



# Operation of the *Environmental Bill of Rights, 1993* 2020/21 Audit

## Why We Did This Audit

- Since 2019, the Office of the Auditor General of Ontario has been responsible for reporting annually on the EBR Act, including how and when people use of their environmental rights and how the province acts on its EBR responsibilities.

## Why It Matters

- Ontario's *Environmental Bill of Rights, 1993* (EBR Act) was designed to protect the environment by ensuring the public can find out about and participate in government plans that could significantly affect the environment, including air, water, and land, as well as climate change, biodiversity and ecosystem health. Giving Ontarians the opportunity to take part in decision-making about the environment can lead to better, healthier outcomes.
- The rights in the EBR Act are comparable to other legal rights enshrined in provincial laws that aim to protect Ontarians' ability to participate in government processes. These include the rights to take part in environmentally significant decision-making and to hold the government accountable for those decisions.

## What we found

### EBR Act's Scope Too Limited

- In 2020/21, we identified several environmentally significant decisions that are not subject to the EBR Act. For example, environmentally significant legislation to alter Tribunal hearing procedures for many environmental matters, was introduced by the Ministry of the Attorney General that was not required to be posted on the Environmental Registry, a public website used to provide information about environmentally significant plans and decisions to the public.
- The Ministry of Municipal Affairs and Housing continued to issue Minister's Zoning Orders, which bypass local land-use planning and public consultation, as well as the right to appeal, and are exempt from EBR consultation.

### RECOMMENDATIONS 1-7

### Some Ministries Lacked EBR Procedures for Staff

- Many ministries did not have or did not follow procedures to ensure they meet the requirements of the EBR to provide information and consult with Ontarians. Seven ministries did not have any formal internal processes at all, and eight ministries did not provide any formal training to staff on their EBR Act obligations.

### RECOMMENDATION 8

### Environment Ministry Weak in Demonstrating Support of and Upholding EBR Act

- The Environment Ministry did not lead by example on its EBR Act responsibilities and fully met just 18% of criteria we developed to measure its performance with the EBR Act.
- For instance, the Ministry avoided consulting the public on major amendments to the *Environmental Assessment Act* and the *Conservation Authorities Act*.

- The Ministry did not provide educational programs to Ontarians about their environmental rights as required by the EBR Act.
- The Ministry did not keep the Environmental Registry updated with changes related to the EBR Act.

### RECOMMENDATIONS 9-28

#### **Ministries Made Environmentally Significant Decisions Without Consulting the Public as Required Under the EBR Act or Delayed, Avoided or Did Not Provide Notification or Complete Information**

- In 2020/21, four ministries made environmentally significant decisions without consulting the public as required by the EBR Act. For example:
  - The then-Ministry of Natural Resources and Forestry did not consult the public about a new regulation under the *Conservation Authorities Act* meant to speed up land development in a provincially significant wetland.
  - The Municipal Affairs Ministry made changes to the *Planning Act* to enhance powers regarding Minister's Zoning Orders without first consulting the public. The Ontario Divisional Court concluded that the Minister contravened the EBR Act in failing to consult on these changes.
- Seven ministries took too long to provide notice about environmentally significant decisions in a third of the cases that we reviewed. For example, the Ministry of Municipal Affairs and Housing took 523 days to notify the public about its decision to approve a municipality's official plan, and the Ministry of Transportation took eight weeks to inform Ontarians about amendments made to the *Transit-Oriented Communities Act, 2020*.
- Ministries did not always provide all the information people needed to understand proposals and decisions posted on the Environmental Registry which could limit the public's ability to provide informed and meaningful feedback.

### RECOMMENDATIONS 29-61

## Conclusions

- The EBR Act has helped to improve public consultation and decisions about the environment since 1994. But some ministries do not have procedures to ensure the information about environmental plans and decisions required is provided and public consultation takes place. For the past year, ministries only fully met our audit criteria in 63% of cases overall, similar to the previous two years.
- Ministries did not notify and consult Ontarians about all proposals that could have a significant impact on the environment. Some ministries deliberately avoided consulting the public on proposals that were subject to the EBR Act.
- The EBR Act does not currently cover all environmentally significant government actions. The Environment Ministry, which is responsible for the EBR Act, should take steps to ensure that all ministries and laws that don't require public information and consultation are covered by the EBR Act if they could significantly affect the environment.
- Even when ministries did consult the public under the EBR Act, they did not always provide Ontarians with clear, accurate and complete information in a timely way.

Read the report at [www.auditor.on.ca](http://www.auditor.on.ca)