

**AMENDMENT IN COMMITTEE OF THE  
WHOLE HOUSE**

**BILL 35**

**AN ACT TO AMEND THE ENERGY  
CORPORATION ACT**

**1. Clause 2 of the Bill is amended by deleting the word "and" at the end of the proposed paragraph 5.2(1)(a), by deleting the period at the end of the proposed paragraph 5.2(1)(b) and substituting a semi-colon and the word "and" and by adding immediately after the proposed paragraph 5.2(1)(b) the following:**

(c) a report of each subsidiary giving an account of its activities during the immediately preceding financial year and including information that it believes may be of public interest relating to its activities but the report shall not be required to include commercially sensitive information.

**2. Clause 2 of the Bill is amended by deleting the proposed section 5.3 and substituting the following:**

Form and content of reports

**5.3** The report required under section 5.2 shall be consistent in form and content with annual reports prepared by publicly traded companies.

**3. Clause 2 of the Bill is amended by deleting the proposed subparagraph 5.4(1)(d)(i) and substituting the following:**

(i) is treated consistently in a confidential manner by the third party, or

**4. Clause 2 of the Bill is amended by deleting the proposed subsection 5.4(3) and substituting the following:**

(3) Where a person appeals,

- (a) under subsection 60(1) of the *Access to Information and Protection of Privacy Act*, from a decision under subsection (1); or
- (b) under subsection 43(3) of the *Access to Information and Protection of Privacy Act*, from a refusal by a chief executive officer under subsection (1) to disclose information,

paragraph 62(3)(a) and section 63 of that Act apply to that appeal as if Part III of that Act included the grounds for the refusal to disclose the information set out in subsection (1) of this Act.

**5. Clause 2 of the Bill is amended by deleting the proposed section 5.5 and substituting the following:**

Report of auditor  
general

**5.5 (1) Where,**

- (a) during the course of an audit;
- (b) as a result of a review of an audit report prepared by another auditor; or
- (c) as a result of an internal audit procedure,

the auditor general becomes aware of an improper retention or misappropriation of funds by a director, officer, employee or agent of the corporation or a subsidiary, or of another activity that may constitute an offence under the *Criminal Code* or an Act of the province or of Canada, the auditor general shall, where the report includes commercially sensitive information, notwithstanding the *Auditor General Act*, provide the report to the Lieutenant-Governor in Council in confidence.

(2) In addition to the report required under subsection (1), the auditor general shall immediately provide a report to the House of Assembly that includes a general description, excluding commercially sensitive information, of the activity that is the subject of the report under subsection (1) and the dates on which those activities were reported to the Lieutenant-Governor in Council.

(3) Section 19.1 of the *House of Assembly Act* applies to a report under subsection (2) as if it were a report of an officer of the House of Assembly.

**6. Clause 5 of the Bill is amended by renumbering the proposed section 17.1 as subsection (1) of section 17.1 and by adding immediately after subsection (1) the following:**

(2) Notwithstanding subsection (1), the Lieutenant-Governor in Council may declare that a subsidiary is subject to the *Public Tender Act* and in that event the Act applies to the subsidiary.

(3) Subject to the prior approval of the Lieutenant-Governor in Council, the corporation shall develop and adopt procurement principles that follow best industry practices for procurement and contracting, including transparent supplier development, monitoring and reporting and those principles shall apply to the corporation and its subsidiaries.

(4) The corporation and its subsidiaries shall report to the minister on their procurement activities and shall include a summary of contracts entered into and the identities of suppliers to whom the contracts have been awarded every 6 months.

(5) A summary of the procurement principles adopted under subsection (3) and the reports required under subsection (4) shall be made public by the minister by

- (a) presenting them to the House of Assembly; and
- (b) other effective means, including electronically.

(6) Section 19.1 of the *House of Assembly Act* applies to a summary required under subsection (5) as if the summary were a report of an officer of the House of Assembly.

## EXPLANATORY NOTES

The first amendment - This amendment would provide for a reporting requirement on the part of a subsidiary of the energy corporation on an annual basis.

The second amendment - This amendment is intended to clarify the nature of the annual report required of the corporation.

The third amendment - Subparagraph 5.4(1)(d)(i) as it presently reads would restrict access to information on the basis that it is treated consistently as confidential by the corporation, a subsidiary or a third party. This amendment would limit this ground for refusing to provide the information to the reason that it is consistently treated as confidential by a third party only. This ground would not be available to the corporation or a subsidiary.

The fourth amendment - The purpose of this amendment is to clarify that, when a person has been refused information which he or she has requested under the *Access to Information and Protection of Privacy Act* because the information is commercially sensitive, the appeal to a judge of the Trial Division is from the decision of the chief executive officer of the corporation or a subsidiary, or the head of another public body, not the commissioner.

The amendment would also clarify that on an appeal from a refusal to disclose the information the appeal shall be treated as if Part III of the *Access to Information and Protection of Privacy Act* included the grounds for the refusal to release the information contained in the proposed subsection 5.4(1).

The fifth amendment - This amendment would provide that the report the auditor general must make to the Lieutenant-Governor in Council under the proposed subsection 5.5(1) relating to an improper retention or misappropriation of funds or another activity that may constitute an offence must also be made to the House of Assembly, but excluding commercially sensitive information.

The sixth amendment - This amendment would permit the Lieutenant-Governor in Council to make a subsidiary of the energy corporation subject to the *Public Tender Act*.

The amendment would also require the corporation to develop procurement policies and to report to the minister and to the House of Assembly on its procurement activities and those of its subsidiaries.