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Bill 4

**An Act respecting the preparation of a climate change plan,
providing for the wind down of the cap and trade program and repealing the
Climate Change Mitigation and Low-carbon Economy Act, 2016**

The Hon. R. Phillips

Minister of the Environment, Conservation and Parks

Government Bill

1st Reading July 25, 2018

2nd Reading October 3, 2018

3rd Reading

Royal Assent

*(Reprinted as amended by the Standing Committee on General Government
and as reported to the Legislative Assembly October 23, 2018)*

(The provisions in this bill will be renumbered after 3rd Reading)



This reprint of the Bill is marked to indicate the changes that were made in Committee.
The changes are indicated by underlines for new text and a ~~strikethrough~~ for deleted text.

EXPLANATORY NOTE

The Bill sets out the *Cap and Trade Cancellation Act, 2018*, which repeals the *Climate Change Mitigation and Low-carbon Economy Act, 2016* and provides for various matters related to the wind down of the Cap and Trade Program.

Under the *Cap and Trade Cancellation Act, 2018*, the Government is required to establish targets for reducing the amount of greenhouse gas emissions in Ontario. The Minister of Environment, Conservation and Parks is required to prepare a climate change plan and to prepare progress reports in respect of the plan.

With respect to the wind down of the Cap and Trade Program, the matters addressed by the Act include the following:

1. The retirement and cancellation of cap and trade instruments.
2. The payment by the Crown of compensation in respect of cap and trade instruments, the amount of which is to be determined in accordance with the regulations. The obligation to pay compensation is subject to various limitations set out in the Act.
3. Preventing any cause of action from arising against the Crown and specified related persons as a result of various specified matters, including the enactment of the Act and the repeal of the *Climate Change Mitigation and Low-carbon Economy Act, 2016*.
4. The extinguishment of any existing proceedings, and the prevention of any future proceedings, against the Crown and other specified related persons, in relation to specified matters.

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

GENERAL

Interpretation

1 (1) In this Act,

“cap and trade accounts” means, in relation to a participant, the cap and trade accounts that were established under the *Climate Change Mitigation and Low-carbon Economy Act, 2016* for the participant; (“comptes du programme de plafonnement et d'échange”)

“cap and trade instrument” means an instrument described in subsection (2); (“instrument du programme de plafonnement et d'échange”)

“CO₂e” means, when used in reference to a quantity of greenhouse gas, the equivalent quantity of carbon dioxide, calculated in accordance with the regulations; (“éq. CO₂”)

“greenhouse gas” means a prescribed greenhouse gas; (“gaz à effet de serre”)

“Minister” means the Minister of the Environment, Conservation and Parks or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“participant” means a person who was registered as a mandatory participant, a voluntary participant or a market participant under the *Climate Change Mitigation and Low-carbon Economy Act, 2016* on July 3, 2018; (“participant”)

“person” includes an individual, corporation, partnership, sole proprietorship, association or any other organization or entity; (“personne”)

“prescribed” means prescribed by a regulation made under this Act. (“prescrit”)

Cap and trade instrument

(2) For the purposes of the definition of “cap and trade instrument” in subsection (1), a cap and trade instrument means one of the following:

1. An Ontario emission allowance within the meaning of subsection 1 (1) of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* as that provision read immediately before the repeal of that Act.
2. An Ontario credit within the meaning of subsection 1 (1) of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* as that provision read immediately before the repeal of that Act.
3. An instrument that was, on July 2, 2018, set out in Column 1 of the Table to section 10.1 of Ontario Regulation 144/16 (The Cap and Trade Program) made under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*.

Attribution of emissions

2 (1) For the purposes of this Act, the amount of all greenhouse gas emissions attributed to a participant is the amount prescribed by the regulations or determined in accordance with the regulations.

Same

(2) Despite subsection (1), in prescribed circumstances the amount of greenhouse gas emissions shall be determined by the Minister in accordance with the regulations.

Opportunity to be heard

(3) If the Minister proposes to determine the amount of greenhouse gas emissions to be attributed to a participant, the Minister shall give the participant notice of the proposal in accordance with the regulations and shall, in accordance with the regulations, give the participant an opportunity to be heard.

Equivalence in CO₂e

(4) Each cap and trade instrument is equivalent to one tonne of CO₂e or such other amount of CO₂e as may be prescribed.

TARGETS, PLAN AND PROGRESS REPORTS

Targets

3 (1) The Government shall establish targets for the reduction of greenhouse gas emissions in Ontario and may revise the targets from time to time.

Public notice

(2) The Government shall make the targets and any revisions to them available to the public on a website of the Government or in such other manner as may be prescribed.

Climate change plan

4 (1) The Minister, with the approval of the Lieutenant Governor in Council, shall prepare a climate change plan and may revise the plan from time to time.

~~**Advisory panel**~~

~~(2) The Minister may, for the purpose of preparing the climate change plan, appoint panels to perform such advisory functions as the Minister considers advisable.~~

Advisory panel

(2) The Minister may, for the purpose of taking any steps with respect to the climate change plan, appoint panels to perform such advisory functions as the Minister considers advisable.

Public notice

(3) The Minister shall make the plan and any revisions to it available to the public on a website of the Government or in such other manner as may be prescribed.

Status

(4) For greater certainty, the plan and any revisions to it are not undertakings within the meaning of the *Environmental Assessment Act*.

Minister’s progress reports

5 (1) The Minister shall, on a regular basis, prepare reports in respect of the climate change plan.

Public notice

(2) The Minister shall make each report available to the public on a website of the Government or in such other manner as may be prescribed.

CAP AND TRADE INSTRUMENTS

Retirement of eligible instruments

Eligible instrument

6 (1) In this section,

“eligible instrument” means a cap and trade instrument that,

- (a) was held in the cap and trade accounts of a participant on July 3, 2018, and
- (b) is not classified with or assigned a vintage year of 2021.

Retirement

(2) Eligible instruments of a participant are retired as follows:

1. If the number of eligible instruments of the participant is equal to or greater than that aggregate amount of all greenhouse gas emissions attributed to the participant in respect of the prescribed time period, the number of eligible instruments equivalent to that aggregate amount shall be retired.
2. If the number of eligible instruments of the participant is less than the aggregate amount of all greenhouse gas emissions attributed to the participant in respect of the prescribed time period, all of the eligible instruments shall be retired.

Cancellation of instruments

7 The following cap and trade instruments are cancelled:

1. All cap and trade instruments held in the cap and trade accounts of participants on July 3, 2018, other than any number of cap and trade instruments in the accounts that are retired under section 6.
2. All cap and trade instruments that were created under the *Climate Change Mitigation and Low-carbon Economy Act, 2016* and were never distributed.

COMPENSATION IN RESPECT OF CAP AND TRADE INSTRUMENTS

Compensation to participant

~~8 (1) The Crown shall pay compensation, out of money appropriated under section 11 or money otherwise appropriated for such purposes by the Legislature, to a participant in respect of a number of cap and trade instruments that is no greater than the number determined by applying the following formula:~~

$$A = B - C - D$$

where,

- ~~—A= the maximum number of instruments in respect of which compensation may be paid to the participant,~~
- ~~—B= the number of instruments held in the participant’s cap and trade accounts that are cancelled under paragraph 1 of section 7,~~
- ~~—C= the number of allowances that were distributed free of charge to the participant under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, and~~
- ~~—D= the number of instruments held in the participant’s cap and trade accounts that are classified with or assigned a vintage year of 2021.~~

Payment

~~(2) The amount of compensation payable shall be determined in accordance with the regulations and shall be paid in accordance with the regulations.~~

Prescribed criteria, circumstances

~~(3) The regulations may prescribe criteria that must be met or circumstances that must apply in order for compensation to be paid.~~

Compensation to participant

8 (1) The Crown shall pay compensation, out of money appropriated under section 11 or money otherwise appropriated for such purposes by the Legislature, to a participant in accordance with this section and the regulations.

Emissions to be expressed as equivalent number of cap and trade instruments

(2) For the purposes of applying this section, the number of tonnes of greenhouse gas emissions shall be expressed as the equivalent number of cap and trade instruments, as determined in accordance with subsection 2 (4).

If instruments distributed free of charge do not exceed aggregate emissions

(3) If the number of instruments that were distributed free of charge to the participant under the *Climate Change Mitigation and Low-carbon Economy Act, 2016* is equal to or less than the aggregate amount of all greenhouse gas emissions attributed to the participant in respect of the prescribed time period, the maximum number of cap and trade instruments in respect of which compensation may be paid to a participant shall be determined by applying the following formula:

$$A = B - C$$

where,

A = the maximum number of cap and trade instruments in respect of which compensation may be paid to the participant,

B = the number of cap and trade instruments held in the participant's cap and trade accounts that are cancelled under paragraph 1 of section 7, and

C = the number of the participant's cap and trade instruments referred to in "B" that are classified with or assigned a vintage year of 2021.

If instruments distributed free of charge exceed aggregate emissions

(3.1) If the number of instruments that were distributed free of charge to the participant under the *Climate Change Mitigation and Low-carbon Economy Act, 2016* is greater than the aggregate amount of all greenhouse gas emissions attributed to the participant in respect of the prescribed time period, the maximum number of cap and trade instruments in respect of which compensation may be paid to a participant shall be determined by applying the following formula:

$$A = (B - C) - (D - E)$$

where,

A = the maximum number of cap and trade instruments in respect of which compensation may be paid to the participant,

B = the number of cap and trade instruments held in the participant's cap and trade accounts that are cancelled under paragraph 1 of section 7,

C = the number of the participant's cap and trade instruments referred to in "B" that are classified with or assigned a vintage year of 2021,

D = the number of cap and trade instruments that were distributed free of charge to the participant, and

E = the aggregate amount of all greenhouse gas emissions attributed to the participant in respect of the prescribed time period.

No compensation, specified participants

(4) Unless otherwise provided by a regulation made under paragraph 4 of subsection 15 (2), no compensation shall be paid to the following participants:

1. A participant that was registered as a market participant within the meaning of the *Climate Change Mitigation and Low-carbon Economy Act, 2016*.
2. A participant that was registered as a participant with respect to the importation of electricity into Ontario for consumption in Ontario.
3. A participant that was registered as a participant with respect to the distribution of natural gas in Ontario.
4. A participant that was registered as a participant with respect to the operation of equipment related to the transmission, ~~storage and transportation of natural gas~~ storage or transportation of natural gas in Ontario.
5. A participant that was registered as a participant with respect to the supply of petroleum products for consumption in Ontario.
6. A participant that was registered as a participant with respect to the operation of equipment for a transmission system within the meaning of subsection 2 (1) of the *Electricity Act, 1998* and that has been issued an order under subsection ~~78 (1)~~ 78 (3) of the *Ontario Energy Board Act, 1998*.
7. A participant that was registered as a participant with respect to electricity generation in Ontario at a facility at which the primary activity was electricity generation and at which no products were produced other than electricity and any heat, steam or by-product gas.

GENERAL

No compensation

9 Except as set out in section 8, no person is entitled to any compensation or damages in respect of the value of cap and trade instruments retired or cancelled under this Act or for any other loss, including loss of revenues or loss of profits, related, directly or indirectly, to the enactment of this Act, the making or revocation of any regulation under this Act, the repeal of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* or the making or revocation of any regulation under that Act.

No cause of action

10 (1) No cause of action arises against the Crown or any current or former member of the Executive Council or any current or former employee or agent of or advisor to the Crown as a direct or indirect result of,

- (a) the enactment, operation, administration or repeal of any provision of this Act or the enactment, operation, administration or repeal of the *Climate Change Mitigation and Low-carbon Economy Act, 2016*;
- (b) the making or revocation of any provision of a regulation made under this Act or made under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*;
- (c) anything done in accordance with or under this Act or a regulation made under this Act or anything not done in accordance with this Act or a regulation made under this Act, including any decision related to participants' eligibility to receive compensation or the amount of such compensation;
- (d) the retirement or cancellation of any cap and trade instrument in accordance with this Act; or
- (e) any act or omission related to the wind down of the cap and trade program established under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, including the decision to have no further distribution of cap and trade instruments by auction.

Proceedings barred

(2) No proceeding, including but not limited to any proceeding for a remedy in contract, restitution, tort, misfeasance, bad faith, trust or fiduciary obligation, and any remedy under any statute, that is directly or indirectly based on or related to anything referred to in subsection (1) may be brought or maintained against the Crown or any current or former member of the Executive Council or any current or former employee or agent of or advisor to the Crown.

Application

(3) Subsection (2) applies to any action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, or any other remedy or relief, and includes a proceeding to enforce a judgment or order made by a court or tribunal outside of Canada.

Retrospective effect

(4) Subsections (2) and (3) apply regardless of whether the cause of action on which the proceeding is purportedly based arose before, on or after the day this subsection comes into force.

Proceedings set aside

(5) Any proceeding referred to in subsection (2) or (3) commenced before the day this subsection comes into force shall be deemed to have been dismissed, without costs, on the day this subsection comes into force.

No expropriation or injurious affection

(6) Nothing done or not done in accordance with this Act or the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, or any regulation under this Act or the *Climate Change Mitigation and Low-carbon Economy Act, 2016*, constitutes an expropriation or injurious affection for the purposes of the *Expropriations Act* or otherwise at law.

Continuation of account

11 (1) The account established in the Public Accounts under subsection 71 (1) of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* is continued, to be known as the Cap and Trade Wind Down Account in English and compte de liquidation du programme de plafonnement et d'échange in French, in which shall be recorded the following amounts:

1. The amount of the balance in the account immediately before this subsection comes into force.
2. All expenditures of public money incurred under subsection (2).

Authorized expenditures

(2) Amounts not exceeding the balance in the account may be charged to the Cap and Trade Wind Down Account and paid out of the Consolidated Revenue Fund for the following purposes:

1. To fund costs incurred by the Crown, directly or indirectly, in connection with the administration of this Act and the regulations.

2. To fund costs incurred by the Crown, directly or indirectly, in connection with the administration and enforcement of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* and the regulations made under that Act.
3. To fund costs incurred by the Crown, directly or indirectly, in connection with the repeal of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* or the revocation of regulations made under that Act.
4. To fund costs incurred by the Crown, directly or indirectly, in connection with the winding down of the administration and enforcement of the *Climate Change Mitigation and Low-carbon Economy Act, 2016*.
5. To fund costs incurred by the Crown, directly or indirectly, in connection with any purpose described in paragraph 2 of subsection 71 (2) of the *Climate Change Mitigation and Low-carbon Economy Act, 2016* related to an initiative, if the initiative was reviewed and evaluated under subsection 71 (3) of that Act.
6. To fund costs incurred by the Crown, directly or indirectly, in connection with the wind down of initiatives referred to in paragraph 5 or any initiative funded under the *Climate Change Mitigation and Low-carbon Economy Act, 2016*.
7. To fund compensation under section 8 and related costs incurred by the Crown, directly or indirectly.
8. To reimburse the Crown for expenditures incurred by the Crown, directly or indirectly, for any purpose described in paragraphs 1 to 7.

Same

(2.1) The funding of a cost described in paragraph 3, 4 or 6 of subsection (2) may be provided for a cost incurred by the Crown before the day this subsection comes into force.

Repeal

(3) On the day this subsection comes into force, this section is repealed.

Non-application of *Financial Administration Act*

12 Subsection 16.0.1 (3) of the *Financial Administration Act* does not apply in respect of a refund or repayment of an expenditure or advance charged to a statutory appropriation in,

- (a) subsection 11 (2); or
- (b) subsection 71 (2) of the *Climate Change Mitigation and Low-carbon Economy Act, 2016*.

Existing aboriginal or treaty rights

13 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*.

Delegation by Minister

14 The Minister may delegate any of the Minister's powers or duties under this Act to a public servant appointed under Part III of the *Public Service of Ontario Act, 2006*, and may impose restrictions with respect to the delegation.

Regulations, general

15 (1) The Lieutenant Governor in Council may make regulations,

- (a) governing anything that is required or permitted to be prescribed or that is required or permitted to be done by, or in accordance with, the regulations or as authorized, specified or provided in the regulations;
- (b) defining, for the purposes of a regulation, words and expressions used in this Act that are not defined in the Act;
- (c) providing for such other matters as the Lieutenant Governor in Council considers advisable to carry out the purpose of this Act.

Regulations, compensation

(2) The Lieutenant Governor in Council may make regulations governing compensation required to be paid to participants under section 8, including but not limited to the following:

- ~~1. Prescribing the amount of compensation to be paid to a participant or class of participants or the procedure for determining that amount.~~
- 1. Prescribing the amount of compensation to be paid to a participant or class of participants in respect of each cap and trade instrument, which may include prescribing different amounts for different types of cap and trade instruments, or prescribing a procedure for determining such amounts.
- 1.1 Prescribing criteria that must be met or circumstances that must apply in order for compensation to be paid.

2. Prescribing the circumstances in which the Minister is required to make adjustments to the amount of compensation that would otherwise be required to be paid to a participant or class of participants, which may include requiring the Minister to decrease the amount or prohibiting the Minister from paying any amount.
3. Governing adjustments mentioned in paragraph 2.
4. Authorizing, despite subsection 8 (4), compensation to be paid to a prescribed participant or class of participants.
- ~~5. Limiting the compensation authorized under paragraph 4 such that it is only paid in respect of the number of cap and trade instruments equivalent to the amount of greenhouse gas emissions attributed to a participant in respect of a prescribed activity.~~
5. Limiting the compensation authorized to be paid under paragraph 4, which may include,
 - i. limits that apply in prescribed circumstances, and
 - ii. limits in respect of a prescribed number of cap and trade instruments or a number of cap and trade instruments determined in accordance with a prescribed method.

Incorporation by reference

(3) A regulation may incorporate, in whole or in part and with such changes as the Lieutenant Governor in Council considers necessary, a document, including a code, formula, standard, protocol, procedure or guideline, as the document may be amended or remade.

Same

(4) An amendment to a document referred to in subsection (3), or a document referred to in subsection (3) as remade, comes into effect upon the Ministry publishing notice of the amendment or remade document in *The Ontario Gazette* or in the registry under the *Environmental Bill of Rights, 1993*.

Conflict with *Statutory Powers Procedure Act*

(5) A regulation may provide that it prevails over a provision of the *Statutory Powers Procedure Act*, despite anything in that Act.

REPEAL, COMMENCEMENT AND SHORT TITLE

Repeal

16 The *Climate Change Mitigation and Low-carbon Economy Act, 2016* is repealed.

Commencement

17 This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

18 The short title of this Act is the *Cap and Trade Cancellation Act, 2018*.