generation asset, but rather is doing so in order to lower the price in the "short" term by increasing the price in the long term. If the proposed financing served to encumber future consumers with a premium payment to cover the GA financing in order to subsidize current ratepayers, then there would be a moderately high constitutional risk that the financing proposal would result in an unconstitutional tax.

- Former Supreme Court Justice Ian Binnie has provided a legal opinion concluding that the current proposal is at a moderately high risk of being a tax, for the following reasons:
  - The degree of constitutional risk is in direct proportion to the extent the government is not able to show a proper match between the cost of providing facilities for electricity generation and the group of consumers who benefit year to year from electricity generated by those facilities.
  - If the government fails to establish that the relevant electricity generating assets will continue to perform economically over the 30-year period, or if the GA charge is in the opinion of the Court disproportionately backend loaded, the GA will not qualify as a regulatory charge (and would be characterized as a tax).
  - By shifting costs to the 20-30 year customers, the government may in reality be disproportionately back-end loading the GA with the effect that the 20-30 year consumers will be subsidizing the 1-20 year consumers.
  - The judges can be expected to be aware of the difficult political problem of high energy costs in in Ontario, and will take a careful look at the government's evidence in support of the re-allocation of the GA.

- The legislation contains provisions to mitigate the constitutional law risks, including requiring the Minister of Energy to reallocate estimated clean energy costs attributable to each reference period in a way that takes into account the need to align those costs with the estimated clean energy benefits attributable to the same period. Limiting the near-term rate reductions to such amounts which can be justified as counterbalancing disproportionate GA payments during the 2005-2017 period ensures that the statutory 25% reduction is consistent with proportionate reallocation.

- The bill provides for provincial assurances, guarantees and a statutory cause of action.

- **The provincial assurance provision** is intended to mirror as closely as possible the language of a similar provision that appears in legislation in the United States that purports to limit a state legislature's ability to enact legislation that would affect the transaction.

- The main legal risk associated with the provision is that its precise legal purpose and intended effect are not clear. Under Canadian law, it is not possible for legislation to limit the future exercise of legislative power by the Legislature, including the power to amend or repeal statutory provisions or to expropriate private rights conferred under past statutes.

- In light of this limitation, the U.S. provision has been modified to focus on possible actions by the executive branch of government that might undermine the value of the proposed securities (including regulation-making), rather than seeking to constrain the Legislature's powers. However, in the absence of some future statutory amendment, it is not clear what, if any, executive action could have the effect of undermining the payment obligation that would be imposed on consumers under the Act and, therefore, it is not clear what practical risk the provision is designed to mitigate against. This uncertainty creates a risk that a reviewing court could construe the provision in unanticipated ways.

- **The guarantee provisions** are intended to backstop the provincial assurance provision and provide that:
  - the Minister of Energy and Minister of Finance may, with LGIC approval, enter into agreements regarding the performance of IESO or electricity vendors; and
  - the Minister of Energy and Minister of Finance may, pursuant to LGIC order, agree to guarantee and indemnify any debt, obligation, security or undertaking associated with an investment interest.

Legal risk to the province will be assessed as the agreements are negotiated and drafted.

A statutory cause of action may be created by LGIC regulation. Much like the provincial assurance provision, the statutory cause of action provision is intended to mirror features of US legislation. Legal risk to the province will be assessed as the regulation defining the statutory cause of action is developed.

s. 6 Delivery and Results Tracking

A. GA Refinancing

- The Minister of Energy is to calculate the Fair Allocation Amount and provide the amount to the Financial Services Manager (OPG). Subsequent calculations may be undertaken by other agents as prescribed by the Minister. Such update calculations will be required given uncertainty related to electricity demand, interest rates and actual GA costs.

- The legislation establishes a framework for processes once the ratepayer relief is set. There is limited control once the plan is set, which could represent challenges for electricity planning and rate mitigation in future Long-Term Energy Plans.

- Under the legislation, OPG, as the Financial Services Manager, must prepare a Financing Plan and submit it to the Minister.
  - The Financing Plan sets out the funding obligations and amounts related to the financing of the under-collected GA amounts.

B. Social Programs

- As the social programs are funded through the tax-base, and in keeping with normal practice, Treasury Board Secretariat and the Ministry of Finance require that provisions be included that track the flow of tax money and hold all parties accountable for the proper allocation of tax money (proposed new OEBA s. 79.5-79.11).

- The actual implementation of the programs would be required to be shown on the bill (timelines will be in stated in the regulations). This timeline is in accordance with the feedback provided to the Ministry and the Board by affected LDCs.

s.7 **Stakeholder Consultations**

A. GA Refinancing

- In the development of the proposed legislation, the Ministry of Energy has worked closely with key ministries (i.e., TBS-OPCD, MOF-OFA/IGS, MAG, CO), OEB, IESO, OPG and their independent advisors (lawyers and accountants) and third party financiers (i.e., investment dealers).

- In addition, the Ministry hosted LDC workshop sessions on March 16 and April 19, 2017. Nearly 40 LDC representatives attended in person or by phone and were briefed on OFHP, including implementation.

B. Social Programs

- The Ministry has consulted with Energy agencies such as the Ontario Energy Board and the Independent Electricity System Operator on their respective roles and responsibilities.

- The Chief of Ontario (COO) have publicly supported the introduction of the First Nations Delivery Credit. ENERGY met with COO on April 26, 2017 to discuss implementation.

- The Ministry held working groups with all affected LDCs:
  - The Ministry received several quantitative data submissions from LDCs to help support the program and to buttress the implementation issues flagged by the utilities.
  - The consultations occurred in person and over teleconference.

- The consultations respecting the RRRP, the DRP and the On-Reserve First Nations Delivery Credit revealed concerns from LDCs over the costs of implementation and the timelines and obstacles to implementing the billing system changes.

- The feedback from the OEB helped to shape the estimates for the program costs of the proposed On-Reserve First Nations Delivery Credit as well as implementation timelines for the aforementioned program.

- Other key Ministries such as the Ministry of Finance and Treasury Board Secretariat were consulted as their will be a role for them to play in overseeing the implementation of the program funding.

s.8 Other Jurisdictions and Harmonization

A. GA Refinancing

- The program would not impact upon any other jurisdiction.

- GA refinancing does not harmonize Ontario rules with other jurisdictions and are not comparable to other Canadian jurisdictions.

B. Social Programs

- The program would not impact upon any other jurisdiction.

- The social programs do not harmonize Ontario rules with other jurisdictions and are not comparable to other Canadian jurisdictions.

s. 9 Communications

A. GA Refinancing

- The communications for GA refinancing will be referenced in ongoing announcements related to OFHP broadly, and as necessary targeted communications for specific stakeholder group can be developed.

- Energy has prepared a Communications Snapshot which summarizes the approach to communications.

B. Social Programs

- Energy has prepared a Communications Snapshot which summarizes the approach to communications.

- In respect of the First Nations On-Reserve Delivery Credit, the LDCs will work in collaboration with the Chiefs of Ontario and the Ministry to promote and advertise the availability of the credit to all eligible on-reserve customers.

s. 10 **Contacts and Appendices**

Contacts

	Name	Phone Number
Ministry Policy/Program	Tim Christie/Sunita Chander	5-6708/5-6594
Ministry Legal	Carolyn Calwell	2-8392
Ministry Communications		
Assistant or Deputy Minister's Office		
Cabinet Office Policy	Tim Hindmarch-Watson	5-4618

Appendices

Appendix A: Variance Memo
Appendix B: Compendium
Appendix C: Draft Legislation