

LEGISLATIVE MEASURES

PROMOTING BIRD-SAFE BUILDING

INTRODUCTION

Billions of birds are killed flying into sheet glass installed in buildings as clear and reflective windows. The reason is that birds behave as if windows are invisible to them. All species and all individuals within a species are potential victims. The evidence and its objective interpretation is that glass is an indiscriminate killer of free flying birds, taking the fit as well as the less fit members of a population. No reasonable person condones these unintended and unwanted tragedies caused by one of the most useful and aesthetically attractive building materials. There are solutions to make windows safe for birds and humans. Developers and architects who design and place buildings on space occupied by birds and people share an ethical and moral responsibility to prevent this human-caused avian mortality. History has revealed that the use of the legal system is a far more powerful means of stimulating action to protect birds from windows than relying on the voluntary efforts of the many constituencies involved in this important conservation issue. In the federal court of Canada, a multibillion-dollar corporation was prosecuted in 2011 for birds killed striking the windows of their corporate center in Toronto under Ontario's *Environmental Protection Act* and the federal *Species at Risk Act*. The prospect and promise of local (municipal), regional (provincial, state), and federal legal action to protect birds from windows has been and continues to be justified based on ethical, moral, conservation, and environmental reasons. The purpose of this overview is to describe and document the existing and growing number of mandatory and voluntary legislation to require and promote

bird-safe buildings, for retrofitting existing structures and using specially designed sheet glass for remodeling and new construction.

EXISTING LEGISLATION

International treaties, provincial and state regional laws, county, city and other municipal ordinances and zoning regulations directly and indirectly address preventing bird fatalities resulting from window strikes. Interpretive ambiguity and opposing court judgments have rendered international legislation to protect birds from human threats confusing and uncertain. International legal agreements continue to be a viable option to force action to prevent bird-window collisions, but without clear directives, the current trend is the drafting and adoption of regional and municipal legislation to address the issue.

The most prominent international bird protection legal agreements relevant to avian mortality at windows are the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA) for Canada; their equivalents the *Migratory Bird Treaty Act* (MBTA), *Endangered Species Act* (ESA) in the United States (US), and the *Birds Directive of the European Commission* in the European Union (EU). For North America regionally, protecting birds from windows is justifiably authorized under the *Endangered Species Act* (ESA) as applied in the province of Ontario, the Ontario *Environmental Protection Act* (EPA), and the *B3 Program* (Building, Benchmark, and Beyond) in the state of Minnesota.

A nationwide US federal *Bird Safe Buildings Act of 2019* (H.R. Bill 191) is pending legislation currently under congressional consideration. This bipartisan supported bill would require public buildings incorporate bird safe building materials and architecture. Similar state laws are pending in Maryland, New York, Washington, District of Columbia (DC), and Cook County, Illinois. Although regional legislation almost exclusively is directed to retrofitting,

remodeling and new construction of government buildings, the hope is that mandatory bird-safe government practices will serve as a model and example to stimulate the same practices for private commercial structures.

Specific mandatory ordinances and zoning regulations to prevent bird-window collisions at government and commercial buildings have been adopted by the following municipalities: Mountain View, Oakland, Richmond, San Francisco, San Jose in California; Highland Park, Illinois, and Portland, Oregon; Markham and Toronto, Ontario. A similar *Bird Friendly Design Ordinance* (Chapter 13-150) is pending before the City Council of Chicago, Illinois.

Voluntary recommendations have been formalized in Calgary, Alberta and Vancouver, British Columbia; in the statewide California Green Building Code, and in California cities of Palo Alto and Sunnyvale; and the village of Barrington, Illinois. The drafting of each of these legislative policies have been guided by published bird-safe building design guidelines by the American Bird Conservancy, and the planning authorities and their avian conservation cooperators in the cities of Calgary, Markham, New York, Oakland, Portland, San Francisco, Toronto, and Vancouver.

RECENT LEGISLATIVE TRENDS

As more bird-safe sheet glass becomes available and more affordable, we can expect and predict that human construction increasingly will be legally required to protect birds from windows the world over. One current progressive step is a grant to the Canadian Standards Association (CSA), an international organization, by the Ontario Ministry of Environment Conservation and Parks to develop *Bird Friendly Building Design* (CSA A460). This work has recently completed a public review comment period, and is nearing completion and release to

guide bird-safe-building industry practices. When completed it promises to be a model for bird-safe building construction worldwide.

CONCLUSION

Once informed of the scale and scope of the threat sheet glass poses to bird life, it is obvious to any reasonable person that making our windows safe for birds is required to save billions of their lives worldwide. Humans can solve this environmental problem, and the cooperation and action of the building industry is essential to its solution. Global legislative efforts requiring our human structures be made safe for birds are responsible sustainable environmental practice. In my view, the Canadian Standards Association (CSA) *Bird Friendly Building Design* standard will be a model for bird-safe building construction worldwide.

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