

Fair Hydro Financing Plan Act, 2017

EXPLANATORY NOTE

[Insert explanatory note.]

1. (1) Subsection 79 (4) of the *Ontario Energy Board Act, 1998* is repealed and the following substituted:

Liability for compensation

(4) All consumers are required, in accordance with the regulations, to contribute towards the amount of any compensation required under subsection (3) that is not otherwise provided under subsection (4.1).

Payments for certain classes

(4.1) Compensation required under subsection (3) shall be provided with respect to one or more prescribed classes of consumers who receive rate protection under this section, in a manner provided for in the regulations.

[“shall” is unusual in a provision of this type, since it puts an obligation on the government to make regulations, and to make regulations about something where the funding is to be subject to a yearly appropriation]

Money appropriated by the Legislature

(4.2) The compensation provided for in subsection (4.1) shall be paid for out of the money appropriated for those purposes by the Legislature.

Information, etc.

(4.3) If provided for in the regulations, the Board, the IESO, distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the rate protection or of anything else provided for in this section.

(2) Clause 79 (5) (e) of the Act is repealed and the following substituted:

- (e) prescribing rules respecting the amounts that must be collected to compensate distributors, taking into account any compensation provided under subsection (4.1), including rules,
 - (i) respecting the calculation of those amounts,
 - (ii) respecting the calculation of any off-set to the liability of consumers under subsection (3) having regard to those amounts,
 - (iii) establishing the time and manner of collection,

- (iv) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,
 - (v) prescribing methods of ensuring that the amounts required cannot be bypassed, and
 - (vi) respecting the distribution of those amounts;
- (e.1) prescribing classes of consumers for the purposes of subsection (4.1), and governing how the compensation is to be provided with respect to the rate protection provided to them, including, without restricting the generality of the foregoing, requiring the IESO to receive payments or amounts from the Minister of Energy and to make payments to licensed distributors or to prescribed persons;

2. (1) Section 79.2 of the Act is repealed and the following substituted:

OESP

79.2 (1) The program known as the “Ontario Electricity Support Program” in English and “Programme ontarien d’aide relative aux frais d’électricité” in French is continued for the purpose of providing rate assistance to rate-assisted consumers having regard to their economic circumstances.

Administered by Minister

(2) The Ontario Electricity Support Program shall be administered by the Minister.

Money appropriated by the Legislature

(3) Subject to subsection (4), the money required for the purposes of the Ontario Electricity Support Program shall be paid out of the money appropriated for those purposes by the Legislature.

Variance account

(4) The money required for the purposes of the Ontario Electricity Support Program may be provided out of the variance account maintained by the IESO under the Program as it existed before the coming into force of [**** reference to section number of bill**].

Variance account depleted

(5) The IESO shall provide the Ministry of Energy with advance notice, on a timely basis, of the time the IESO estimates that the amounts reflected in the account would be less than the amount required to meet its obligations related to funding the Ontario Electricity Support Program for the upcoming month.

How provided

(6) Rate assistance provided under this section shall be provided with respect to those consumers provided for in the regulations, and shall be provided at the times provided for in the regulations and in the amounts and in the manner provided for in the regulations.

Payments with respect to prior use

(7) The regulations may require provision of rate assistance to prescribed classes of rate-assisted consumers with respect to electricity consumed during a period prior to the date of the making of the regulation, but no such rate shall be required under the regulations with respect to electricity consumed before January 1, 2016.

Transitional

(8) The regulations may require the provision of rate assistance for a rate-assisted consumer with respect to a period prior to the date on which the consumer became a rate-assisted consumer if the consumer meets all of the criteria prescribed by the regulations.

Compensation

(9) A distributor, a unit sub-meter provider and any other person or entity that may be prescribed is entitled to be compensated for any lost revenue resulting from the provision of rate assistance under the Ontario Electricity Support Program.

Deemed licence conditions, IESO, settlements, payments, etc.

(10) Every licence issued to the IESO, a distributor or unit sub-meter provider or a retailer of electricity shall be deemed to contain conditions requiring the licensee to do anything necessary to implement and administer the provision of rate assistance under this section as may be required by the regulations or the Board, including requirements with respect to,

- (a) making payments to the IESO, distributors, unit sub-meter providers and other persons and entities identified by the regulations or the Board;
- (b) receiving payments or other amounts from the IESO, distributors, unit sub-meter providers and other persons and entities identified by the Minister or the Board;

[ntd-jpr: Note for clients: We have left a bit of residual OEB-related authority here. Please consider – should it stay or be removed.]

- (c) requiring licensees to pass any rate assistance provided for under this section through to rate-assisted consumers in the manner provided for in the regulations;
- (d) engaging in settlement activities;

- (e) providing information to and receiving information from the Ministry of Energy, the Board, the IESO, distributors, unit sub-meter providers, retailers of electricity and any other prescribed persons and entities in the time and in the manner provided for by the Board or as may be prescribed; and
- (f) entering into agreements or arrangements with licensees and other persons.

Information, etc.

(11) If provided for in the regulations, the Board, the IESO, distributors, retailers of electricity and unit sub-meter providers, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of rate-assistance or of anything else required under this section.

Conflicts, etc.

(12) Where any conflict exists between an order of the Board, a code issued by the Board or a licence condition and this section or a regulation made under this section, this section or the regulation made under this section shall prevail to the extent of the conflict.

Regulations

(13) The Lieutenant Governor in Council may make regulations governing anything dealt with in this section and without limiting the generality of the foregoing, may make regulations,

- (a) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;
- (b) governing the determination of classes of consumers who are rate-assisted consumers, including providing for different classes of rate-assisted consumers;
- (c) establishing rules for the calculation of the amount of the rate assistance to be provided, but no rule shall be based on electricity consumed before January 1, 2016;

[instructions said 2017, but I'm inclined to this 2016 works better because of the transition]

- (d) governing payments under this section;
- (e) setting maximum amounts of the total annual value of rate assistance that may be provided;

- (f) requiring a unit sub-meter provider or other prescribed person or entity to make or receive payments in respect of rate assistance, including requiring them to make or receive payments directly to and from consumers or other persons entitled to receive, or make payments toward, the rate assistance and prescribing the circumstances in which such payments are to be made and received as well as methods for determining the amounts payable or to be received.
- (h) requiring the IESO to receive payments from the Minister and requiring the IESO to make payments to the Board, to licensed distributors, or to prescribed persons, in respect of the rate assistance provided under this section and governing methods for determining the amounts payable
- (i) governing transitional matters arising from the changes made to the Ontario Electricity Support Program as a result of the enactment of the *Fair Hydro Financing Plan Act, 2017*.

General or particular

(15) A regulation under this section may be general or particular in application, may provide for different classes of persons and entities and may prescribe different rules for different persons or entities or different classes of persons or entities.

Retroactivity

(16) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed.

Verification of eligibility

(17) Section 11 of the *Ministry of Revenue Act* applies with respect to the Ontario Electricity Support Program as a government assistance program administered by the Board.

Definition

(18) In this section,

“rate-assisted consumer” means a consumer referred to in subsection (6).

3. The Act is amended by adding the following sections:

Distribution rate-protected consumers

79.3 (1) The Minister shall provide for distribution rate protection to distribution rate-protected residential consumers having regard to the costs of the distribution of electricity to such consumers.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of distribution rate protection under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Maximum charge

(3) Despite any order of the Board, or anything else under this Act, where the regulations so provide, a prescribed distributor who distributes electricity to distribution rate-protected residential consumers shall not charge those consumers, or a prescribed class of those consumers, any amount for monthly distribution charges more than,

- (a) the maximum amount for the charge that is provided for in the regulations; or
- (b) the amount determined by the Board after applying any calculations, processes or methods provided for in the regulations.

Compensation

(4) A distributor who is prescribed under this section is entitled to be compensated from the money referred to in subsection (2) for lost revenue resulting from the provision of the distribution rate protection to distribution rate-protected residential consumers under this section.

Information, etc.

(5) If provided for in the regulations, the Board, the IESO, distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of distribution rate protection or of anything else required under this section.

[are any provisions like 79.2 (10) necessary here?]

Regulations

(6) The Lieutenant Governor in Council may make regulations,

- (a) prescribing consumers or classes of consumers as distribution rate-protected residential consumers for the purposes of this section;
- (b) governing anything that is described in this section as being prescribed or as being provided for in the regulations or that is required to be done in accordance with the regulations;

[I don't think we need the proposed (b.1), since I think (b) covers everything that happens under s. (3). Please double-check]

- (c) governing the provision of distribution rate protection by the Minister in respect of distribution rate-protected residential consumers under this section;
- (d) requiring the IESO to receive payments from the Minister and to make payments to licensed distributors, or to persons prescribed by the regulations, in respect of the distribution rate protection provided for under this section and prescribing methods for determining the amounts payable to distributors or distribution rate-protected residential consumers in respect of that protection.

[do you need a retroactivity power?]

Interpretation

(6) In this section,

“distribution rate-protected residential consumer” has the meaning provided for in the regulations;

[I am inclined to not want to put in “Distribution rate-protection has the meaning provided for in the regulations” because I don’t see the definition being more than “distribution rate-protection” means the distribution rate-protection provided under section 79.3 of the Act.” In any case, if it becomes necessary to define it, we could use the existing power under clause 127 (1) (g) of the Act, so it’s not necessary to provide for it here]

First Nations delivery credit

79.4 (1) The Minister shall provide a delivery credit to on reserve consumers who meet the criteria prescribed under this section.

Money appropriated by the Legislature

(2) The money required for the purposes of the provision of the credits required under this section shall be paid out of the money appropriated for those purposes by the Legislature.

Eligible costs

(4) The eligible costs for the delivery credit referred to in subsection (1) are,

- (a) the sum of the following charges for which the consumer would otherwise be liable,
 - (i) all variable and fixed distribution charges,
 - (ii) all charges based on the retail transmission network service rate,

- (iii) all charges based on the retail transmission connection service rate,
 - (iv) all charges related to losses incurred in the distribution of electricity, except for such amounts that are included in regulatory charges provided for in the regulations, and
 - (v) any other charges that may be prescribed; or
- (b) where no separate charges for delivery are provided for by the distributor, the monthly service charge or such other amount as may be prescribed for or in respect of a prescribed distributor.

Delivery rate credit

(5) A distributor shall, unless the regulations provide otherwise, provide the delivery credit referred to in subsection (1) by crediting the account of an on reserve consumer.

Same

(6) The regulations may require that distributors and any other persons or entities provide a delivery credit to an on reserve consumer who is entitled to a delivery credit under subsection (1) in such manner or in accordance with such methods as may be prescribed.

Compensation

(7) A distributor or any person or entity as may be prescribed is entitled to be compensated for any lost revenue resulting from the provision of the delivery rate credits under this section.

Information, etc.

(8) If provided for in the regulations, the Board, the IESO, distributors, or any of them shall provide such information and reports to the Ministry of Energy and to one another as are necessary to facilitate the implementation, administration, funding and delivery of the delivery credits or of anything else required under this section.

Regulations

(9) The Lieutenant Governor in Council may make regulations governing the delivery rate credits provided to on reserve consumers under this section, and without restricting the generality of the foregoing, may make regulations governing anything that under this section is to be prescribed or provided for in the regulations, or that is to be done in accordance with the regulations.

Interpretation

(10) In this section,

“on reserve consumer” has the meaning provided for in the regulations.

Information, audits, etc.

79.5 (1) The IESO and any person or entity who is entitled to compensation or a credit under sections 79 to 79.4 shall,

- (a) provide the Minister, the Minister of Finance or the Board with any information related to anything in those sections, within the time set by the Minister, Minister of Finance or the Board, as the case may be; and
- (b) submit to any audit or other accounting procedure set by the Minister, Minister of Finance or the Board with respect to the compensation or credit

Definition

79.6 In sections 79.7 to 79.11,

“Finance Minister” means the Minister of Finance or such other member of the Executive Council to whom the administration of those sections is assigned under the *Executive Council Act*.

[Based on sections 7 to 13 of the *Ontario Rebate for Electricity Consumers Act, 2016* - didn't think something based on 14 was necessary]

Records

79.7 (1) Every distributor and every other person prescribed by regulation shall keep at a location in Ontario such records as are necessary to determine and verify compliance with sections 79 to 79.4 and the regulations associated with them and any records required by those regulations to be kept.

Electronic records

(2) If a person keeps records in an electronic form, the person shall ensure that, from the time the records are first made and for as long as they are required to be retained,

- (a) they remain complete and unaltered, apart from any changes or additions made in the normal course of communication, storage or display; and
- (b) they are capable of being printed and of being produced in electronically readable format for inspection, examination or audit.

Retention of records

(3) Records required to be kept under subsection (1) shall not be destroyed unless authorization has been given in writing by the Finance Minister.

Offence

(4) Every person who fails to keep records in accordance with this section is guilty of an offence and, on conviction, is liable to a fine of not less than \$50 and not more than \$5,000.

Inspections and inquiries

79.8 (1) The Finance Minister may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of sections 79 to 79.4 of this Act.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of sections 79 to 79.4 of this Act.

Admission of evidence

(3) The Finance Minister, or a person authorized by the Finance Minister, may, for any purpose related to the administration of sections 79 to 79.4 of this Act or the regulations made in association with them, reproduce from original data stored electronically any information previously submitted as required under those sections or regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way.

Inquiry

(4) The Finance Minister may, for any purpose related to the administration of sections 79 to 79.4 of this Act or the regulations made in association with them, authorize any person, whether or not the person is an employee in the Ministry of the Finance Minister, to make such inquiry as the Finance Minister considers necessary with reference to anything relating to the administration of this Act or the regulations.

Copies

(5) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry may make, or cause to be made, one or more copies of it, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way.

Compliance

(6) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing.

Same

(7) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything the person is required by this section to do.

Administration of oaths

(8) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee for doing so.

Application of Public Inquiries Act, 2009

(9) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (4).

Recovery of overpayments

Definitions

79.9. (1) In this section,

“inspector” means an inspector referred to in section 79.8; (“inspecteur”)

“overpayment” means an amount received by a person in excess of that to which the person is entitled under sections 79 to 79.4 of this Act or the regulations made in association with them. (“trop-perçu”)

Notice of overpayment

(2) If it appears to an inspector that a person has received an overpayment, the Finance Minister may send a written notice to the person advising the person of the following:

1. That the person has received an overpayment.
2. The amount of the overpayment and how it was calculated.
3. The required steps to be taken by the person with respect to the overpayment.
4. The date, not more than six months after the date of the notice, by which these steps must be completed.

5. That the Finance Minister has the authority to assess the person for the amount of the overpayment, plus interest, if the person fails to complete the required steps by the specified date.

Calculation of amount of overpayment

(3) For the purposes of this section, an inspector shall calculate an overpayment or the outstanding balance of an overpayment in the manner and form and using such procedures as the Finance Minister considers adequate and expedient.

Assessment

(4) If a person fails to complete the steps required in a notice under subsection (2) within the time specified in the notice, and any additional time requested by the person and permitted by the Finance Minister, the Finance Minister may assess or reassess the amount of the overpayment, or the outstanding balance of the overpayment, based on the inspector's calculation described in subsection (3).

Penalty

(5) If the Finance Minister makes an assessment or reassessment under subsection (4) and is satisfied that the person's non-compliance with the required steps in the notice was attributable to neglect, carelessness, wilful default or fraud, the Finance Minister may assess a penalty against the person equal to the outstanding balance of the overpayment when the penalty is assessed.

Time limit

(6) The Finance Minister shall not assess or reassess under subsection (4) more than 48 months after the end of the month in which the person received the overpayment.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Finance Minister establishes that the person has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in supplying information under this Act or the regulations or in omitting to disclose information.

Deemed debt retirement charge

(8) An amount assessed or reassessed by the Finance Minister under this section is deemed for the purposes of the administration and enforcement of this Act to be a debt retirement charge, as defined in subsection 85 (1) of the *Electricity Act, 1998*, that has been collected, on the last day of the month in which the person received the overpayment, by the person as a collector appointed under subsection 85.3 (1) of the *Electricity Act, 1998* and, for those purposes,

- (a) sections 85.11, 85.12, 85.14, 85.17 and 85.30 of that Act apply with necessary modifications;
- (b) in the application of sections 85.11 and 85.14 of that Act and without limiting the generality of clause (a), references to the Financial Corporation are read as references to the Minister of Finance and references to the Minister of Finance are read as references to the Finance Minister as defined in section 79.6 of this Act;

[I'm confused here, please check that this works]

- (c) the regulations made under that Act for the purposes of calculating the rate or rates of interest payable under section 85.11 of that Act and the manner of calculating the amount of interest apply with necessary modifications; and
- (d) sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply with necessary modifications.

Disposition of repaid amounts

(9) If all or part of an overpayment is repaid to the Finance Minister, the Minister of Energy shall make such financial arrangements and payments as may be necessary to ensure that any person entitled to all or part of the overpayment receives the appropriate amount.

Confidentiality

79.10 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

- (a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Energy or the Finance Minister for the purposes of sections 79 to 79.4 of this Act or the regulations made in association with them; or
- (b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

- (a) to give evidence relating to any information obtained by or on behalf of the Minister of Energy or Finance Minister for the purposes of this Act; or

- (b) to produce any record or thing obtained by or on behalf of either Minister for the purposes of this Act.

Exception

- (3) Subsections (1) and (2) do not apply in respect of,
 - (a) criminal proceedings under any Act of the Parliament of Canada;
 - (b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or
 - (c) proceedings relating to the administration or enforcement of this Act or Part V.1 or VI of the *Electricity Act, 1998*.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of sections 79 to 79.4 of this Act or the regulations made in association with them

- (a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law or to an employee of the Board information obtained by or on behalf of either Minister for the purposes of sections 79 to 79.4 of this Act or the regulations made in association with them and
- (b) allow another person employed by the Government of Ontario in the administration or enforcement of any law or an employee of the Board to inspect or have access to any record or thing obtained by or on behalf of either Minister for the purposes of sections 79 to 79.4 of this Act or the regulations made in association with them.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to that Minister on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Act.

Use of information

(6) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of sections 79 to 79.4 of this Act or the regulations made in association with them or an Act that is administered or enforced by the person receiving the information, record or thing.

Same

(7) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79 to 79.4 of this Act or the regulations made in association with them to be given to,

- (a) the person from whom the information, record or thing was obtained;
- (b) any person by whom an amount is payable or has been paid under sections 79 to 79.4 of this Act or the regulations made in association with them; or
- (c) the legal representative of a person mentioned in clause (a) or (b) or the agent of the person authorized in writing in that behalf.

Information

(8) The Finance Minister may permit information or a copy of any record or thing obtained by or on behalf of the Finance Minister for the purposes of sections 79 to 79.4 of this Act or the regulations made in association with them to be given to any person employed by any government if,

- (a) the information, record or thing obtained by that government for the purpose of any Act that imposes a tax or duty are communicated or furnished on a reciprocal basis to the Minister; and
- (b) the information, record or thing will not be used for any purpose other than the administration or enforcement of a law that provides for the imposition of a tax or duty.

Offence

(9) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Offences**False statements, etc., and fraud**

79.11 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in any document or answer required or submitted under sections 79 to 79.4 of this Act or the regulations made in association with them.

2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of any person, for the purpose of evading compliance with sections 79 to 79.4 of this Act or the regulations made in association with them.
3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of any person required to maintain records for the purposes of sections 79 to 79.4 of this Act or the regulations made in association with them.
4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of any person required to maintain records for the purposes of sections 79 to 79.4 of this Act or the regulations made in association with them.
5. Wilfully evading or attempting to evade, in any manner, compliance with an obligation under sections 79 to 79.4 of this Act or the regulations made in association with them.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty assessed under this Act:

1. A fine in an amount that is not less than \$1,000 and not more than \$10,000.
2. Imprisonment for a term of not more than two years.

Commencement

xx. This Act comes into force on **[insert commencement rule]**.

Short title

xx. The short title of this Act is the *Fair Hydro Financing Plan Act, 2017*.