



ERO SUBMISSION

Comments on Proposal 26-MTO013: Building Homes and Improving Transportation Infrastructure Act, 2026 (Bill 98) – Building Science Compliance Report

Submitted by: Ontario Society of Professional Engineers (OSPE)

Submitted to: Ministry of Transportation, Ontario

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1. Introduction

The Ontario Society of Professional Engineers (OSPE) is the voice of the engineering profession in Ontario, representing over 40,000 engineers across the province. OSPE welcomes the province's commitment to accelerating the delivery of transit infrastructure and acknowledges the intent behind Proposal 26-MTO013 to create a more efficient compliance pathway for Metrolinx projects.

However, OSPE has significant concerns about one specific element of the proposed Building Science Compliance Report framework: the requirement for municipalities and Chief Building Officials (CBOs) to assess the applicability of the Professional Engineers Act (PEA) and to certify that persons who prepared building documents hold the correct qualifications under the Building Code.

This is not a municipal function. It falls squarely within the scope of professional engineering regulation, and OSPE submits that the proposal as drafted inadvertently creates a mechanism that conflicts with the Professional Engineers Act, risks undermining the regulatory framework that governs the right of practice of professional engineers in Ontario, and exposes municipalities to liability they are neither equipped nor authorized to assume.

2. The Core Concern: Engineering Certification is Not a Municipal Function

In practice, this proposal would allow transit infrastructure to be approved without an engineer's seal, by officials who are not engineers and are not equipped to determine whether structures are safe or properly designed. This is not a process efficiency measure. It is a fundamental reordering of who bears accountability for engineering decisions on public infrastructure.

Critically, this is not a permissive framework. The proposal mandates that municipalities produce the Building Science Compliance Report upon receiving a construction or demolition notice from Metrolinx. Compliance is not optional. Municipalities are compelled to act in a role they have no statutory authority to fill and no professional capacity to discharge.

The proposed review form (attached to Proposal 26-MTO013) requires the Chief Building Official to sign a document stating the following:

“The undersigned hereby give assurances that the design of the components of the plans and supporting documents prepared by this registered professional of record in support of the application for a Building Science Compliance Report complies with the Ontario Building Code relevant to the scope of review.”

The form then requires the CBO to sign off on, among other items:

- Structural Sufficiency
- Mechanical Systems
- Electrical Systems
- Fire Protection
- Vertical Transportation

These are not administrative categories. Structural sufficiency and mechanical systems design are engineering practice. Under the Professional Engineers Act, R.S.O. 1990, c. P.28, the practice of professional engineering is reserved for licensed engineers who are accountable to Professional Engineers Ontario (PEO). A Chief Building Official is not a licensed engineer by virtue of their role. Requiring a CBO to sign a compliance certification that includes structural and mechanical engineering assessments effectively asks a non-engineer to render a professional engineering opinion, without the qualifications, the professional liability insurance, or the regulatory accountability that the PEA requires.

The proposed form includes a partial disclaimer: “The City/Town has relied upon the plans and drawings prepared and submitted by the qualified architects and/or engineers on this project.” This language does not resolve the problem. The CBO is still the signatory on a document that says the design “complies.” Third parties, including Metrolinx, lenders, and future occupants, will rely on that certification. A disclaimer within the body of a compliance report does not eliminate the legal or professional scope implications of the signature on its face.

3. The PEA Applicability Assessment Cannot Be Delegated to Municipalities

The government’s ERO proposal summary states explicitly that the building compliance report must include:

“An assessment of the applicability of the Architects Act or the Professional Engineers Act.”

This language appears in the government’s published summary of Proposal 26-MTO013 on the Environmental Registry of Ontario. OSPE recommends that the ministry confirm the precise legislative and regulatory provision from which this requirement derives, as this will determine the scope of any amendment required to address it.

This is a regulatory determination. Whether a given scope of work constitutes the practice of professional engineering under the PEA is a legal and regulatory question that falls within the mandate of PEO, not municipal building departments. CBOs are not trained to make PEA applicability determinations and have no statutory authority to do so. Creating a compliance process that embeds

this requirement within a municipal review form normalizes the delegation of professional regulatory functions to non-regulatory bodies.

OSPE recommends that any PEA applicability assessment be explicitly assigned to PEO, or to the licensed engineers of record, rather than to municipal building officials.

4. Risk to the Right of Practice of Professional Engineers

The right of practice of professional engineers in Ontario is protected by the Professional Engineers Act. This protection exists to safeguard the public. When engineering work is certified by someone who is not a licensed engineer, the accountability framework that the PEA creates is bypassed. If a structural or mechanical engineering failure occurs on a project where a CBO signed a compliance certification, questions of professional accountability become legally complicated and potentially unresolvable.

The PEA framework is designed so that the engineer of record bears professional responsibility for the work they seal and sign. The proposed compliance report, as drafted, inserts a municipal signatory between the engineer of record and the regulatory record. This does not strengthen compliance. It diffuses accountability in a way that is inconsistent with how professional engineering responsibility is structured in Ontario.

OSPE is not opposed to streamlined processes for transit infrastructure delivery. We support the province's housing and transit goals. But a streamlined process must preserve, not erode, the professional accountability structures that protect public safety.

5. What Engineers Are Telling Us

OSPE consulted its membership on this proposal ahead of this submission. The responses were clear and consistent: engineers across disciplines and sectors are concerned that this proposal weakens the professional accountability structures that protect the public. Several themes from that consultation are directly relevant to the ministry's consideration of this proposal.

Professional liability and errors and omissions insurance

Multiple members raised a gap the proposal does not address: professional engineers carry errors and omissions insurance tied to their licence. That insurance exists precisely because engineering certifications carry legal weight and public safety implications. Chief Building Officials do not carry equivalent professional liability coverage for engineering certifications. If a CBO signs a compliance report certifying structural sufficiency and a failure occurs, the question of who bears liability is not answered anywhere in this proposal. That is not a minor administrative detail. It is a fundamental gap in the accountability framework.

Fire protection: an international precedent

OSPE members with fire protection engineering backgrounds flagged a directly relevant international precedent. Limiting fire protection certification to qualified fire protection engineers was a key investigative outcome of the Grenfell Tower tragedy in the United Kingdom, and that standard has since been adopted internationally. The proposed compliance report form includes fire protection as a line

item the CBO must certify. Ontario would be moving in the opposite direction from where the international community has landed on this specific question. OSPE recommends that fire protection certification be explicitly excluded from the CBO's scope and retained with qualified fire protection engineers.

The BCIN precedent in Ontario

Members also referenced a prior attempt in Ontario to create an alternative certification pathway that bypassed P.Eng. requirements through the Building Code Identification Number (BCIN) regime. The current proposal raises similar concerns. Ontario has been down this road before, and the outcome reinforced that engineering certification belongs with licensed engineers. OSPE recommends the ministry review that precedent before proceeding with the current framework.

CBO capacity and independence varies across Ontario

Members working in both large urban municipalities and smaller communities raised a concern the proposal does not address: CBO capacity, expertise, and independence from political pressure is not uniform across Ontario. One respondent with direct experience as a former Chief Building Official noted that while CBOs are well trained in their discipline, they can be subjected to political influence and duress in their decisions, and that those decisions are not held to the same professional standards, legal discipline, and personal liability as engineers. A compliance framework that depends on consistent, independent, technically qualified judgment from CBOs across all of Ontario's municipalities is not a framework the current system can reliably deliver.

The accountability chain must be traceable

Several members described situations where the accountability chain broke down when non-engineers were inserted into engineering approval processes. In one case, a building inspector accepted a contractor's representation that an engineer had approved a structural fix, without verifying it with the engineer. The deficiency was never resolved and the project was closed. A second engineer, retained after the fact, confirmed the structural violation remained. The proposed compliance report creates a similar risk at scale: a CBO signing a form that says a design complies, based on submitted documents, without the professional obligation to verify or the liability exposure if they are wrong.

6. Recommendations

OSPE respectfully recommends that the province:

1. Remove from the Building Science Compliance Report any requirement for CBOs to certify compliance with engineering-specific items, including structural sufficiency, mechanical systems, electrical systems, and fire protection. These certifications must remain with the licensed engineers of record.
2. Remove or reassign the PEA applicability assessment. This determination should rest with PEO or the engineer of record, not with municipal building officials.
3. Revise the certification language on the review form to accurately reflect the scope of what a CBO is authorized and qualified to certify: namely, administrative compliance with applicable Building Code provisions within their statutory mandate, not the engineering quality or sufficiency of the design.

4. Engage PEO and OSPE in the design of the final compliance reporting framework to ensure that the professional accountability structure required by the Professional Engineers Act is preserved.
5. Clarify in both the legislation and the proposed regulations that the Building Science Compliance Report does not constitute an engineering opinion or a professional certification under the Professional Engineers Act.

6. Conclusion

OSPE supports the province's goal of delivering transit infrastructure more efficiently. Metrolinx projects are critical to Ontario's future, and we recognize the need for practical compliance pathways that do not create unnecessary delays.

At the same time, the right of practice of professional engineers exists to protect the public, not to create administrative friction. The proposed Building Science Compliance Report, as currently drafted, asks municipal officials to certify engineering work they are not qualified or authorized to certify, and to assess the applicability of the Professional Engineers Act, a function that belongs to PEO.

These are correctable problems. With targeted revisions to the review form and the proposed regulations, the province can achieve its transit delivery objectives while maintaining the professional accountability framework that Ontario's engineers and the public depend on.

OSPE is available to meet with ministry staff to discuss these concerns and to contribute to a revised framework that works for all parties. Please contact Paola Cetares, OSPE Director of Public Affairs, at 416 223 9961 Ext. 225 or at pcetares@ospe.on.ca to arrange a meeting.

Yours sincerely,



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