SP-31

ISSN 1710-9477

Legislative Assembly of Ontario

Second Session, 38th Parliament

Assemblée législative de l'Ontario

Deuxième session, 38e législature

Official Report of Debates (Hansard)

Tuesday 12 September 2006

Journal des débats (Hansard)

Mardi 12 septembre 2006

Standing committee on social policy

Comité permanent de la politique sociale

Clean Water Act, 2006

Loi de 2006 sur l'eau saine

Chair: Shafiq Qaadri
Clerk: Trevor Day

Président : Shafiq Qaadri
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

http://www.ontla.on.ca/

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Copies of Hansard

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8. e-mail: webpubont@gov.on.ca

Exemplaires du Journal

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8 courriel : webpubont@gov.on.ca

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Tuesday 12 September 2006

Mardi 12 septembre 2006

The committee met at 1000 in committee room 1.

CLEAN WATER ACT, 2006
LOI DE 2006 SUR L'EAU SAINE

Consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts / Projet de loi 43, Loi visant à protéger les sources existantes et futures d'eau potable et à apporter des modifications complémentaires et autres à d'autres lois.

The Vice-Chair (Mr. Khalil Ramal): Good morning, ladies and gentlemen. Welcome to the second day of clause-by-clause on Bill 43, the Clean Water Act. We'll start with the first motion, NDP motion 63. Mr. Tabuns, you can start.

Mr. Peter Tabuns (Toronto–Danforth): Thank you, Mr. Chair. Good morning, colleagues.

I move that subsection 19(2) of the bill be amended by adding the following paragraph:

"2.1 Policies to address the adverse effects of climate change on existing and future sources of drinking water."

Mr. Chair, please correct me if I'm wrong here, but I thought we had actually gotten to this yesterday. I would be happy to re-debate the amendment, because I thought it was a wonderful amendment.

Interjection.

Mr. Tabuns: I'll wait for the official checking of the record.

Interjection.

Mr. Tabuns: We are at 63? Okay. I've read it out. I'll just note that I think we are facing substantial turbulence in terms of water supply and quality with climate change. Plans that don't recognize the changing circumstances that we'll face will be inadequate and will put public health at risk, because there will be times when there will be shortages of water and there will be times when surpluses of water will lead to contamination—surplus being a flood. Everyone around this table recognizes that climate change is happening. It makes complete sense to give source protection committees and source protection authorities direction from the beginning to address climate change in their planning, to understand what's coming and to make sure that they are doing the due diligence necessary to protect human health and the environment over the long term. I don't think this policy, in fact, is contrary to government direction or stated government direction. I see every reason why you would support it.

The Chair (Mr. Shafiq Qaadri): Further comments?

Mr. John Wilkinson (Perth–Middlesex): This bill is a framework piece of legislation, and within that framework we give a great deal of latitude for all issues that can result in a significant threat to drinking water primarily but also any threat to drinking water when it comes to the questions of quantity and quality. We believe that we've crafted a bill that is robust enough. One of the aspects that undoubtedly—and I agree with my friend—will have, and has even today, an impact on water and drinking water is the issue of climate change, but we believe that the bill, as drafted, is the appropriate way to make sure that all things are considered.

Mr. Tabuns: I've heard and understood the argument about the framework, and I would say that this is a framework piece. We're not telling them what their policy should be; we're not telling them how to write their plan. We're saying that in the process of defining the problem, this element has to be taken into account; simple as that. If you're talking framework, I'm saying this is a framework piece, and I think that's a reasonable argument.

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll proceed now to NDP motion 64.

Mr. Tabuns: I move that subsection 19(2) of the bill be amended by adding the following paragraph:

"2.2 Policies relating to water conservation."

I found it interesting that agricultural groups raised this issue pretty consistently in the hearings. They correctly understood that a reduction in demand on groundwater and surface water would reduce the overall impact of the human footprint on the environment and reduce the chances of contamination. This bill is meant to protect

both quantity and quality of water. Again, then, in preparing these plans, it makes sense to give direction to source protection committees and source protection authorities to include consideration for water conservation in their plans. I don't quite see how you can protect the environment without reducing our drawdown on the resources in that environment.

So, again, as you've said, Mr. Wilkinson, if we are going to be talking about framework, this is a piece of the framework, saying, "Here is an element that you have to take into consideration." It could have been three pages long, detailing how they conserve water, but it simply says, "When you're doing that plan, you have to have policies relating to water conservation." I don't see any reason that you'd oppose this amendment.

Mr. Wilkinson: I believe the bill, as drafted in this regard, where there is a requirement in the assessment report that there is a water budget—which I think is quite progressive of the government to put that in there—I believe we're in a position where inherently the bill, as already approved in previous sections, deals with the whole question of a water budget.

I know my friend understands that across Ontario there are some regions where water is more plentiful. When we were in Norfolk, we listened to the Norfolk Federation of Agriculture. They're on the sandy plain. They talked at great length about the co-operative efforts that they use to conserve water because they are heavily dependent on irrigation in an area that is not blessed with great quantities of water. So when we have the province the way it is, I think the appropriate way to deal with this first is to do what we have done, which is enshrine in the framework that a water budget has to be part of it.

Again, I believe that the source planning committees, which are from the ground up, as a community, will reach these conclusions, though the minister has the regulatory authority to deal with anything she would consider a deficiency. When you're trying to empower people—we want those source planning committees themselves to determine from the input from their own communities those things which are of the greatest priority, water conservation being one of them, because it'll be inspired by the science telling us what the water budget is for the watershed in question.

Mr. Tabuns: I'm listening to what you're saying, and yes, science can tell us what the water budget is, but on principle, we should be reducing our drawdown on our water resources. We should use less. We should use the absolute minimum that's consistent with good health, comfort and enjoyment. It makes total sense for us to say not solely that you should have a budget, but you should have a budget that conserves the resource. So I don't see a contradiction between what I'm saying here and the water budget. I'm saying, "You want to have a budget? Good. We suggest you make it a budget that is as economical of the resource as possible."

Mr. Wilkinson: And the question here is that we believe that the appropriate place for that to be developed and for that consensus to be built upon is, first, at the local level; this bill is all about local empowerment first. Though the minister has the ability to look at that and impose conditions, let's first let the community come together and make that decision, as opposed to all the work being done in Toronto. It's just a difference of philosophy. I think we're going to get to the same point.

Again, my fear is not doing this; it's how it's implemented. It has to have credibility with the people who are affected. They, neighbour to neighbour, have to reach the consensus that conservation is of paramount importance, and I want them to have the opportunity first, before the government starts prescribing these things.

Mr. Tabuns: And that's what they were asking for in our hearings.

Mr. Wilkinson: In one part of Ontario.

Mr. Tabuns: I think that came up in a variety of hearings, but we may well have gone over this ground as much as we're going to go over it productively.

The Chair: Are there any further questions and comments on NDP motion 64? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

I'd just inform members of the committee that government motion 65, which of course sequentially is next, is going to be deferred until after consideration of PC motion 73.1 for rules that are too intricate at this early juncture to share with you. Nevertheless, we now proceed to NDP motion 66.

1010

Interjections.

The Chair: NDP motion 66.

Mr. Tabuns: I move that section 19 of the bill be amended by adding the following subsection:

"Other drinking water threats

"(2.1) A source protection plan may, in accordance with the regulations and the terms of reference, set out policies intended to address activities and conditions that are identified in the assessment report as drinking water threats but are not identified as significant drinking water threats."

Based on a precautionary approach to dealing with potential water contamination, based on the fact that we don't have a definition of "significant drinking water threats," we're proposing that source protection committees have this direction.

The Chair: Comments?

Mr. Wilkinson: I think when we deal with government motion 65 in regard to an amendment to subsection 19(2.4) we'll address this issue at that time.

The Chair: If members are ready to vote, we'll proceed.

Mr. Tabuns: Recorded, please.

The Chair: Recorded vote, NDP motion 66.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 67.

Mr. Tabuns: I move that clause 19(3)(b) of the bill be struck out and the following substituted:

"(b) a possible future activity that would be a drinking water threat."

Going back to my previous commentary, this is changing the threshold, saying "a threat's a threat," and giving the planners, the source protectors, this particular tool for their use in making sure that the water in the area they're protecting is safe and sound.

The Chair: Further comments, questions?

Mr. Wilkinson: We've already put on the record that we believe that Justice O'Connor's lengthy and considered work on this matter says we need to be able to deal with significant drinking water threats first and not be bogged down by trying to do all things all at once. That's why we don't support the motion. That's it.

The Chair: If members are ready to proceed to the vote, we'll have a vote on NDP motion 67.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 68.

Mr. Tabuns: I move that subsection 19(3) of the bill be struck out and the following substituted:

"Designation of activities for section 49

"(3) An activity shall not be designated under paragraph 3 of subsection (2) if the activity is a type of activity prescribed by the regulations.

"Same

"(3.1) An activity shall not be designated under paragraph 3 of subsection (2) unless the activity is identified in the assessment report as a possible future activity that would be a significant drinking water threat."

We've left the term "significant drinking water threat" in because we didn't think we would get your support if we got rid of it. This gives the source protection committee greater powers to potentially prohibit a broader spectrum of activities that threaten drinking water. Under the act, an activity can only be designated by a source protection committee for prohibition under section 49 if it's prescribed in the regulations. So at present, the source protection committee can only prohibit what's listed in the regulations. We've reversed that. Something can be prohibited unless it is exempted in the regulations, giving broader powers to the source protection committee.

The Chair: Comments?

Mr. Wilkinson: Given the deputations that we've received over the last three years, we believe that the bill, as drafted, achieves the correct balance.

The Chair: We'll proceed, then, to the vote.

Mr. Tabuns: Recorded, please, Mr. Chair.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll proceed now to NDP motion 69.

Mr. Tabuns: I move that subsection 19(4) of the bill be struck out and the following substituted:

"Designation of activities for section 50

"(4) An activity shall not be designated under paragraph 4 of subsection (2) if the activity is a type of activity prescribed by the regulations and,

"(a) is an existing activity that is a drinking water threat; or

"(ii) is a possible future activity that would be a drinking water threat."

Again, in this instance, it's taking the opportunity to remove "significant" and putting in a more concrete and defined drinking water threat.

Mr. Wilkinson: The same arguments.

The Chair: Same arguments for and/or against? Okay.

Mr. Tabuns: Recorded vote.

Mr. Wilkinson: The same arguments against.

The Chair: Thank you. We'll proceed now with voting on—

Mr. Tabuns: Are you crossing the floor, John? Come on over.

The Chair: Recorded vote, I presume, on NDP motion 69?

Mr. Tabuns: Yes.

Ayes

Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 70.

Mr. Tabuns: I move that subsection 19(4) of the bill be struck out and the following substituted:

"Designation of activities for section 50

"(4) An activity shall not be designated under paragraph 4 of subsection (2) if the activity is a type of activity prescribed by the regulations.

"Same

"(4.1) An activity shall not be designated under paragraph 4 of subsection (2) unless the activity is identified in the assessment report as,

"(a) an existing activity that is a significant drinking water threat; or

"(b) a possible future activity that would be a significant drinking water threat."

Again, this is trying to expand the powers of the source protection committee so that their ability to protect local water is not constrained by the regulations; it in fact opens up their powers, something that the parliamentary assistant has consistently said in this debate is something that he wants: more power at the grassroots level. Well, this gives them more power at the grassroots level, less constraint by the regulation process done here in Toronto.

Mr. Wilkinson: Having been inspired by the testimony from countless stakeholders, when you draft a bill, you have to get an appropriate balance. For example, I have one party here who decided in their first two amendments to gut the bill. It would make all of the work that we did irrelevant. Then we have others—and I respect the member. As you've said, you want to broaden the bill. You want it to have greater scope than envisioned by Justice O'Connor. So we, as a government, after many years of consultations, have to deal with the whole issue of how to balance and craft a bill that we think has that balance and allows the source planning committees to begin their work with the full faith and confidence of their local community.

This is all about getting people who share the same drinking water to come to a common consensus on their own, as opposed to having one as the first step imposed upon them by government; allow those communities to come together in a consultative way and get to where we all want them to be. So I believe that we have struck the right balance.

Mr. Tabuns: Well, it's interesting, Mr. Chair. If you, in fact, want to put that power in the hands of the local community, I'm giving you an opportunity in this amendment to expand the power they have to come to their consensus within their community. You have expressed this ongoing interest in having it sorted out at the grassroots level. Well, this is an opportunity to say that it's at the grassroots where people have debates as to what activities are problematic, without an excessively straitjacketed approach imposed on them by Queen's Park.

Mr. Wilkinson: I disagree. I think it is naive to believe that we should ignore a great deal of testimony that I think was given to the ministry and to this committee as to how one strikes the appropriate balance. I note that the stakeholders involved are very—and again, I don't remember a cross-section of stakeholders coming to us and saying that we had not struck the right balance in this bill. There are some other issues that I know almost all stakeholders told us that they felt needed to be removed from the bill. I think that's how I know when it's important for us to take a more balanced approach, or we need to revisit it. I remember distinctly people coming to us and saying that we should not change this. Again, it is up to the government to decide, after consultation, what they consider to be the appropriate balance. I think the bill is balanced, particularly when we look at the goal, which is the appropriate implementation of the bill. Despite the fact that there are some people who don't want the bill to be implemented and will do everything they can to kind of, I think, put a monkey wrench in, we want to start with the ability for people to deal with that.

1020

Mr. Tabuns: I think our arguments are on record.

The Chair: Thank you, Mr. Tabuns. We'll proceed, then, to the recorded vote, I presume, on NDP motion 70.

Interjection: Yes, recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 71.

Mr. Tabuns: I move that clause 19(5)(c) of the bill be struck out and the following substituted:

"(c) the activity referred to in clause (b) is a drinking water threat."

As I've tried to do in other amendments, it's to change the threshold so that the term "significant drinking water threat" is set aside and we go to something concrete and definable, a "drinking water threat."

Mr. Wilkinson: Same arguments against.

Mr. Tabuns: Recorded vote.

The Chair: That's certainly efficient. We'll move to the vote, then, on NDP motion 71.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 72.

Mr. Tabuns: I move that subsection 19(5) of the bill be struck out and the following substituted:

"Designation of land uses for s. 51

"(5) A land use shall not be designated under paragraph 5 of subsection (2) if the land use is a type of land use prescribed by the regulations.

"Same

"(5.1) A land use shall not be designated under paragraph 5 of subsection (2) unless,

"(a) the land use relates to an activity that has been designated under paragraph 3 or 4 of subsection (2) as an activity to which section 49 or 50 should apply; and

"(b) the activity referred to in clause (b) is identified in the assessment report as a possible future activity that would be a significant drinking water threat."

So we've left in the undefined term "significant drinking water threat." As I've tried now for a number of amendments, this expands the power of the source protection committee, reduces the straitjacketing that would be imposed from Queen's Park and gives those source protection committees the opportunity to designate any land use they wish for prohibition unless it's a land use that the government has specifically prescribed in the regulations. The word "exempted" is a more useful word, but I gather "prescribed" is the one we have to use.

Mr. Wilkinson: Same arguments against.

The Chair: We'll proceed now to the recorded vote. Those in favour of NDP motion 72?

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 73.

Mr. Tabuns: I move that subsection 19(6) of the bill be amended by striking out "identified in the assessment report" at the end.

Again, an ongoing attempt to increase the power at the local level.

Mr. Wilkinson: Same arguments against.

The Chair: Recorded vote, NDP motion 73.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll proceed now to PC motion 73.1.

Mr. John O'Toole (Durham): I move that subsection 19(6) of the bill be struck out and the following substituted:

"Location or area

"(6) A location or area shall not be specified under paragraph 3, 4 or 5 of subsection (2) unless it is in a surface water intake protection zone, wellhead protection area or a surface rights property located in a vulnerable area identified in the assessment report."

The purpose for this was the location of the water intake zones or wellhead protection areas—we therefore would like to amend it to include surface rights property in vulnerable areas. I think that's self-explanatory, and I'd ask for a recorded vote.

The Chair: Thank you, Mr. O'Toole. Are there any further comments or questions?

Mr. Wilkinson: We're opposed to the motion for the same reason we were previously.

The Chair: Thank you, Mr. Wilkinson. We'll proceed now to the recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll now re-proceed to government motion—

Interjections.

The Chair: We'll proceed now to government motion 65.

Mr. Wilkinson: Great. Thanks. Just clarifying it for the clerk.

I move that subsections 19(2) to (6) of the bill be struck out and the following substituted:

"Contents

"(2) A source protection plan shall, in accordance with the regulations, set out the following:

"1. The most recently approved assessment report.

"2. Policies intended to achieve the following objectives for every area identified in the assessment report as an area where an activity is or would be a significant drinking water threat:

"i. Ensuring that the activity never becomes a significant drinking water threat.

"ii. Ensuring that, if the activity is being engaged in, the activity ceases to be a significant drinking water threat.

"3. Policies intended to assist in achieving every target established under section 76 for the source protection area, if the minister has directed under subsection 76(5) that a report be prepared that recommends policies that should be set out in the source protection plan to assist in achieving the target.

"4. Policies governing,

"i. the monitoring, in every area that is identified in the assessment report as an area where an activity is or would be a significant drinking water threat, of the activity, and

"ii. the monitoring, in every area that is identified in the assessment report as an area where a condition is a significant drinking water threat, of the condition.

"5. Policies governing,

"i. the monitoring of an activity in an area, if the area is identified in the assessment report as a vulnerable area, the activity is listed in the assessment report as an activity that is or would be a drinking water threat, subparagraph 4i does not apply and the monitoring of the activity is advisable to assist in preventing the activity from becoming a significant drinking water threat, and

"ii. the monitoring of a condition in an area, if the area is identified in the assessment report as a vulnerable area, the condition is listed in the assessment report as a condition that is a drinking water threat, subparagraph 4ii does not apply and the monitoring of the condition is advisable to assist in preventing the condition from becoming a significant drinking water threat.

"6. Policies governing monitoring to assist in implementing and in determining the effectiveness of every policy set out in the source protection plan under paragraph 3.

"7. Policies governing the monitoring of a drinking water issue identified in the assessment report, if the monitoring of the drinking water issue is advisable.

"8. Any other matter required by the regulations.

"Contents relating to ss. 49 to 51

"(2.1) Without limiting the generality of paragraph 2 of subsection (2), the source protection plan may, in accordance with the regulations, set out the following:

"1. A list of activities that are designated by the source protection plan as activities to which section 49 should apply and, for each designated activity, the areas that are designated by the plan as areas within which section 49 should apply to the activity.

"2. A list of activities that are designated by the source protection plan as activities to which section 50 should apply and, for each designated activity, the areas that are designated by the plan as areas within which section 50 should apply to the activity.

"3. A list of land uses that are designated by the source protection plan as land uses to which section 51 should apply and, for each designated land use, the areas that are designated by the plan as areas within which section 51 should apply to the land use.

"4. Policies governing the content of risk management plans that are agreed to or established under section 50.

"Designated Great Lakes policies

"(2.2) A source protection plan may designate a policy set out under paragraph 3 of subsection (2) as a designated Great Lakes policy.

"Designating public body

"(2.3) A policy set out in a source protection plan under paragraph 4, 5, 6 or 7 of subsection (2) shall designate the public body responsible for implementing the policy.

"Other contents

"(2.4) A source protection plan may, in accordance with the regulations, set out the following:

"1. Policies that, for an area identified in the assessment report as an area where a condition that results from a past activity is a significant drinking water threat, are intended to achieve the objective of ensuring that the condition ceases to be a significant drinking water threat.

"2. Policies intended to address activities and conditions that are listed in the assessment report as drinking water threats but that are not addressed by policies set out under paragraph 1 or under paragraph 2 of subsection (2).

"3. Any other matter prescribed by the regulations.

1030

"Incentive programs; education and outreach programs

"(2.5) Without limiting the generality of paragraphs 2 and 3 of subsection (2) and paragraphs 1 and 2 of subsection (2.4), a source protection plan may, in accordance with the regulations, set out policies governing incentive programs and education and outreach programs.

"Prohibition and regulation of activity

"(2.6) Subject to the regulations, policies set out in a source protection plan under paragraph 2 or 3 of subsection (2) or paragraph 1 or 2 of subsection (2.4) may prohibit or regulate a land use or other activity even if the land use or other activity is not prohibited or regulated under section 49, 50 or 51.

"Designation of activities for s. 49 or 50

"(3) An activity shall not be designated under paragraph 1 or 2 of subsection (2.1) unless the activity is an activity prescribed by the regulations.

"Designation of areas for s. 49 or 50

"(4) An area shall not be designated for an activity under paragraph 1 or 2 of subsection (2.1) unless,

"(a) all of the designated area is in an area that is identified in the assessment report as an area where the activity is or would be a significant drinking water threat; and

"(b) all of the designated area is in a surface water intake protection zone or wellhead protection area identified in the assessment report.

"Same

"(5) An area that is designated for an activity under paragraph 2 of subsection (2.1) shall not include any part of an area that is designated for the activity under paragraph 1 of subsection (2.1).

"Designation of land uses for s. 51

"(6) A land use shall not be designated under paragraph 3 of subsection (2.1) unless,

"(a) the land use is a land use prescribed by the regulations; and

"(b) the land use relates to an activity that has been designated under paragraph 1 or 2 of subsection (2.1) as an activity to which section 49 or 50 should apply.

"Designation of areas for s. 51

"(6.1) An area shall not be designated for a land use under paragraph 3 of subsection (2.1) unless,

"(a) all of the designated area is in an area that is identified in the assessment report as an area where an activity is or would be a significant drinking water threat,

the land use relates to the activity, and the activity has been designated under paragraph 1 or 2 of subsection (2.1) as an activity to which section 49 or 50 should apply; and

"(b) all of the designated area is in a surface water intake protection zone or wellhead protection area identified in the assessment report."

This motion would amend subsection 19(2), which sets out the mandatory provisions of a source protection plan. Source protection plans would be required to contain the most recently approved assessment report and policies to address significant drinking water threats; policies to assist in achieving Great Lakes targets set by the minister for the source protection area, including monitoring policies, if the minister has requested a report on such policies; policies governing the monitoring of significant drinking water threats; and policies governing the monitoring of drinking water issues and other drinking water threats if the source protection committee believes it is advisable to monitor the issue.

This motion also sets out the authority to designate prescribed activities for the purposes of sections 49, 50 and 51 of part IV, in a separate subsection (2.1), to clarify that designating activities for the purposes of part IV of the bill is not a mandatory requirement of the source protection plan. The amendment would add a new subsection (2.4) to clarify that in addition to the mandatory provisions set out in subsection (2), a source protection plan could also contain policies addressing conditions that are significant drinking water threats and policies addressing activities and conditions that are non-significant drinking water threats.

The Chair: Mr. Tabuns, further comments?

Mr. Tabuns: Before I comment, I'd like to have a question answered. Subsection (2.5), "Incentive programs; education and outreach programs," can that be separated out for a separate vote from the body of the motion as a whole?

The Chair: Whether it can or not I believe is up to the presenters to decide. We'd have to move an amendment to that effect, and that would have to be considered by the committee.

Mr. Tabuns: I apologize, because I'm not as familiar with procedure here. The amendment would be that I move that this section be taken out, and then we get to vote on the main motion, and then we would go back to the clause that had been taken out?

The Clerk of the Committee (Mr. Trevor Day): The amendment would be to remove it from the amendment that's on the floor right now. A subsequent motion would have to be moved to vote on that piece. So it would have to be amended out of the amendment that's on the floor right now, to strike it. We'd vote on whether to strike it or not, and then you'd have to, again, move the section as a separate amendment on its own.

Mr. Tabuns: Right. I understand. Well, I don't think I'm going to do that. I think I can guess at the outcome of the vote.

I do have problems with what is written here. I think there's a narrowing of the scope of the bill. I think that's problematic for water protection.

But I have to say the section on incentive programs is important. It was very clear both from the environmental community and the agricultural community that having incentive programs was going to be a significant piece of what it would take to make clean water protection happen in this province. I'm not certain that the money that's been allocated will be adequate. I don't have another figure to offer. But I think that that incentive program allocation is something the opposition has called for, something the general public has called for and something that must be in this bill.

Mr. Jeff Leal (Peterborough): Just quickly, I will be asking for a recorded vote. I'm just checking my notes. People who made presentations, particularly in Peterborough and Bath, certainly indicated a need for a substantial overhaul of this particular section of the bill. I think there was quite an articulate water scientist from Orono who may have made a presentation on the need to overhaul this section too, so there was a lot of good input on this matter.

Mr. O'Toole: I'm glad Mr. Leal is listening to my constituents. It's important to me, because I certainly do.

I see this as an example of a drafting amendment. This bill has been changed dramatically from its original scope. I'm not in a position to give much critical assessment of this very large amendment, which changes the complete section technically. I'm not sure, because I'm not briefed enough to know in detail, although I have looked at the other sections, 49, 50 and 51, including 48 which has to do with fees. It's a pretty large section.

But I am concerned and would ask the parliamentary assistant—for instance, the section on page 4 of your amendment. I'll just read it: "Subject to the regulations,"—we don't know what they are "—policies set out in a source protection plan under paragraph 2 or 3 of subsection (2) or paragraph 1 or 2 of subsection (2.4) may prohibit or regulate a land use or other activity even if the land use or other activity is not prohibited or regulated under section 49, 50 or 51."

Could you just explain that for us so that ordinary farmers and rural people will understand. This is rezoning by any other language. I'm confident in saying—I've been here 11 years. I've sat on almost every committee, and I'm not sure I fully understand the breadth of this amendment. Mr. Leal presumes he does, and I would ask him to answer the question. He has no clue. I'm telling you, without being rude, he has no clue, nor does the parliamentary assistant, as to what this is actually doing to property rights. Not that I'm a defender of property rights, but the general public—if somebody designates something that may cause a risk. Define "may cause." I find this very difficult and I'm asking, again, not just for a layman's description of what this means—this whole section here, going right down through designation of land use under section 51. It's in that tone that we have a lot of people in Ontario—and I'm trying to give you good advice here—who are concerned.

I'm going to pull out an old article here just to add to the drama of the whole thing. This is an article in the Globe and Mail, July 28. I just happened to be reading the Globe because the hearings were on. It says, "The Ottawa Valley way: Expressing rural rage with a musical comedy." It goes on to explain, and I think this is very appropriate for all of us to understand, what the rage is about. It's a number of things all coming together at the same time: done rather hastily, limited consultations and limited understanding, quite frankly. The lawyers will understand and the others, mostly, once these things are tested in court.

It goes on. I'm quoting here from an article "This Country" by Roy MacGregor, on July 28. It says, "'Everything seemed to go into decline,' he says. 'You have the removal of so much infrastructure: the railroads, the mills, the small factories. Most of the farms now are back to forest or else they have seasonal owners. People pay high taxes but get next to nothing in return compared to what urban people get for their tax dollars.

1040

"'That's one reason why you see those Back Off Government signs up all over the place these days.' The situation is difficult. The young leave, new investment doesn't come, the city takes no notice....

"'People have this sense of being shafted, of being ignored by the cities, and they really don't like it when city people act like we're the crazy fools for living here.

"'There's a disenfranchisement bordering on rage, and it's palpable right here.'"

That's kind of what I'm saying. I'm not trying to add to that or in any way enrage, but it's that lack of understanding and comfort that is causing this response. I'm saying, quite frankly—I said it at the beginning, and Ms. Scott and John Tory have said it as well—that we aren't opposed to protecting drinking water, despite what critics might say. What we are opposed to is acting hastily while not bringing the people of Ontario along, making sure they understand the balance of their rights and the public right, and having a process to resolve those disputes and compensate for those disputes.

I'm not making a theatrical speech here. I'm saying it's a conundrum. I support the goal; what I have a problem with is the process. You've moved an amendment that most members here—Mr. Tabuns is very well informed. He's worked in this area much of his life prior to politics. He has some understanding of the need to be strong on the environmental arguments, and I would support the work he's doing there.

Here, again, when you're talking about land use, potential zoning by policy, by fiat, those need to be understood before we move rather quickly. I'll leave it at that. Hopefully, I'll get an explanation of what this means.

If I have property that's zoned C1 commercial in a rural area where I had a mill at one time and it's now not an active mill, is that future use, not as a mill but as a wood-processing plant—I'm thinking of the Tyrone Mill, one of the oldest mills in Ontario. They have some serious water problems. It still operates as a water-powered mill. They do process wood. It's a beautiful location, a destination you should visit. It was built in 1856, I think. There would be some potential, because there's kind of an industrial activity going on—may cause a risk or a significant risk to water in the future, in somebody's mind.

The Chair: Thank you, Mr. O'Toole.

Mr. O'Toole: That's just one example of a zoning that I can think of. I can think of hundreds of others. The municipality of Orono, the town, the village of Orono is serviced by two wells on Concessions 4 and 5. They have huge problems in terms of the lack of sewage capacity in the community. They've been looking for a pipe for a sewage treatment for years, because there's a potential effect on issues there.

So I would say that we have every reason, and that Durham region has every reason, to protect. I think this legislation will do that, certainly protect the water, resources that those people drink, and the potential risk for a future private well, which may be somewhat unrelated to the actual well I'm drilling here on my property. So I'm quite sensitive to the importance of this issue. Just look at the zoning issue here and see if you can answer.

Mr. Wilkinson: After that, I think it's clear to all of us why you're confused, but if we can shed any light, I guess I'll ask our friends from the ministry to come and answer your conundrum.

Mr. O'Toole: John, that kind of comment isn't called for. I find it rude.

Mr. Wilkinson: It is absolutely called for.

Mr. O'Toole: No. It's completely rude. You explain to me what—

Mr. Wilkinson: You didn't ask a question. You asked one question and you said, "I have a conundrum," and I'll get you the answer. The rest—

The Chair: Gentlemen, at this point, I'd invite ministry staff to intervene. Please identify yourself and proceed.

Ms. Cynthia Brandon: I'm Cynthia Brandon from the legal services branch of the Ministry of the Environment. With respect to subsection (2.6), I'd like to try to clarify what we were thinking when we put this subsection in.

In the source protection plan, the source protection committee might decide that they are going to designate certain activities as activities to which sections 49, 50 or 51 should apply. Those sections, under part IV, give the authority, then, to prohibit the use of land in certain areas or to essentially regulate the use of land. The significance, then, of that activity being designated under section 49, 50 or 51 would be with respect to, as I say: 49, the prohibition; 50, the need to get a risk management plan in place; and 51, the need to get a notice before the property is developed. So we had done that.

Then some of us became a little bit concerned as to whether or not, having said that you can regulate or prohibit the use of land under sections 49, 50 and 51, we were suggesting that the municipality could not use its

already existing authorities under, for example, the Planning Act or the Municipal Act to regulate or prohibit land use and put those types of policies into their source protection plan. That was not the intention.

So this subsection was included—it was supposed to try to clarify—to say that in fact the municipalities could continue to use those other powers, include those as policies in their source protection plan. That was the purpose of the subsection.

Mr. O'Toole: So you're saying that the municipality, with this amendment, cannot use other acts to change land use? It all becomes subrogated to this act, the source water protection—

Ms. Brandon: No. That was precisely our concern: that some people might think that because we had specifically talked about prohibiting or regulating land use under 49, 50 and 51 and including that in your source protection plan, that we were saying the municipalities can't use the other authorities that they already have.

Mr. O'Toole: But which would take precedence, in terms of—if there is primacy here, in terms of protecting a public resource, i.e. water—risk, potential or significant? Which would take primacy if, for instance, I was going to permit, as a municipal councillor, a mill to operate in an area that had been designated as a significant risk to an aquifer or something? If I'm the mayor and I want the mill to go ahead, and some non-elected source protection committee says, "No. It's in our risk assessment report. Sorry, you're out of business," which would take primacy? Or would I have to go to court now to resolve the primacy issue?

Ms. Brandon: Hopefully not. It would depend on whether it was addressing your policy that has been included in the source protection plan—whether it's there to address a significant drinking water threat or a non-significant drinking water threat. Part III of the act provides that planning decisions and prescribed instruments have to conform with policies that are set out to address significant drinking water threats. If the policy was in fact included to address a non-significant drinking water threat, then the act provides that those decisions have to have regard to those policies. So it depends on the nature of what type of threat is being addressed by the policy.

Mr. O'Toole: I understand the argument of "having regard to" and "consistent with." Bill 51 has that same discussion, as we speak—which has not passed, by the way. That's where it says the policies of the province in water or wetlands or whatever must be consistent in the official plan and other land use decisions by the municipality. As such, you're telling me now that this act has primacy, because in regulation you will have the policies that you wish to endorse in this bill as provincial policy statements. There are no provincial policy statements that I'm aware of just yet with specific regard to water and source water protection.

Ms. Brandon: The policies would be policies within the source protection plan that the committee has—

Mr. O'Toole: Would they be provincial policy statements, though? Because in the Planning Act—51 and the "regard to" argument—they've got to amend their official plans, both local and regional, to be consistent with provincial policy statements on wetlands and, hopefully, source water. That's the argument that Mr. Tabuns has been making in most of his amendments: the absoluteness of protection.

1050

Ms. Brandon: Section 35 of the bill, which we haven't gotten to yet—

Mr. O'Toole: We haven't got to that yet.

Ms. Brandon: Right. It sets out, in fact, the priority of the source protection plan; again, the policies that affect the significant drinking water threats and the policies that are there to—

Mr. O'Toole: Yes, well it does say in there—and I've read that section—"shall conform with."

Ms. Brandon: Right. I'm not 100% sure what subsection you're referring to there. So subsection (4) says, "if there is a conflict between—"

Mr. O'Toole: That's right, it prevails. So the primacy is this bill.

Ms. Brandon: With respect to the significant drinking water threats, policies, and the Great Lakes policies. It's "the provision that provides the greatest protection to the quality and quantity of the water" that will prevail.

Mr. O'Toole: I appreciate your answer. It has been helpful. I still think it's exactly as I said at the beginning: This does have primacy. You just read section 35—it does. They must conform in the official plan with this bill.

Ms. Brandon: Correct, and with respect—

Mr. O'Toole: Which means they could potentially, in the risk assessment plan, change the current use of property. And I want to know what, then, in the other section, section 88, the compensation section—hopefully there will be an amendment dealing with that so that people are appropriately compensated when you remove a current designation on property. Somebody had to pay for it to get zoned at some point in time in history.

Anyway, I appreciate your attempt at explaining it to me.

The Chair: Thank you, Ms. Brandon.

Thank you, Mr. O'Toole. Are there any further comments or questions?

Mr. Leal: I did have a quick question. Could I have that lady just come back?

The Chair: Ms. Brandon, we welcome you back.

Mr. Leal: This is a fascinating discussion because of official plans and that. All officials plans in Ontario already contain provincial statements dealing with wetlands and recharge areas. Local conservation authorities have to sign off on official plans. And conservation authorities now, with the funds they have, are doing a lot of this mapping to incorporate into official plans—that's my understanding—which would identify properties that may have difficulties with regard to those two provincial policy statements and this third one as a result of this bill. That's been the modus operandi in Ontario for years. That's a question—I'm sorry—with a little preamble.

Ms. Brandon: I'm sorry. I missed the question.

Mr. Leal: The question is, there are other provincial policy statements now that are incorporated into all official plans in Ontario, correct?

Ms. Brandon: Yes.

Mr. Leal: Dealing with recharge areas and wetlands.

Ms. Brandon: Yes.

Mr. Leal: Which are sources of water.

Ms. Brandon: Yes.

Mr. Leal: Thank you very much.

The Chair: If there are no further questions, comments or cross-examinations pending, then we'll proceed now to the vote.

Those in favour of government motion 65?

Mr. Leal: Recorded vote.

Ayes

Kular, Leal, Ramal, Tabuns, Wilkinson.

Nays

O'Toole, Scott.

The Chair: Carried.

Shall section 19, as amended, carry? Carried.

Since no amendments have been brought forth for sections 20, 21 and 22, inclusive, we'll consider that as a block. Shall those sections so named carry? Carried.

We'll now proceed to the consideration of section 23. We begin with NDP motion 74.

Mr. Tabuns: I move that section 23 of the bill be amended by adding the following subsection:

"Time limit

"(1.1) An agreement shall not be entered into under subsection (1) later than six months after the source protection area is established."

Again, an attempt to provide some timelines so that in fact, once the bill is proclaimed, there will be action on a timely basis giving people some sense of the urgency with which this matter should be addressed.

When we come to a vote, I'd appreciate that it be recorded.

The Chair: Thank you very much. Any further questions or comments?

Mr. Wilkinson: Mr. Chair, it's our opinion that the minister doesn't require the constraint in the time. We don't feel that the six-month period is appropriate, given the nature of our memorandum of understanding with our municipal partners. I'm sure that we will work together collegially with our municipalities to deal with the implementation, as we have agreed as a government to always do so in regard to our municipal partners.

The Chair: Thank you. We'll proceed, then, to the vote.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 75.

Mr. Tabuns: I move that section 23 of the bill be amended by adding the following subsection:

"Consultation

"(1.2) The minister shall not enter into an agreement under subsection (1) unless he or she is satisfied that it requires consultation equivalent to the consultation required when a source protection plan is prepared by a source protection committee."

It's making the argument that when the minister creates a source protection area, enters into an agreement with a municipality, that the public consultation in developing the plan has to be equivalent to the consultation process required in source protection areas under the control of conservation authorities in the southern part of the province. This tries to ensure that northern citizens have the same protections and consultation opportunities as southern citizens.

The Chair: Thank you, Mr. Tabuns. Mr. Wilkinson.

Mr. Wilkinson: Our government is always required to write a draft and submit and affirm a bill that applies equally to all Ontarians. That's one of the principles of writing a good bill. We think that the one-size-fits-all approach here would not be appropriate when we have over 400 different municipalities in the province of Ontario. We believe, if we can reach an agreement with our municipal partners, that that is the intention of the bill. Trying to put in restrictions doesn't allow both sides to enter into an agreement as quickly. Again, this is all about implementation.

Mr. Tabuns: Recorded vote.

The Chair: We'll proceed now to the vote, if there are no further comments.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

NDP motion 76.

Mr. Tabuns: I move that subsection 23(5) of the bill be amended by striking out "significant drinking water threat" wherever it appears and substituting in each case "drinking water threat."

We've had this debate. I believe that "significant drinking water threat" is not defined—I don't just believe it; that's the case—and that we should be setting the standard at "drinking water threat." A recorded vote, when it comes to that.

The Chair: Comments?

Mr. Wilkinson: The same arguments in opposition.

The Chair: We'll proceed to the vote.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Government motion 77.

Mr. Wilkinson: I move that clauses 23(5)(b) and (c) of the bill be struck out and the following substituted:

"(b) deem an activity to be an activity that is or would be a drinking water threat, and deem an area to be an area where an activity is or would be a significant drinking water threat; and

"(c) deem a condition that results from a past activity to be a condition that is a drinking water threat, and deem an area to be an area where a condition is a significant drinking water threat."

This is a point of clarification for the bill.

The Chair: Any further comments?

Mr. Tabuns: Yes. The amendment, as presented, narrows the scope of the original section, deletes the requirement to look at future activities, and thus does not strengthen the bill but weakens it. So I would recommend that all vote against the amendment proposed by the government.

Mr. Wilkinson: This motion is made to reflect the changes in language that are being incorporated throughout the bill, removing references to "existing activities," "possible future activities" and "existing conditions" in section 23, which provides for the development of source protection plans pursuant to agreements between municipalities outside source protection areas and the minister. Where there is a need to distinguish existing activities from future activities, that distinction would be made in the relevant section of the bill. Again, I believe that this is for clarification.

The Chair: Thank you. Mr. O'Toole.

Mr. O'Toole: Just a quick question to the parliamentary assistant on this one: Given that there were past land uses which, through ignorance, would not have constituted a risk, willingly, on the proponent, and now in the overall assessment and in our knowledge, we would judge that the past activity was a risk, who would be liable? In other words, if a landowner owns that property today where there was a blacksmith's shop, which was deemed to be appropriate at the time, a past activity, and now it's found that there are considerable potential risks on that site—who's liable for the cleanup and such things of the past activity of a previous owner who's now deceased?

1100

Mr. Wilkinson: There are a couple of issues. There are rules and regulations. I think you're describing what we would refer to as a brownfield.

Mr. O'Toole: Well, yes, that's kind of the—and that's why nobody is developing the waterfront, by the way, because no one wants to own it. No one wants the liability. That's why it's not developed. Who would help remediate that?

Mr. Wilkinson: Since it has to do with the broad application of a number of laws, I'll refer this question to our legal counsel for the ministry, Jamie, who would be able to provide greater clarity. But in principle, again, the idea is that the first order of business is making sure that a significant drinking water threat ceases to be a significant drinking water threat.

Mr. O'Toole: Absolutely. I agree with that totally. Yes.

Mr. James Flagal: My name is James Flagal, and I'm counsel with Ministry of the Environment, legal services branch.

In relation to the question, the bill uses two types of language to describe two types of drinking water threats. If you look at the definition of "drinking water threat," you'll see it says "activity" and "condition." What you are speaking about is a condition that results from a past activity. If you look at the motions that the committee considered for section 13, the assessment report provision, you'll see that in the motion that was passed in relation to section 13, when you're doing your assessment report, you look for the activities that are on the landscape—right now or that may exist in the future—in order to determine which ones are drinking water threats. Then you would do something called the risk assessment—this is going to be in the regulations—to find out which ones are the significant drinking water threats, which ones pose a significant risk.

There's one final element. When you're doing this, you also have to look at the conditions that result from past activity—in your example, the brownfield—in relation to who would be responsible. Then the source protection plan could contain policies. For a historically contaminated site, this is the level of threat that it is. Let's say it's moderate, or it's low, or it may even be significant. The source protection plan could then set out policies about how to deal with that threat. What happens to those policies? Part III deals with that. If you look at section 39, you will see that there is an ability for the minister to say to an official who has the authority to deal with that past condition—so think of a couple of things, not only brownfields. What about abandoned wells? That's a very important past condition, or a condition that results from a past activity. So the minister would say to an official who has the ability to deal with that issue, "Consider issuing an instrument"—think of an order, especially with a brownfield. Brownfields are dealt with under the Environmental Protection Act, as an example, right? So what the minister would say is, "Okay, there's this issue here. Now, director, consider issuing an order to people who may be responsible under that act." So it doesn't add new authority; that's the key. Whoever is responsible now for that brownfield under the Environmental Protection Act, meaning they could be held responsible—all the minister is saying to the director is, "This is a high priority abatement issue. You have to

consider how we're going to deal with this contaminated site." Then you get into the Environmental Protection Act and the provisions there that govern the issuance of orders in relation to contaminated sites.

Mr. O'Toole: I appreciate that. As just a little bit of a follow-up on that: Knowledge has the power of helping us understand past misbehaviours. Science today is far more accurate than it was 10 to 20 years ago. Litigation or remediation is something that's under study on contaminated sites, helping migration and different strategies that they're using in different parts of the world. When you look at this, it is, as I said, because of past activity on a site, unknown to me perhaps. I may not say too much more because I do have a couple of country properties where there may even be wells that I'm not aware of, but there were buildings there once, so there probably is a well somewhere. Do you understand what I mean? This could be a hole into the aquifer, and I've got to now clear the bush, because you can't get to it, to get a string in to fill this hole. That's $75,000. I'm surprised and quite concerned that I'm going to be liable here because some technician from Ryerson said that I could cause a risk to my neighbours.

Mr. Flagal: What you're raising, though, as I understand it, is that—

The Chair: Mr. Flagal, just for edification of committee members, any policy question should be directed to the parliamentary assistant, please.

Mr. Wilkinson: Mr. O'Toole, I think you're missing the bigger picture here, which is quite simple. This process may uncover a condition due to a past activity that poses a significant drinking water threat to a municipal source of drinking water. There are those who would ill-advisedly jump to the conclusion that somehow the appropriate reaction to that is that it has to be borne by one party alone. I think Mr. Flagal has been very clear that if we have instruments that need to be enacted and acted upon, because through this process we become aware of a significant drinking water threat, it does not mean that the other powers available to the ministry can't be used.

It also puts the onus on the municipality. We may determine, because of past activities, that we've uncovered an area where a municipal source of drinking water is in a heavily contaminated area. The appropriate response to that would be to move the source of the municipal drinking water. In other words, if you can't remediate it, let's not forget the other thing that can happen here, which is that the community uncovers, through this process, that their source of drinking water has a significant risk of being contaminated. Therefore, it is not the only response that's available; there is also what I would refer to as the common-sense approach, which says, "We've uncovered something through this wonderful process and we must take action."

Mr. O'Toole: I don't have any question at all on that. Everyone in their right frame of mind would want to address it. What's missing here is some certainty on how those past activities, unknown at the time, not maliciously intended, are now a huge problem. That's the problem in the brownfields for sure, and it's the problem here. There needs to be a mechanism in the legislation to redress that or resolve those issues because they're the right thing to do, but how do we do it? The person declares bankruptcy, it goes back to the municipality and the municipality or the city of Toronto's then responsible. Well, they don't want it either, so the land sits in court or somewhere—and that's the story I'm trying to get to, and I'll tell you why. It came to my attention that many apple orchards used arsenic. Arsenic is a huge problem, and if it wasn't managed properly, it could have created what would be dealt with in section 39, a past activity, as you said in your excellent explanation—a condition.

Mr. Wilkinson: Just to remind my friend in regard to brownfields, there is the environmental cleanup fund. The minister has always identified that there could be, in the future, a case of hardship which will be revealed through this whole process, and of course with all-party support we were able to put in the stewardship fund. So I think there is now, on balance, the kind of ability for us to deal with these problems. We can't bury our heads in the sand and hope that they're not there; we will uncover what will have to be uncovered and we will eliminate significant threats to drinking water. That is the intention of the bill, that's what we're going to do, and we're not going to shy away from our requirement to do that. I'm not saying it isn't challenging, but we as a community are going to be able to work together to resolve and mitigate these significant threats to drinking water, as Justice O'Connor said we must.

The Chair: Thank you. Seeing no further questions or comments, we'll proceed to the vote on government motion 77. All those in favour? All opposed? Carried.

Consideration of the section as a whole: Shall section 23, as amended, carry? Carried.

We'll proceed now to section 24: NDP motion 78.

1110

Mr. Tabuns: I move that section 24 of the bill be amended by adding the following subsection:

"Existing aboriginal or treaty rights

"(2) Nothing in subsection (1) 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."

Given that the source protection plans that will be coming forward will impact First Nations—I don't think there's any question; they will impact them—it's important to explicitly recognize the primacy of aboriginal and treaty rights.

We went through this debate yesterday. What I'd like to add to the debate is again a plea to the government to respect treaty rights, incorporate respect for those rights in the legislation, and for them to support this. The opposition has already taken a position in support of the non-derogation clause, so I don't think there's any question there. I assume, in the many hours that have passed since we last debated this one, that you've had a

chance to have further discussion. Will the government be coming onside with this motion?

Mr. Wilkinson: I say to my friend, I appreciate the fact that he brought up this issue and he argued it eloquently yesterday. I know that in the initial motion put forward by the official opposition, it also contained what we consider to be an inappropriate clause binding the government to money, which is not really in order for the opposition to bring in. But then we looked at your amendment in subsection (2). In our opinion, in a government motion that will be submitted for our consideration in the near term a little bit later in the bill, we think we have found the best place to provide this assurance to First Nations. We don't feel that this is the appropriate place, but we believe, after discussion, that there is a best place to put in a non-derogation clause, and I'll be bringing in that amendment later on today.

Mr. Tabuns: Two questions for you, then: What's the problem with this location and what is the virtue of the location that you have found?

Mr. Wilkinson: The problem with this location is that, after consulting with our people, we know that as the debate followed yesterday, it was: Where is the issue where reassurance is required to assure our First Nations that their concern is most acute? Having it where you propose we don't think deals with it. Having it here we don't think deals with it. I'll be more than happy to argue at the time why we think that we have found the right place, but I do want to thank the member for bringing the attention of the government to this issue, and we look forward to the debate.

With all due respect, though, we'll vote it down here. We think we have found the appropriate spot in the bill for this to be contained. I give credit to our friends in the opposition for highlighting the need for something which—we will always respect First Nations and we will always have bills that are in compliance with the Constitution and the supreme law of this land. But if we can provide that assurance like we did in the parks bill, that is the intention of the government.

The Chair: Thank you, Mr. Wilkinson.

Mr. Tabuns: Mr. Chair, just briefly: Since I don't know what motion you'll be bringing forward—I haven't seen the wording; since I don't know what section it will be in, so I can't judge whether I would agree whether or not that section is the correct section: I would urge the government to support this because I don't think it will contradict their stated intent.

When we asked to have this language drafted by the legal staff operating in this building, we were told that this was an entirely appropriate area for this to be included. I'm assuming the legal advice we received from lawyers hired and paid for by the people of Ontario was reasonable advice. I see no reason not to adopt this.

Mr. Wilkinson: I say to my friend, in a bill, if we're going to do this, we have to put it in once. We can't put the same clause in over and over again. The question is: Where is the appropriate place? In your own position you have put in numerous amendments where you say, "Well, it could be here. It could be here. It could be here." It falls to the government to decide where the appropriate place is to put this in the bill. I thank them for bringing this to our attention, but we feel that we have found the appropriate place. It will be contained only once in the bill. In the opinion of the government, it should not be contained here; there is a better spot.

Mr. Tabuns: Can I just ask legislative counsel—that's why you were brought here: Do you see any disadvantage to having this amendment here in this section of the act?

Mr. Doug Beecroft: This amendment is slightly different than the amendment you proposed yesterday. The amendment you proposed yesterday was a general provision that applied to the whole act. In this provision, you're only addressing the obligation of the minister under section 24 to confer with people.

Mr. Tabuns: Correct.

Mr. Beecroft: So this particular motion has quite a limited application.

Mr. Tabuns: That's correct, but it does, in turn, then, have impact on 24 itself with regard to source protection plans. So in fact it's an appropriate amendment of 24.

Mr. Beecroft: Yes. It relates only to 24.

Mr. Tabuns: Okay. I think my argument's made, Mr. Chair.

Mr. Wilkinson: To make the point, I can tell you that the amendment will be in part IV under "Other," where it deals with a number of cross-jurisdictional issues. We feel that that is the appropriate place in the bill. It provides the clarity or perhaps—

Interjection: Part V.

Mr. Wilkinson: Sorry; part V. Some people are very sharp around here. Yes, it's part V, and there is a section—and again, we think that if we're going to put it in once, we have to put it in the most appropriate place to make sure that the assurance I think that you're asking on behalf of First Nations is given and is given clearly and appropriately.

Mr. Tabuns: No further commentary. Recorded vote, though, Mr. Chair.

The Chair: Thank you, Mr. Tabuns. Indeed.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

Mr. O'Toole: We missed the call.

The Chair: With the committee's indulgence, we'll try it one more time.

All those committee members of social policy who would like to vote in favour of NDP motion 78, would you please do so now?

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll now proceed to government motion 79.

Mr. Wilkinson: Mr. Chair, did we call section 24? Do we need to deal with section 24?

The Chair: Yes, thank you. Shall section—no, no, wait. We're on government motion—

Mr. Wilkinson: That's on section 25. We were dealing with 24.

Interjection.

Mr. Wilkinson: That was the amendment but not the whole section.

The Chair: Shall section 24 carry? Carried.

We'll now proceed to government motion 79, which, you quite rightly point out, Mr. Wilkinson, is mislabelled here. So government motion 79, which applies to section 25.

Mr. Wilkinson: I move that subsection 25(5) of the bill be amended by striking out "within 30 days" and substituting "within 60 days".

This motion is made to allow the hearings officer 60 days to report back to the minister at the conclusion of a hearing related to a proposed source protection plan rather than 30 days. It's self-evident. We believe that that is for the effective administration of the bill.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 79? Those opposed? Carried.

We'll now proceed to consideration of PC motion 80, which also applies to that same section: section 25. Ms. Scott.

Ms. Laurie Scott (Haliburton–Victoria–Brock): I move that section 25 of the bill be struck out and the following substituted:

"Environmental Review Tribunal

"25(1) The Environmental Review Tribunal shall convene for the purpose of conducting one or more hearings within the source protection area or in the general proximity of that area for the purpose of receiving representations respecting the proposed source protection plan, or any matter relating to the proposed source protection plan.

1120

"Duty of Tribunal

"(2) The tribunal shall fix the time and date for the hearing and shall require that notice, as it specifies, be given to landowners in the source protection area, to other interested persons and to persons and bodies prescribed by regulation.

"Parties

"(3) The source protection authority, any landowner and any other person or body who responds to the notice and any other person specified by the tribunal shall be parties to the hearing.

"Decision

"(4) The tribunal shall serve notice of its decision, together with the reasons for it, on the parties to the hearing and the minister and the minister shall require that the source protection plan be amended to reflect the tribunal's decision.

"Appeals from tribunal decision

"(5) A party to a hearing may appeal from the tribunal's decision on a question of law to the Divisional Court."

This is similar to an amendment that we brought up yesterday. It seeks to provide a comprehensive and fair appeals process to those impacted by the bill.

The Chair: Thank you, Ms. Scott. If there are no further comments—Mr. Wilkinson?

Mr. Wilkinson: We will not be voting in favour. We believe that the bill strikes the right balance and ensures that people have a say. Sending all of this off to the lawyers at the beginning of the process, as far as we're concerned, is just a way of slowing down the process, which people have consistently told us we need to get about doing.

Ms. Scott: With all due respect, we don't feel that's what this amendment is doing and it opens it to a more fair process. I'll leave it at that.

Mr. Wilkinson: I'm sure we disagree on that one.

Ms. Scott: I won't argue—

The Chair: Thank you. We'll proceed to the vote.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Shall section 25, as amended, carry? Carried.

We'll now proceed to section 26, PC motion 81.

Ms. Scott: I move that the portion of subsection 26(1) before clause (a) of the bill be struck out and the following substituted:

"Minister's options

"26(1) The minister shall, after considering any comments and resolutions submitted under section 22 and any comments and other material submitted under subsection 23(8),"

This was brought forward to us by a large number of farm groups, again trying, with similar amendments, to adjust the role of the source protection committee and its ability to advise the minister on decisions.

The Chair: Thank you, Ms. Scott. Any further comments?

Mr. Wilkinson: We'll be voting against this so that we are consistent with our voting record in regard to section 25 as well.

The Chair: We'll proceed to the vote.

Ms. Scott: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Shall section 26 carry? Carried.

We'll proceed now to consideration of NDP motion 82, which is for a new section, 26.1.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Deadline for source protection plan

"26.1 The minister shall take such steps as are necessary to ensure that he or she approves the source protection plan under section 26 not later than 18 months after the source protection committee is established under section 7."

Again, in our minds, it's a question of ensuring that there are timelines, a sense of urgency instilled in those who are implementing and carrying through this legislation that drinking water protection occurs quickly, not slowly.

The Chair: Thank you, Mr. Tabuns. Mr. Wilkinson?

Mr. Wilkinson: We're opposed for the same reasons as stated earlier.

Mr. Tabuns: A recorded vote.

The Chair: Thank you. We'll proceed to the vote.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We'll go for block consideration now of sections 27, 28 and 29, inclusive, no amendments having been received. Shall those sections, so named, carry? Carried.

We'll now move to consideration of section 30, government motion 83.

Mr. Wilkinson: I move that clause 30(3)(b) of the bill be amended by striking out "by the crown in right of Ontario" and substituting "by the crown in right of Ontario or a lead source protection authority specified in the order".

This motion is made to ensure that the minister seeks to recover money given to a source protection authority in connection with the preparation of the terms of reference, assessment report or source protection plan that the source protection authority has failed to prepare. The minister may require the return of the money paid to the authority directly by the crown or through a lead source protection authority.

The Chair: Thank you. Any further comments? Seeing none, we'll proceed to the vote.

Mr. Wilkinson: Recorded vote.

Ayes

Kular, Leal, Ramal, Tabuns, Wilkinson.

The Chair: Carried.

Shall section 30, as amended, carry? Carried.

We'll proceed now to section 31, PC motion 84, Ms. Scott.

Ms. Scott: I move that section 31 of the bill be struck out and the following substituted:

"Amendments initiated by source protection committee

"31(1) A source protection committee may propose amendments to a source protection plan in the circumstances prescribed by the regulations.

"Copies of proposed amendments for municipalities

"(2) The source protection committee shall give a copy of the proposed amendments to the clerk of each municipality in which any part of the source protection area is located, if the municipality is affected by the amendments.

"Resolutions of municipal councils

"(3) If the council of every municipality whose clerk was given a copy of the proposed amendments passes a resolution endorsing the amendments, or if the amendments only affect unorganized territory, the source protection committee shall,

"(a) publish the proposed amendments in accordance with the regulations;

"(b) give notice of the proposed amendments in accordance with the regulations to the persons prescribed by the regulations, together with information on how copies of the amendments may be obtained and an invitation to submit written comments on the amendments to the source protection committee within the time period prescribed by the regulations; and

"(c) publish notice of the proposed amendments in accordance with the regulations, together with information on how members of the public may obtain copies of the amendments and an invitation to the public to submit written comments on the amendments to the source protection committee within the time period prescribed by the regulations.

"Committee's oversight role

"(6) The source protection committee shall oversee the process of proposing amendments on behalf of the minister.

"Submission of amendments to minister

"(5) The source protection committee shall submit the proposed amendments to the minister, together with the

resolutions passed by the municipal councils and any written comments received by the source protection committee after publication of the amendments under subsection (3).

"Application of ss. 24-29

"(6) Sections 24 to 29 apply, with necessary modifications, to proposed amendments submitted to the minister under subsection (5)."

Currently, Bill 43 indicates that source protection committees have no role beyond the preparation of the source protection plan. Section 31(1) states that it is a source protection authority—i.e. the conservation authority, but not necessarily—that may propose amendments to a source protection plan, and section 31(1) should be amended to indicate that it is a source protection committee that is responsible for proposing amendments to a source protection plan. That came from many agriculture groups that appeared before us.

The Chair: Thank you, Ms. Scott. Further comments?

Mr. Wilkinson: Yes. It is the government's opinion that, actually, if we were to adopt this it would cancel out the intended role of the source protection authority, so we will not be voting in favour.

Ms. Scott: I just want to put it on the record that we are trying to enhance the role of the source protection committees with this amendment.

The Chair: Thank you. We'll proceed to the vote, then.

Mr. Wilkinson: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

Shall section 31 carry? Carried.

We'll proceed now to section 32, government motion 85.

Mr. Wilkinson: I move that section 32 of the bill be amended by adding the following subsections:

"Amendment to consider drinking-water system

"(1.1) Without limiting the generality of subsection (1), the minister may direct the source protection authority to prepare amendments to a source protection plan to consider any existing or planned drinking-water system specified by the minister that is located in the source protection area.

"Same

"(1.2) Despite subsections (1) and (1.1), the minister shall not direct the source protection authority to prepare amendments to a source protection plan to consider an existing or planned drinking-water system prescribed by the regulations for the purpose of this subsection."

This motion is made to give the minister the authority to require the amendment of a source protection plan to include an existing or planned drinking-water system in the source protection area. The drinking-water system required by the minister to be included in the source protection plan cannot include a system prescribed by regulations.

That is just for clarity, and it addresses a lot of the stakeholder concerns that we received.

1130

The Chair: Thank you. Mr. Tabuns?

Mr. Tabuns: Could I just have further explanation? This (1.2), the minister shall not direct the source protection authority to consider drinking water systems prescribed by the regulations, I don't understand that.

Mr. Wilkinson: I'm going to give you the answer, and if it's not right, I'm sure we'll bring somebody up. It is just to prevent duplication. In other words, there are systems that are prescribed, so you can't call on them twice.

Mr. Tabuns: Unless that's incorrect.

Mr. Wilkinson: Now we're going to get some clarity.

Mr. Tabuns: So it's going to be refined and clarified.

Mr. Wilkinson: I should have just gone to clarity in the first place.

Mr. Tabuns: Okay, yes, if you could explain that.

Mr. Ian Smith: Ian Smith with the Ministry of the Environment. The intent there is that as we draft a regulation, we would go out to the public and ask if single wells could be identified for protection. Based on that regulation, then that would clarify what systems can in fact be brought into this act for protection.

Mr. Tabuns: So you, in the course of doing regulations, will engage in consultations. You will identify a variety of water systems. You will enter those water systems into the regulations, so well such and such at this intersection is to be protected?

Mr. Smith: The current policy intent is to engage in a public discussion around what systems might be brought into protection and what systems should in fact be left out for the current purpose of this act.

Mr. Tabuns: So when you write the regulations, you will actually list those that should be protected?

Mr. Smith: We anticipate listing classes or types of systems rather than identifying individual systems.

Mr. Tabuns: So the minister will be able to specify drinking water systems outside of your list, but not ones that are already on your list, on the assumption that you've identified them, they're dealt with?

Mr. Smith: What we anticipate is how many—for example, we've been asked repeatedly during consultations that we've taken on this act how many clusters of private wells are an appropriate clustering of wells to be brought into this act, and that is the discussion we wish to have when we consult on the draft regulation.

Mr. Tabuns: Okay.

The Chair: Thank you. Mr. O'Toole?

Mr. O'Toole: Just a similar clarification. The first part of this amendment is to consider drinking water systems, and it goes on to say in (1.1), "protection plan to consider any existing or planned drinking water system."

What does that specifically mean? I think of the case of Orono. They want to expand the hamlet or the village.

Mr. Wilkinson: I'm not familiar with the case in Orono. But we know that municipalities, for example, are engaged, when they do their land use planning—they do have plans that show that one day they will expand beyond their existing borders. So what this bill anticipates is that it is prudent for a municipality, if it's already identified through its other planning work that there will be a source of municipal drinking water in that land currently not part of the municipality—they're already moving forward, obviously, with the consent to do that. That is something that can be designated. Prudently, you would agree, I believe, that it should be designated because if everyone already knows it's going to be in—

Mr. O'Toole: That's true, because the official plan would be 10 years out or whatever.

Mr. Wilkinson: Yes.

Mr. O'Toole: That being said, can they direct the municipality to nix that expansion? You see, the whole deal today is intensification.

Mr. Wilkinson: Who is "they"? You lost me.

Mr. O'Toole: It says, "the minister may direct the source protection authority to prepare amendments to a source protection plan to consider any existing or planned drinking-water system ... that is located in the source protection area." So in other words, as you've said, and I understand, you've got the area, the official plan says in 10 years we're going to have 10 estate homes out here or whatever. They could direct them that they're not to expand.

Mr. Wilkinson: My understanding from the testimony we received from a lot of stakeholders is that they were concerned that there was no mechanism where the minister could actually listen to people who would come to him or her and say, "You know, you've got this plan, but there's a nursing home, and it's just outside the municipal boundary, and it really should be part of this." The local people don't want to do it, but we just think in the public interest that that is something the minister needs to be able to deal with. In that situation, we don't know what the minister would decide, but it allows that discussion to happen. We had a lot of people who came to us and said that because it wasn't in there, it was presuming that there was no mechanism for that to happen. So given our stakeholder response from people, they felt it was reasonable that we make sure we have that in there.

Mr. O'Toole: I understand that. I think that's a very good discussion, actually, because if there are areas that are poorly serviced today—that's existing—the minister could order that they be considered in their overall plan, which is appropriate, because there may be some risk to those institutions, schools or whatever. What I'm concerned about is the plan. These are non-existing, potential future use situations.

The goal here today is to draw, like they've done in Seattle, a big circle around Durham and say, "That's it. You're not expanding, period. You're going to become intensified," and fill it up, and everybody will be living in condos in 20 years.

Mr. Wilkinson: And there has to be water for those people, and it has to be clean.

Mr. O'Toole: Agreed. We all agree with that.

Mr. Wilkinson: So there may be a source of drinking water that isn't there yet but will be there.

Mr. O'Toole: Then they limit the growth of a municipality, period.

Mr. Wilkinson: I can tell you that it's the government position, and I would think the position of everybody, that we should not grow a community where there is not a safe, clean source of drinking water.

Mr. O'Toole: It does say, though, in the next section, (1.2), unless it's "prescribed by regulations for the purpose of this subsection." In other words, it's more specific. In other words, they could say in regulations that these types of uses aren't allowed. They could say that in regulation; rural estate development, for instance. They could say that. Do you understand? If they did say it in regulation, then they could be prescribing how future growth could occur in rural or northern or remote Ontario. I'm concerned that they don't have regard—in the last review of the Sewell commission, which I was part of many years ago, there were some very exceptional kinds of urban thinking that went into some of the ideas.

I haven't seen the regulations. I would hope that there isn't anything in regulations that is going to prevent municipalities who are duly elected, duly constituted, and I'm sure have the right interests of their citizens at heart—they have to be respected.

Mr. Wilkinson: Just for clarification, this does not give the minister the power, if a municipality has said, "We do want this included," to turn around and say, "No, you can't." This is about making sure that the people who feel they've been excluded can appeal, can ask the minister to be included. But it does not give the minister authority to go the other way.

Mr. O'Toole: They can't be excluded.

Mr. Wilkinson: That's right. Again, I think it strikes the right balance, given the stakeholder feedback that we got from people.

The Chair: Thank you, gentlemen. We'll now proceed to the vote.

Those in favour of government motion 85? Those opposed? Carried.

Shall section 32, as amended, carry? Carried.

We'll proceed now to section 33, NDP motion 86.

Mr. Tabuns: I move that section 33 of the bill be amended by adding the following subsection:

"Date

"(1.1) The date specified under subsection (1) shall be not later than five years after the source protection plan takes effect."

Given the kinds of changes that we expect to see in Ontario—population growth, urban sprawl, global warming—we do need to have regular review of the bill. We think five years is too long. We set it as the outside limit, and the minister obviously would be able to review more

frequently. We think that it makes sense in terms of good public policy to have that minimum review time and to give the minister the opportunity to go more quickly than that if he or she sees it as necessary.

When we come to a vote, I'd like it to be recorded. Thank you.

1140

The Chair: Thank you, Mr. Tabuns. Are there any further comments?

Mr. Wilkinson: Under the bill, the minister does have the ability to set this, and I have every confidence that it would be done, but we need to do that in consultation with the people who are doing the work and the affected municipalities. I envision the problem of having everybody under review at the same time. I think it's a broad province, and there are obviously areas—and I think that the power granted to the minister in his or her wisdom at the time will allow this to happen. So we're not in support of the motion.

Mr. O'Toole: I agree with Mr. Tabuns here. I think that there should be some, I would say, sunset provisions in any legislation for a review. This is open-ended here. All he's asking for, quite frankly, is to put a date. At the end of the time, they can say, "We're considering, we're looking, we're not prepared at this time to complete the review." But with something this large, in the broadest sense, such a big and important bill, I'd say a sunset provision is important so that you have a mandatory review in five years or 10 years or whatever it is. That's all. I'll be supporting that on that principle alone.

This has just left it open, that a review of the plan must begin by some date. There's no date. If, for instance, we were government the next time, theoretically—that's probably going to happen, I would think; certainly, I hope—then we would be mandated to review this particular bill or legislation. Laurie, of course, would be the minister, I suppose.

The Chair: Thank you, Mr. O'Toole. You've certainly shared a number of master plans, but in any case, if we're ready to proceed with the vote, those in favour of NDP motion 86?

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated. Shall section 33 carry? Carried.

Shall section 34 carry? Carried.

We'll now proceed to consideration of government motion 87 for new section 34.1.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Obligation to implement policies

"34.1 A municipality, local board or source protection authority shall comply with any obligation that is imposed on it by a significant threat policy or designated Great Lakes policy that is set out in the source protection plan."

This motion is made to expressly provide that the municipality, local board or source protection authority must comply with obligations imposed upon it by policy set out in the source protection plan. We provide this for greater clarity.

The Chair: Are there any comments? Further questions? Seeing none, we'll proceed to the vote. Those in favour of government motion 87?

Mr. Wilkinson: Recorded vote.

The Chair: Recorded vote.

Ayes

Kular, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson.

The Chair: Those opposed? Carried.

We'll proceed now to section 35 with PC motion 88.

Mr. O'Toole: I move that subsection 35(1) of the bill be amended by striking out "shall conform with the source protection plan" and substituting "shall have regard to the source protection plan".

The purpose for moving this is that it's sort of the debate we had a little earlier with respect to official policy and stuff like that so that the municipalities are respected as having an important and meaningful role in this process and that they not be completely and absolutely bound by the minister's interpretations.

The Chair: Any further comments?

Mr. Wilkinson: We'll vote against this, because we think it runs contrary to the recommendations that were given by Justice O'Connor to the province of Ontario. I quote page 106 of part II, where he states, "I envision that the planning process would identify areas where the protected measures for drinking water sources are critical to public health and safety and that, in such cases, the plan would govern municipal land use and zoning decisions." We are still of that opinion, and that is why we'll vote against the amendment.

The Chair: We'll proceed now to the vote. Those in favour of PC motion 88?

Mr. O'Toole: Recorded vote.

The Chair: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

PC motion 89.

Mr. O'Toole: I move that subsection 35(2) of the bill be struck out and the following substituted:

"Conflicts re official plans, by-laws

"(2) Despite any other act, an official plan, a zoning bylaw and a policy statement issued under section 3 of the Planning Act prevail in the case of conflict between any of them and the source protection plan."

We have made this argument on several occasions, with respect. It really is a matter of primacy, of respecting the role of duly elected municipal councillors, who must conform with other statutes and regulations. There's no suggestion of weakening; it's a matter of strengthening the democratic role of duly elected local and regional authorities, who, by the way, are advised by very qualified staff in their jurisdictional areas. So I would ask for your support out of respect for the role of municipal councillors.

Mr. Wilkinson: For the government, I think for anyone to vote for this would show a lack of respect to the families of the people in Walkerton who lost their loved ones and the people who still suffer tremendously, as we heard, in Walkerton. The idea that the ultimate responsibility should lie with those who are elected and that we should not listen to what Justice O'Connor told us, after a lengthy review of this issue, as to how one can make sure that the primacy of public health and safe, clean drinking water is the inspiration and the highest ideal and the highest principle that should prevail—therefore, we'll be voting against the amendment.

Mr. O'Toole: Just a small response to that. Actually, that overstates it. The intent here is not to in any way diminish; it's to pay respect to the different levels of authority and responsibility. To refer this to O'Connor, to the Walkerton situation directly is just—in fact, the argument could be made that there were some due diligence issues in that particular case. I don't want to say that there isn't suffering, and that's the most regrettable of all. We're trying to say that municipalities still have that same authority and responsibility. Let's be clear about it; someone does.

What you're doing here, subtly—and this is the supreme subtlety of this bill. It's shifting all of the liabilities to the municipality. That's what it's actually doing. You have the say but they have the pay. Small-town Ontario, small communities in rural Ontario primarily, are going to be saddled with a huge bureaucracy and having to mandate all these duly elected responsibilities of people much like ourselves, and you aren't giving them five cents to deal with this. If it's that important, if you say the supremacy of this whole thing is that important—and I agree it is—then it should be the province that has the responsibility, and it should be the province that says, "Thou shalt do the following 10 commandments," and pay for it. What you're doing is, "Thou shalt do the following 10 commandments, and you're paying for it." That's where we differ. This is downloading, and it's an absolute insult to inculcate the whole idea that somehow Justice O'Connor would agree with this. He doesn't. In fact, he says it should be a provincial responsibility.

Mr. Wilkinson: I say to the member, it falls upon the government to bring in the bill. Let's just be very clear. This bill says, "whichever act does the best job of protecting source water." Your amendment says, "No, no, the local municipal, that will prevail." That guts the bill. We didn't do all of this to have the bill gutted, to find out that another instrument is required. If another instrument was required, if the OWRA would do this, if the land use planning would do this, we wouldn't be here. The reason we need to do this is to send a clear signal that communities will come together. You may decide that you think all of this should be prescribed by the government. It sounds to me that you made a great argument about why we should have big government. What we're talking about is local communities being empowered to deal with any significant threat to their drinking water, whether it's quality or quantity. The approach here is inspired by Justice O'Connor. That's why there is absolutely no—I can assure you that we'll have a recorded vote, because I think this will be an issue as to what the position of your party is about the Clean Water Act. If you think that the Planning Act should prevail, I would be more than happy—let's get that on the record right now.

Mr. O'Toole: This has become a fairly significant variance in philosophy and approach.

Mr. Wilkinson: I want to hear what John Tory says about this.

1150

Mr. O'Toole: On the one hand, you're saying in most of your arguments—a rather smarmy kind of implication—that it's working together in community. You're not actually doing that in practice. What you're actually doing is downloading all of the responsibilities for implementation to these fragile communities in mostly rural Ontario. Urban are well served for the most part today, because they have the infrastructure. That's what I'm trying to say here, that in unorganized territories I think the province will have to pay. If there is some idea that they should have piped water or somehow everyone will have to have a chlorination system in their house, then the province will have to pony up there. Well, that's what you're actually doing to these small municipalities. You're forcing them to comply with standards without any access to resources. So your argument of working co-operatively—the proof here is in the legislation. You're downloading every single liability going forward, so the province is exempt. Even if you looked at the section we dealt with earlier where we tried to implement that there be an appeal to the Ontario courts, you've denied that access. You've denied any sense of liability. In future sections you'll see this. So the province is saying, "Here it is. You got it. We shall have oversight and final say in policy and regulation. You're going to pay, and you're going to do the following things." That being said, there isn't a person in Ontario who doesn't want safe, clean, affordable drinking water.

Mr. Wilkinson: And there won't be a person who won't understand that you were here yesterday and granted unanimous consent for the minister to come in here to bring in a stewardship fund, and thanked her because it addresses the concerns that you're raising.

Mr. O'Toole: Seven million dollars won't get you the printing of the regulations.

Mr. Wilkinson: That's a down payment on a problem that hasn't been clearly defined yet.

The Chair: Thank you, gentlemen. Perhaps we might proceed to the vote.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

We will now move to the consideration of PC motion 89.1.

Ms. Scott: I move that subsection 35(4) of the bill be struck out and the following substituted:

"Conflicts re provisions in plans, policies

"(4) Despite any act, but subject to a regulation made under clause 100(1)(g), (h) or (i), if there is a conflict between a provision of the source protection plan and a provision in a plan or policy that is mentioned in subsection (5) with respect to a matter that affects the quality or quantity of any water that is used as a source of drinking water, the provision that protects the water supply should prevail."

In order to square all these amendments that are being brought forward—we knew the government would not agree with some of our amendments; it's such a flawed bill, with some 247 amendments, and we'll see how we're going to get through—we thought we would attempt to ensure that owners are not impacted by unintended circumstances or provisions that go beyond the legislation.

This was brought forward to us by several stakeholders, saying that 35(4) as drafted could unnecessarily restrict appropriate rural resource uses and result in poor resource management. It would also resolve all conflict in favour of whatever provides greater protection to the quality and quantity of the water. So we're asking that the province, as suggested in Justice O'Connor's report, take the responsibility here.

Mr. Wilkinson: I have a question for my critic for the environment in the official opposition. It's nice to say that, but my reading of this and the intention of your motion is that it would restrict the application of a conflict provision only to existing drinking water supplies and not to future drinking water supplies. We've been very clear that the purpose of this bill brought forward by the government is for both existing and future water supplies. So why is it consistent that you think existing water supplies should be in and future water supplies should be out?

Ms. Scott: I don't think it was meant to exclude future water supplies. The source protection plans would—

Mr. Wilkinson: But that's exactly what it does, so that's why we're not going to vote for it.

Ms. Scott: Fair enough. I'm just clarifying what we think should be taken into account. You talked about working in a co-operative manner. I think this actually can enhance working in a co-operative manner.

Mr. Wilkinson: By taking out future water supplies? I can't see how that's co-operative. If it says "existing" but not "future," then it's taking out the future.

Mr. O'Toole: I have a small clarification here. I'll give you an example of what crosses my mind. If some resource sectors use fairly significant quantities of water, as we've heard and seen and are aware of, some activities that may go on in the future could involve—who knows? This is where the future thing comes in. You have to have some process to deal with these. For instance, mining is an example where copious amounts of water and energy are used—big time. Energy is the largest cost of production for mining companies and resource companies generally. If you look at the future, some of the technology today is not using saws and dynamite; they're actually using high-pressured water to cut rock—I've read these things—and to do other industrial activities.

They may be able to recover and clean that water. I've no idea what the future can do and the science of water as it is. That's really where my concern is here. There's a need to have at least a provision—if not this amendment—when it comes to future uses. This is what I'm not comfortable with. I'm aware that in Europe, in some countries, they have these local developments on local water treatment facilities. There are marshes and various wetlands and stuff like that that they use to cleanse. Trent University is doing a lot of work in that area itself. I'm just not comfortable with that.

We can sit in Toronto and have an aging degree in water—maybe five years old; it might be too old for what we're talking about. Future use is what I'm talking about. Do you see what I'm saying? You could be limiting the potential economic development or the economic opportunity for northern, remote and rural parts of Ontario.

Mr. Wilkinson: Thanks for clarifying. The intention of your amendment is about restricting the future, which is exactly the point. I'll tell you, I think I'm entitled to have safe, clean drinking water, and I think my children and my grandchildren and their children are also going to be entitled through this bill. I'm not going to restrict and say, "Well, it applies to me but it doesn't apply to future generations."

Again, we're only talking about the extent that there are significant drinking water threats. Surely to God, people will agree that we should not allow significant drinking water threats to sources of common drinking water. So why you would take that out says that there will be two classes: existing, and then in all the future, the rules don't apply. We don't agree with that.

Mr. O'Toole: Actually, it doesn't say anything about future in here.

Mr. Wilkinson: That's my point. If you cared about it, you would have put it in.

Mr. O'Toole: Yes, but we're substituting—your 35(4) doesn't say anything either: "a provision of the source protection plan and a provision in a plan or policy that is mentioned in subsection (5) with respect to a matter that affects or has the potential to affect—" whatever. It doesn't say anything about the future.

Mr. Wilkinson: It would restrict the application of the conflict provision only to existing drinking water supplies—

Mr. O'Toole: We understand. You haven't voted for one of our amendments.

Mr. Wilkinson: —and not to future.

Mr. O'Toole: With all due respect, we try, as Mr. Tabuns does, passionately and sensitively to get some gravity with the amendments we're moving for the right reasons. We've supported many of the motions in this legislation. There's just no willingness to accept a reasonable amendment, which, at the end of the day, can be expunged with a regulation anyway. That's exactly what you'll likely do in any of these things. Anyway, we know that we're here at your calling.

Mr. Wilkinson: Thanks for coming down from the cottage today.

Mr. O'Toole: You're the ones who are bullying forward. Anyway, it's frustrating. I haven't had one success today.

The Chair: Perhaps we'll move to the vote on PC motion 89.1.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson.

The Chair: Defeated.

This committee is recessed until 1 p.m.

The committee recessed from 1200 to 1302.

The Chair: Thank you, committee members. We'll resume now for consideration of NDP motion 90.

Mr. Tabuns: I move that subsection 35(7) of the bill be amended by striking out "significant drinking water threat" and substituting "drinking water threat".

I've previously made arguments to this effect and they stand here as well.

The Chair: Any further questions?

Mr. Wilkinson: The government has a consistent opinion.

The Chair: We'll proceed to the vote. Those in favour of NDP motion 90? Opposed? Defeated.

Government motion 91.

Mr. Wilkinson: I move that section 35 of the bill be struck out and the following substituted:

"Effect of plan

"35(1) A decision under the Planning Act or the Condominium Act, 1998 made by a municipal council, municipal planning authority, planning board, other local board, minister of the Crown or ministry, board, commission or agency of the government of Ontario, including the Ontario Municipal Board, that relates to the source protection area shall,

"(a) conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and

"(b) have regard to other policies set out in the source protection plan.

"Conflicts re official plans, by-laws

"(2) Despite any other act, the source protection plan prevails in the case of conflict between a significant threat policy or designated Great Lakes policy set out in the source protection plan and,

"(a) an official plan;

"(b) a zoning by-law; or

"(c) subject to subsection (4), a policy statement issued under section 3 of the Planning Act.

"Limitation

"(3) Subsection (1) does not apply to a policy statement issued under section 3 of the Planning Act or a minister's order under section 47 of the Planning Act.

"Conflicts re provisions in plans, policies

"(4) Despite any act, but subject to a regulation made under clause 100(1)(g), (h) or (i), if there is a conflict between a provision of a significant threat policy or designated Great Lakes policy set out in the source protection plan and a provision in a plan or policy that is mentioned in subsection (5), the provision that provides the greatest protection to the quality and quantity of any water that is or may be used as a source of drinking water prevails.

"Plans or policies

"(5) The plans and policies to which subsection (4) refers are,

"(a) a policy statement issued under section 3 of the Planning Act;

"(b) the greenbelt plan established under section 3 of the Greenbelt Act, 2005 and any amendment to the plan;

"(c) the Niagara Escarpment plan established under section 3 of the Niagara Escarpment Planning and Development Act and any amendment to the plan;

"(d) the Oak Ridges moraine conservation plan established under section 3 of the Oak Ridges Moraine Conservation Act, 2001 and any amendment to the plan;

"(e) a growth plan approved under section 7 of the Places to Grow Act, 2005 and any amendment to the plan;

"(f) a plan or policy made under a provision of an act that is prescribed by the regulations; and

"(g) a plan or policy prescribed by the regulations, or provisions prescribed by the regulations of a plan or policy, that is made by the Lieutenant Governor in Council, a minister of the crown, a ministry or a board, commission or agency of the government of Ontario.

"Actions to conform to plan

"(6) Despite any other act, no municipality or municipal planning authority shall,

"(a) undertake within the source protection area any public work, improvement of a structural nature or other undertaking that conflicts with a significant threat policy or designated Great Lakes policy set out in the source protection plan; or

"(b) pass a bylaw for any purpose that conflicts with a significant threat policy or designated Great Lakes policy set out in the source protection plan.

"Prescribed instruments

"(7) Subject to a regulation made under clause 100(1)(j), (j.l) or (j.2), a decision to issue, otherwise create or amend a prescribed instrument shall,

"(a) conform with significant threat policies and designated Great Lakes policies set out in the source protection plan; and

"(b) have regard to other policies set out in the source protection plan.

"No authority

"(8) Subsection (7) does not permit or require a person or body,

"(a) to issue or otherwise create an instrument that it does not otherwise have authority to issue or otherwise create; or

"(b) to make amendments that it does not otherwise have authority to make."

The Chair: Are there any further comments, questions, debate? Mr. O'Toole?

Mr. O'Toole: Yes, just very briefly. This is another case, an example, where they have absolute supremacy in all things. If we look at page 2 of this large amendment, it says:

"Actions to conform to plan

"(6) Despite any other act, no municipality or municipal planning authority shall,

"(a) undertake within the source protection area any public work," to improve structures or other kinds of things.

My point there is that they can't even repair a pipeline, a water pipe or something like that. The York pipe is a good example. There are huge groundwater issues around that. It's so deep, it's actually affecting the aquifer. Do you understand what I mean? Municipalities are there for a reason. I'm sure they don't deliberately set out to do infrastructure work. It says in the protected area, any public works or improvements of a structural nature or other things that conflict with a significant threat policy or designation. Anyway, good luck. It's rather onerous.

The Chair: We'll proceed now to the vote. Those in favour of government motion 91? Any opposed? None. Carried.

Shall section 35, as amended, carry? Carried.

Section 36, government motion 92.

Mr. Wilkinson: I move that section 36 of the bill be struck out and the following substituted:

"Official plan and conformity

"36. (1) The council of a municipality or a municipal planning authority that has jurisdiction in an area to which the source protection plan applies shall amend its official plan to conform with the significant threat policies and designated Great Lakes policies set out in the source protection plan.

"Deadline for amendments

"(2) The council or municipal planning authority shall make any amendments required by subsection (1) before the date specified in the source protection plan for the purpose of this section."

The Chair: Any further comments? Seeing none, we'll proceed to the vote. Those in favour? None opposed. Carried.

PC motion 92.1.

Mr. O'Toole: Just a question, Chair. Is this actually in order now that you've amended the 30 sections? Well, I can move it anyway.

I move that section 36 of the bill be amended by adding the following subsection:

"Same

"(1.1) For the purposes of subsection (1), a provision in an official plan does not conform with the source protection plan if it exceeds the requirements of the source protection plan or is more restrictive than a provision in the source protection plan as it relates to agricultural uses, mineral aggregate operations and wayside pits."

The Chair: Any comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 92.1? Those opposed? Defeated.

Shall section 36, as amended, carry? Carried.

Section 37, government motion 93.

Mr. Wilkinson: I move that subsection 37(1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Minister's proposals to resolve official plan non-conformity

"37 (1) If, in the minister's opinion, the official plan of a municipality or a municipal planning authority does not conform with a significant threat policy or designated Great Lakes policy set out in the source protection plan, the Minister may,"

The Chair: Any further comments? Seeing none, we'll proceed to the vote. Those in favour? Opposed? None. Carried.

NDP motion 94.

1310

Mr. Tabuns I move that subsection 37 (2) of the bill be amended by striking out "The minister jointly with the Minister of Municipal Affairs and Housing" at the beginning and substituting "The minister, after consulting with the Minister of Municipal Affairs and Housing,"

When we had our hearings here in Toronto, the Ontario Medical Association came forward. They made only two recommendations to the government on this bill; this is one of them. Their concern was that the wording in the original text would lead to gridlock; that if it was a question of ensuring that the Minister of the Environment and the Minister of Municipal Affairs and Housing came to the same conclusions before action could be taken, we had ourselves in a position where we might not get any movement whatsoever. So they recom-

mended, and I believe the government should adopt, the setting of priority. This is consistent with the government's text in this bill, which says that this act will have primacy over others unless those provide a higher level of drinking water protection. In this case, we're saying the Minister of the Environment should have primacy when there's a conflict between the Minister of the Environment's assessment of a situation and the assessment of the Minister of Municipal Affairs and Housing.

The Chair: Any comments? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 37, as amended, carry? Carried.

Shall section 38 carry? Carried.

Government motion 95.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Prescribed instruments and conformity

"38.1 (1) Subject to a regulation made under clause 100(1)(j), (j.1) or (j.2), a person or body that issued or otherwise created a prescribed instrument before the source protection plan took effect shall amend the instrument to conform with the significant threat policies and designated Great Lakes policies set out in a source protection plan.

"Deadline for amendments

"(2) The person or body that issued or otherwise created the instrument shall make any amendments required by subsection (1) before the date specified in the source protection plan for the purpose of this section.

"No authority

"(3) Subsection (1) does not permit or require a person or body to make amendments that it does not otherwise have authority to make."

The Chair: Any further comments? Seeing none, we'll proceed to the vote.

Shall section 38.1 carry? Carried.

Section 39: NDP motion 96.

Mr. Tabuns: Withdrawn.

The Chair: Government motion 97.

Mr. Wilkinson: I move that subsection 39 (1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Requests for amendment or issuance of instruments

"39. (1) Subject to a regulation made under clause 100(1)(j), (j.1) or (j.2), if, in the minister's opinion, a prescribed instrument does not conform with a significant threat policy or designated Great Lakes policy set out in the source protection plan, the minister may,"

The Chair: Further comments? Seeing none, we'll proceed to the vote.

Those in favour of government motion 97? Opposed? Carried.

Government motion 98.

Mr. Wilkinson: I move that subsection 39 (2) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"Issuance of instrument; conditions resulting from past activities

"(2) If a source protection plan identifies an area where a condition that results from a past activity is a significant drinking water threat and, in the minister's opinion, the issuance or other creation of a prescribed instrument under an act would assist in ensuring that the condition ceases to be a significant drinking water threat, the minister may,"

The Chair: Any further comments? Seeing none, we'll proceed to the vote.

Those in favour of government motion 98? Carried.

Shall section 39, as amended, carry? Carried.

Government motion 99.

Mr. Wilkinson: I move that section 40 of the bill be struck out and the following substituted:

"Monitoring program

"40. If a public body is designated in a source protection plan as being responsible for the implementation of a policy governing monitoring, the public body shall conduct a monitoring program in accordance with the policy."

The Chair: Further comments? Seeing none, we'll proceed to the vote.

All those in favour of government motion 99? Carried.

Shall section 40, as amended, carry? Carried.

NDP motion 100.

Mr. Tabuns: Withdrawn.

The Chair: NDP motion 101.

Mr. Tabuns: I move that subsection 41(2) of the bill be amended by striking out "available to the public" and substituting "available to the public as soon as reasonably possible".

The Chair: Any further comments? We'll proceed to the vote.

Mr. Tabuns: Recorded vote.

Ayes

Scott, Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated. Government motion 102.

Mr. Wilkinson: Mr. Chair, we are withdrawing government motion 102. There is a replacement motion 102.1.

The Chair: Proceed.

Mr. Wilkinson: I move that section 41 of the bill be struck out and the following substituted:

"Annual progress reports

"41. (1) The source protection authority shall annually prepare and submit to the director and the source protection committee in accordance with the regulations a report that,

"(a) describes the measures that have been taken to implement the source protection plan, including measures taken to ensure that activities cease to be significant drinking water threats and measures taken to ensure that activities do not become significant drinking water threats;

"(b) describes the results of any monitoring program conducted pursuant to section 40;

"(c) describes the extent to which the objectives set out in the source protection plan are being achieved; and

"(d) contains such other information as is prescribed by the regulations.

"Submitting report to source protection committee

"(2) At least 30 days before submitting the report to the director under subsection (1), a source protection authority shall submit the report to the source protection committee.

"Review by source protection committee

"(3) After receiving the report from the source protection authority, the source protection committee shall review the report and provide written comments to the source protection authority about the extent to which, in the opinion of the committee, the objectives set out in the source protection plan are being achieved by the measures described in the report.

"Including comments of source protection committee

"(4) If the source protection committee provides comments to the source protection authority under subsection (3) before the report is submitted to the director under subsection (1), the source protection authority shall include a copy of the comments in the report.

"Available to public

"(5) Subject to subsection (6), the source protection authority shall ensure that the report is available to the public as soon as reasonably possible after it is submitted to the director.

"No personal information

"(6) When a report is made available to the public under subsection (5), the source protection authority shall ensure that it does not contain any personal information that is maintained for the purpose of creating a record that is not available to the public.

"Summary of progress reports

"(7) The minister shall include a summary of the reports submitted by source protection authorities under this section in the annual report prepared by the minister under subsection 3(4) of the Safe Drinking Water Act, 2002."

The Chair: Any further questions or comments? Seeing none, we'll proceed to the vote.

Mr. Wilkinson: Recorded vote.

The Chair: Recorded vote.

Ayes

Kular, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

We'll now proceed to government motion 103.

Mr. Wilkinson: I believe we would look at section 41 in entirety now, before we'd move to section 42?

The Chair: Shall section 41, as amended, carry? Carried.

Government motion 103.

Mr. Wilkinson: I move that section 42 of the bill be struck out and the following substituted:

"Enforcement by municipalities

"42. (1) Except where otherwise provided,

"(a) the council of a single-tier municipality is responsible for the enforcement of this part in the municipality; and

"(b) the council of an upper-tier municipality or lower-tier municipality that has authority to pass bylaws respecting water production, treatment and storage under the Municipal Act, 2001, is responsible for the enforcement of this part in the municipality.

"Joint enforcement

"(2) The councils of two or more municipalities referred to in subsection (1) may enter into an agreement,

"(a) providing for the joint enforcement of this part within their respective municipalities;

"(b) providing for the sharing of costs incurred in the enforcement of this part within their respective municipalities; and

"(c) providing for the appointment of a risk management official and risk management inspectors.

"Joint jurisdiction

"(3) If an agreement under subsection (2) is in effect, the municipalities have joint jurisdiction in the area comprising the municipalities.

"Transfer of enforcement responsibility

"(4) The councils of two municipalities referred to in subsection (1) may enter into an agreement providing for the council of one of the municipalities to be responsible for the enforcement of this part in the other municipality with respect to activities identified in the agreement, and for charging the other municipality the whole or part of the cost.

"Same

"(5) If an agreement under subsection (4) is in effect, the municipality that is made responsible for the enforcement of this part in the other municipality has jurisdiction for the enforcement of this part in that municipality with respect to the activities identified in the agreement.

"Risk management official, risk management inspectors

"(6) The council of a municipality that is responsible for the enforcement of this part shall appoint a risk management official and such risk management inspectors as are necessary for that purpose.

"Certificate

"(7) The clerk of the municipality shall issue a certificate of appointment bearing the clerk's signature or a facsimile of it to the risk management official and each risk management inspector appointed by the municipality."

The Chair: Any further questions or comments on government motion 103? Seeing none, we'll proceed to the vote. Those in favour? Opposed? Carried.

Shall section 42, as amended, carry? Carried.

Government motion 104.

Mr. Wilkinson: I move that section 43 of the bill be struck out and the following substituted:

"Enforcement by board of health, planning board or source protection authority

"43. (1) The council of a municipality referred to in subsection 42 (1) and a board of health, planning board or source protection authority may enter into an agreement for the enforcement of this part by the board of health, planning board or source protection authority in the municipality with respect to activities identified in the agreement, and for charging the municipality the whole or part of the cost.

"Power

"(2) If an agreement under subsection (1) is in effect, the board of health, planning board or source protection authority, as the case may be, has jurisdiction for the enforcement of this part in the municipality with respect to the activities identified in the agreement and shall appoint a risk management official and such risk management inspectors as are necessary for that purpose.

"Certificate

"(3) The board of health, planning board or source protection authority, as the case may be, shall issue a certificate of appointment to the risk management official and each risk management inspector appointed under subsection (2)."

1320

The Chair: Further comments? We'll proceed to the vote. Those in favour of government motion 104? Opposed? None. Carried.

Shall section 43, as amended, carry? Carried.

Government motion 105.

Mr. Wilkinson: I move that subsections 44(2), (3), (4), (5) and (6) of the bill be struck out and the following substituted:

"Agreements

"(2) The council of a municipality referred to in subsection 42(1) and the crown in right of Ontario represented by the minister may enter into an agreement providing for the enforcement of this part by Ontario in the municipality with respect to the activities identified in the agreement, subject to such payment in respect of costs as is set out in the agreement.

"Same

"(3) If an agreement under subsection (2) is in effect, Ontario has jurisdiction for the enforcement of this part in the municipality with respect to the activities identified in the agreement."

The Chair: Further comments? Government motion 105: Those in favour? Opposed? Carried.

Shall section 44, as amended, carry? Carried.

Mr. Wilkinson: I move that section 45 of the bill be struck out and the following substituted:

"Agreements re unorganized territory

"45(1) The council of a municipality referred to in subsection 42(1) adjacent to unorganized territory and the crown in right of Ontario represented by the minister may enter into an agreement providing for the enforcement of this part by the municipality with respect to activities identified in the agreement in such part of the unorganized territory and subject to such payment in respect of costs as is set out in the agreement.

"Area of jurisdiction

"(2) The municipality has jurisdiction for the enforcement of this part with respect to the activities identified in the agreement in the area designated in the agreement under subsection (1).

"Board of health, planning board, source protection authority

"(3) A board of health, planning board or source protection authority and the crown in right of Ontario represented by the minister may enter into an agreement providing for the enforcement of this part by the board of health, planning board or source protection authority with respect to activities identified in the agreement in such part of the unorganized territory and subject to such payment in respect of costs as is set out in the agreement, and subsections 43(2) and (3) apply, with necessary modifications."

The Chair: Further commentary? Seeing none, we'll proceed to the vote. Those in favour of government motion 106? Opposed? None. Carried.

Shall section 45, as amended, carry? Carried.

Government motion 107.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Prescribed activities

"45.1(1) Despite sections 42 to 45, Ontario is responsible for the enforcement of this part with respect to activities prescribed by the regulations.

"Same

"(2) If a regulation mentioned in subsection (1) is in effect, Ontario has jurisdiction for the enforcement of this part with respect to the activities prescribed by the regulation."

The Chair: Thank you. Further comments? Seeing none, we'll proceed to the vote. Government motion 107: Those in favour? Carried.

Government motion 108.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Ontario risk management official and inspectors

"Risk management official

"45.2(1) The director is the risk management official for the enforcement of this part in the areas in which and with respect to the activities for which Ontario has jurisdiction.

"Same

"(2) Despite clause 3(2)(b), a person other than an employee of the ministry or a member of a class of such

employees may be appointed as a director under subsection 3(1) without the approval of the Lieutenant Governor in Council if,

"(a) the person appointed is an employee of another ministry of the government of Ontario or a member of a class of such employees; and

"(b) the appointment specifies that it is in respect of this part.

"Risk management inspectors

"(3) Risk management inspectors necessary for the enforcement of this part in the areas in which and with respect to the activities for which Ontario has jurisdiction shall be appointed by the minister.

"Certificate

"(4) The minister shall issue a certificate of appointment bearing his or her signature or a facsimile of it to the director and each risk management inspector appointed under subsection (3)."

The Chair: Further commentary? We'll proceed to the vote. Those in favour of government motion 108? Those opposed? Carried.

Government motion 109.

Mr. Wilkinson: I move that the bill be amended by adding the following section:

"Qualifications

"45.3(1) A person is not eligible to be appointed as a risk management official under section 42, 43 or 45 unless he or she has the qualifications prescribed by the regulations.

"Same

"(2) A person is not eligible to be appointed as a risk management inspector under this part unless he or she has the qualifications prescribed by the regulations."

The Chair: Any further commentary? Government motion 109: All in favour? All opposed? Carried.

Shall section 46 carry? Carried.

Government motion 110.

Mr. Wilkinson: I move that subsection 47(1) of the bill be amended by striking out clauses (a) to (h) and substituting the following:

"(a) prescribing classes of risk management plans and classes of risk assessments;

"(b) establishing and governing an inspection program for the purpose of enforcing this part;

"(c) providing for applications under sections 50, 51 and 52 and requiring the applications to be accompanied by such plans, specifications, documents and other information as is set out in the bylaw, resolution or regulation;

"(d) requiring the payment of fees for receiving an application under section 50, 51 or 52, for agreeing to or establishing a risk management plan under section 48 or 50, for issuing a notice under section 51, for accepting a risk assessment under section 52, or for entering property or exercising any other power under section 54, and prescribing the amounts of the fees;

"(e) requiring the payment of interest and other penalties, including payment of collection costs, when fees referred to in clause (d) are unpaid or are paid after the due date;

"(f) providing for refunds of fees referred to in clause (d) under such circumstances as are set out in the bylaw, resolution or regulation;

"(g) prescribing forms respecting risk management plans, acceptances of risk assessments, notices under section 51 and applications under sections 50, 51 and 52, and providing for their use;

"(h) prescribing circumstances in which a person with qualifications prescribed by the regulations may act under clause 48(9)(b), 50(15)(b) or 52(2)(b)."

The Chair: Thank you. Any further commentary?

Mr. O'Toole: On this section here, am I correct in assuming that the applicant in whatever role under (d) here is required to pay fees for an application, so they're going to have to pay to get an application and they're going to have to pay to have that application reviewed? It seems like there is a lot of fee-collecting and interest and stuff going on. Who's this money going to? The municipality's totally responsible.

Mr. Wilkinson: Clean water is not free in this province.

Mr. O'Toole: Not anymore, under the Liberal government, for sure. It seems like there's a lot of stuff in here about collecting money. Who does it go to—the province or to the municipality?

Mr. Wilkinson: We're going to keep the sources of drinking water clean in this province.

Mr. O'Toole: I understand that—"Whether you like it or not."

Mr. Wilkinson: Right. It's called cost recovery. I think it's something that your government was quite keen on when in government.

Mr. O'Toole: Yes, that's fine. But you've got interest here, penalties. I understand. It's a government motion. We lose; you win.

Mr. Wilkinson: If I don't pay my phone bill, there's interest on that as well.

The Chair: Those in favour of government motion 110? Those opposed? Carried.

Mr. Wilkinson: I move that subsection 47(4) of the bill be amended by striking out "Section 398 of the Municipal Act, 2001 applies" at the beginning and substituting "Section 398 of the Municipal Act, 2001 and section 264 of the City of Toronto Act, 2006 apply".

This is for clarity.

The Chair: Thank you. Commentary on 111? Seeing none, we'll proceed to the vote. Those in favour? Those opposed? Carried.

Mr. Wilkinson: I move that section 47 of the bill be amended by adding the following subsection:

"Prescribing circumstances under cl. (1)(h)

"(5) The only circumstances that may be prescribed under clause (1)(h) are circumstances prescribed by the regulations."

The Chair: Any further commentary? Seeing none, we'll proceed to the vote. Government motion 112: Those in favour? Those opposed? Carried.

Shall section 47, as amended, carry? Carried.

NDP motion 113.

Mr. Tabuns: Withdrawn.

The Chair: Thank you. NDP motion 114.

Mr. Tabuns: Withdrawn.

The Chair: NDP motion 115.

Mr. Tabuns: I move that subsection 48(5) of the bill be amended by striking out "may, not earlier than 120 days after the order was issued under subsection (1), issue an order" and substituting "may issue an order".

As I said earlier, when the Ontario Medical Association came and presented their concerns to this committee—there were only two. You defeated one amendment based on the recommendations; this is their other. They felt that a 120-day waiting period, regardless of how dire the risk, was too long a delay and was unacceptable given the potential implications for human health. This gives the risk management official the power to act immediately. Frankly, the OMA was fairly straightforward. They felt that this was very necessary to ensure protection of human health and safety, and I see no reason why the government would not support this amendment.

The Chair: Thank you. Those in favour of NDP motion 115?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 116.

1330

Mr. Wilkinson: I move that section 48 of the bill be struck out and the following substituted:

"Interim risk management plans

"48(1) Subject to subsection (9), a person engaged in an activity or proposing to engage in an activity and a risk management official may agree to a risk management plan for the activity at a particular location if,

"(a) the activity is prescribed by the regulations for the purpose of this section; and

"(b) the director has approved an assessment report and,

"(i) the activity is or will be engaged in in an area identified in the assessment report as an area where the activity is or would be a significant drinking water threat, and

"(ii) the area identified in the assessment report as an area where the activity is or would be a significant drinking water threat is within a surface water intake protection zone or wellhead protection area.

"Notice of plan

"(2) If a risk management official and a person agree to a risk management plan under subsection (1), the risk management official shall provide written notice to the person and shall attach a copy of the plan to the notice.

"Deadline for agreement

"(3) In the circumstances prescribed by the regulations, the risk management official may give a person a notice indicating that, if no risk management plan is agreed to under subsection (1) by a date specified in the notice, the risk management official intends to establish a risk management plan for the activity at the location.

"Specified date

"(4) A date specified in a notice under subsection (3) shall be at least 60 days after the notice is given.

"Waiving notice period

"(5) A person to whom a notice has been given under subsection (3) may consent in writing to the establishment of the risk management plan before the date specified in the notice.

"Order establishing risk management plan

"(6) Subject to subsections (5) and (9), if a notice is given under subsection (3) and no risk management plan is agreed to under subsection (1) by the date specified in the notice, the risk management official shall, by order, establish a risk management plan for the activity at the location.

"Amendment of risk management plan

"(7) Subject to subsections (8) and (10), subsections (1) to (6) apply, with necessary modifications, to the amendment of a risk management plan.

"Amendment; deadline

"(8) For the purpose of subsection (7), the 60-day period referred to in subsection (4) may be shortened by the risk management official if,

"(a) the risk management official is of the opinion that the amendment of the risk management plan is required to prevent a drinking water health hazard; and

"(b) the notice given under subsection (3) sets out the reasons for the opinion referred to in clause (a).

"Criteria for agreeing to or establishing a risk management plan

"(9) A risk management official shall agree to or establish a risk management plan for an activity at a location under this section if, and only if,

"(a) the risk management official,

"(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations and rules, and

"(ii) is satisfied that, if the activity is engaged in at that location in accordance with the plan, the plan will reduce by a reasonable amount the potential for the activity to adversely affect the raw water supplies of the drinking water systems that obtain water from the area identified in the assessment report as an area where the activity is or would be a significant drinking water threat; or

"(b) in circumstances prescribed under clause 47(1)(h), a person with qualifications prescribed by the regulations has stated, in a form obtained from or approved by the director, that the person,

"(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations and rules, and

"(ii) is satisfied that, if the activity is engaged in at that location in accordance with the plan, the plan will reduce by a reasonable amount the potential for the activity to adversely affect the raw water supplies of the drinking water systems that obtain water from the area identified in the assessment report as an area where the activity is or would be a significant drinking water threat.

"Criteria for amendment

"(10) Subsection (9) applies, with necessary modifications, to the amendment of a risk management plan and, for that purpose, a reference in subsection (9) to a risk management plan shall be deemed to be a reference to the amended plan.

"Compliance with risk management plan

"(11) If a risk management plan is agreed to or established under this section for an activity at a location, a person shall not engage in that activity at that location except in accordance with the plan.

"Source protection plan in effect

"(12) No risk management plan may be agreed to, established or amended under this section if a source protection plan in respect of the source protection area where the activity is engaged in is in effect.

"Risk management plan ceases to apply

"(13) A risk management plan agreed to or established under this section ceases to apply to an activity at a location if,

"(a) a source protection plan has taken effect and subsection 49(1) applies to that activity at that location; or

"(b) a source protection plan has taken effect and,

"(i) the activity is not an activity designated in the source protection plan as an activity to which section 50 should apply, or

"(ii) the location of the activity is not within an area designated in the source protection plan as an area within which section 50 should apply."

The Chair: Thank you, Mr. Wilkinson. Further comment?

Mr. O'Toole: This is a fairly onerous section as well. I'd say that the issue that I take with you here—I gather that the risk management official is actually an employee of the provincial government.

Mr. Wilkinson: You'd be incorrect there. The act, as noted previously, allows certain leeway. People who are risk management employees are employees of the municipality or the source planning authority. In the previous parts of the bill, we determined which group has authority.

Mr. O'Toole: That's kind of where my question is coming from. I go back to 108. It says here—

Mr. Wilkinson: For clarity, sir, not all parts have municipalities, and so the provision in 108—

Mr. O'Toole: "Risk management inspectors necessary for the enforcement of this part in the areas in which and with respect to the activities for which Ontario has jurisdiction shall be appointed by the minister." So they're appointed by the minister and they're paid for by the municipality?

Mr. Wilkinson: Only in those areas where the municipality has agreed to have enforcement done by the province. So the municipalities under this act are able to enter into an agreement with the crown so that enforcement will be done by the province of Ontario.

Mr. O'Toole: Here's the other part. When I look at 48 as it is currently—and I understand the amendments here—it's fairly onerous. If there's a plan drawn up and somebody comes on my property and says, "You're in violation and so you've got to prepare a risk management plan," I've got this problem now. I've got to go out and pay for an application. There's an order against me. The risk management plan could be—you've got to have an agronomist and all these sort of Ph.D. people doing all this work. It's going to be expensive. Are there any estimates of how much some of these 100-acre risk management plans could amount to?

It's fairly onerous. It says right in here " ... would be a significant drinking water threat at that location or within that area, the permit official may issue an order requiring the person to prepare and submit to the permit official, within such time as is specified"—we want it next week—"... a risk management plan." Anyway, I find it quite onerous.

Mr. Wilkinson: I think the member from Durham will recall the testimony that we had, and I remember specifically talking to so many groups that said, "You know, the permit official is the wrong approach. You have to go to risk management." I remember speaking to Ms. Beswick from the Glengarry Cattlemen's Association and I said, "So if we change it from the permit official to risk management, would you think that also would go a long way to making sure that the approach was right?" Her response: "I believe so."

Speaking to Ms. Rice from the Renfrew county local of the National Farmers Union of Ontario, "If we had this risk management official ... do you feel that in that approach your members would say that person would be welcome on their farm?" "Very much so," was her reply.

When speaking to Chris Hodgson, a former colleague of yours, from the Ontario Mining Association, "Also, it's the government's intention to ensure that a risk management plan is only imposed on a person responsible for an activity that poses a significant risk as a last resort ... would that help assuage some of your concerns?" "Definitely."

The Chair: Thank you. Perhaps we'll proceed to the vote. Those in favour of government motion 116? Those opposed? Carried.

Shall section 48, as amended, carry? Carried.

Government motion 117.

Mr. Wilkinson: I move that section 49 of the bill be struck out and the following substituted:

"Prohibited activities

"49(1) If a source protection plan that is in effect designates an activity as an activity to which this section should apply and an area within which this section should apply to the activity, a person shall not engage in that activity at any location within that area.

"Transition

"(2) If an activity was engaged in at a particular location immediately before the source protection plan took effect, subsection (1) does not apply to a person who engages in the activity at that location until 180 days after the plan takes effect or such later date as is set out in the source protection plan."

The Vice-Chair: I'll put the motion for a vote. Carried? Anybody oppose the motion? Okay. The motion is carried.

We move to NDP motion 118.

Mr. Tabuns: I move that section 49 of the bill be amended by adding the following subsection:

"Same

"(3) Subsection (2) does not apply in the circumstances set out in the source protection plan."

This gives the source protection committees more power in dealing with problematic land uses and activities. I believe that in the spirit of the government's interest in giving power to the grassroots, they should be supportive of this motion.

Mr. Wilkinson: And I can say that we're not supportive because we feel that this motion is actually less stringent than the one we just introduced. We believe that grandfathering should not be subject to negotiation, and that's why we proposed the 180 days.

The Vice-Chair: Any further debate?

Mr. Tabuns: As written by the legislative drafters who talked to us, this actually gives the source protection committees greater latitude in making decisions. It doesn't limit their latitude.

Mr. Wilkinson: Then we have a difference of opinion on that point.

Mr. Tabuns: We do.

1340

The Vice-Chair: Any further debate? I will put NDP motion 118 for a vote. All in favour?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Wilkinson, Wynne.

The Vice-Chair: The motion is defeated.

Shall section 49, as amended, carry? Carried.

We'll now move to motion 119.

Mr. Tabuns: Withdrawn.

The Vice-Chair: Withdrawn.

NDP motion 120.

Mr. Tabuns: I move that section 50 of the bill be amended by adding the following subsection:

"Activities exempted from s. 49(1)

"(3) This section applies, with necessary modifications, to a person who engages in an activity if, pursuant to subsection 49(2), subsection 49(1) does not apply to the person."

It just is intended to ensure that existing activities exempt from prohibition under subsection 49(2) are required to undergo a risk assessment under section 50.

The Vice-Chair: Are there any questions?

Mr. Wilkinson: The government cannot accept the motion because it would be inconsistent with the motion we just introduced and carried at section 49. Where a source protection plan is applied, the prohibition in section 49 to an activity in an area where the activity is a significant risk—it means the activity must cease in that area. We're of the opinion that your motion would allow far too much risk, as such an activity would continue in the section 49 area. For that reason, we will not vote in favour of it.

The Vice-Chair: Any further questions or comments?

Mr. Tabuns: No. Recorded vote.

Ayes

Tabuns.

Nays

Kular, Leal, Wilkinson, Wynne.

The Vice-Chair: Motion defeated.

Shall section 121 carry?

Mr. Wilkinson: I have to read it into the record.

The Vice-Chair: Okay. Go ahead.

Mr. Wilkinson: I move that section 50 of the bill be struck out and the following substituted:

"Regulated activities

"50(1) If a source protection plan that is in effect designates an activity as an activity to which this section should apply and an area within which this section should apply to the activity, a person shall not engage in that activity at any location within that area unless a risk management plan has been agreed to or established under this section or section 48 for that activity at that location.

"Transition

"(2) Subject to subsections (3) and (4), if an activity was engaged in at a particular location immediately before the source protection plan took effect, subsection (1) does not apply to a person who engages in the activity at that location.

"Same

"(3) If an activity was engaged in at a particular location immediately before the source protection plan took effect and the source protection plan specifies a date for the purpose of this subsection, subsection (1) applies, on and after that date, to a person who engages in the activity at that location.

"Same

"(4) If an activity was engaged in at a particular location immediately before the source protection plan took effect and the risk management official gives notice to a person who is engaged in the activity at that location that,

in the opinion of the risk management official, subsection (1) should apply to the person, subsection (1) applies to a person who engages in the activity at that location on and after a date specified in the notice that is at least 120 days after the date the notice is given.

"Agreement on risk management plan

"(5) Subject to subsections (15) and (16), a person engaged in an activity or proposing to engage in an activity and a risk management official may agree to a risk management plan for the activity at a particular location if,

"(a) a source protection plan designates the activity as an activity to which this section should apply and an area within which this section should apply to the activity; and

"(b) the location is in the area referred to in clause (a).

"Notice of plan

"(6) If a risk management official and a person agree to a risk management plan under subsection (5), the risk management official shall provide written notice to the person and shall attach a copy of the plan to the notice.

"Deadline for agreement

"(7) The risk management official may give a person a notice indicating that, if no risk management plan is agreed to under subsection (5) by a date specified in the notice, the risk management official intends to establish a risk management plan for the activity at the location.

"Specified date

"(8) A date specified in a notice under subsection (7) shall be at least 120 days after the date the notice is given.

"Waiving notice period

"(9) A person to whom a notice has been given under subsection (7) may consent in writing to the establishment of the risk management plan before the date specified in the notice.

"Order establishing risk management plan

"(10) Subject to subsections (9), (15) and (16), if a notice is given under subsection (7) and no risk management plan is agreed to under subsection (5) by the date specified in the notice, the risk management official shall, by order, establish a risk management plan for the activity at the location.

"Application for risk management plan

"(11) A person engaged in an activity or proposing to engage in an activity to which this section applies at a location within an area to which this section applies may apply to the risk management official for the establishment of a risk management plan for the activity at the location.

"Order establishing plan

"(12) Subject to subsections (15) and (16), if an application is made under subsection (11), the risk management official shall, by order, establish a risk management plan for the activity at the location.

"Amendment of risk management plan

"(13) Subject to subsections (14) and (17), subsections (5) to (12) apply, with necessary modifications,

"(a) to the amendment of a risk management plan agreed to or established under this section; and

"(b) to the amendment of a risk management plan agreed to or established under section 48, if, pursuant to subsection 48(12), the plan cannot be amended under that section.

"Amendment; deadline

"(14) For the purpose of subsection (13), the 120-day period referred to in subsection (8) may be shortened by the risk management official if,

"(a) the risk management official is of the opinion that the amendment of the risk management plan is required to prevent a drinking water health hazard; and

"(b) the notice given under subsection (7) sets out the reasons for the opinion referred to in clause (a).

"Criteria for agreeing to or establishing risk management plan

"(15) Subject to subsection (16), a risk management official shall agree to or establish a risk management plan for an activity at a location under this section if, and only if, all applicable fees have been paid and,

"(a) the risk management official,

"(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations, rules and source protection plan, and

"(ii) is satisfied that the activity will not be a significant drinking water threat if it is engaged in at that location in accordance with the risk management plan; or

"(b) in circumstances prescribed under clause 47(1)(h), a person with qualifications prescribed by the regulations has stated, in a form obtained from or approved by the director, that the person,

"(i) is satisfied that the risk management plan complies with the requirements, if any, of the regulations, rules and source protection plan, and

"(ii) is satisfied that the activity will not be a significant drinking water threat if it is engaged in at that location in accordance with the risk management plan.

"Refusal to establish plan

"(16) The risk management official may refuse to agree to or establish a risk management plan if the past conduct of the applicant or, if the applicant is a corporation, of its officers or directors, affords reasonable grounds to believe that the applicant will not engage in the activity in accordance with the risk management plan.

"Application of subss. (15) and (16) to amendments

"(17) Subsections (15) and (16) apply, with necessary modifications, to the amendment of a risk management plan and, for that purpose, a reference in subsection (15) or (16) to a risk management plan shall be deemed to be a reference to the amended plan.

"Compliance with risk management plan

"(18) If a risk management plan is agreed to or established under this section for an activity at a location, a person shall not engage in that activity at that location except in accordance with the plan."

The Chair: Thank you, Mr. Wilkinson. Any further comments?

Mr. O'Toole: Once again, the entire section has been completely re-scribed for us. In that, I have a couple of small technical questions.

On page 2, "Order establishing risk management plan," this is the case where the ministry officials sort of step in and establish a risk management plan for the activity at that location. Who pays if the ministry comes in? I can see later on in other sections that they can establish the fee, impose it on your taxes and go ahead and do it—spend the $50,000 or whatever it costs. Is that right?

Mr. Wilkinson: In the case where negotiation has failed and there is a significant threat to drinking water, an order will be imposed. What is the most important thing is that action is taken to reduce the significant drinking water threat to below that threshold.

Mr. O'Toole: Yes. It goes on to say under "Amendment; deadline," page 3, "For the purpose of subsection (13), the 120-day period referred to in subsection (8) may be shortened by the risk management official"—the bureaucrat, and don't take offence; this is all part of our job here—"if the risk management official is of the opinion ..."

What kind of opinion? If he doesn't like the person?

Mr. Wilkinson: Well, if you continue—

Mr. O'Toole: Is there any science here? He's "of the opinion that the amendment of the risk management plan is required to prevent" some kind of hazard. Is there any science behind this?

If you go on here, and I'm going to make my final point, under "Refusal to establish plan," so it's all kind of related to this. You've got this official out there. It's an order, and you've got this cantankerous Randy Hillier or whomever out there.

Okay, here's this. This is number (16) on page 4: "The risk management official may refuse to agree to or establish a risk management plan if the past conduct of the applicant...." If he's got a criminal record? This past conduct, is it just a matter of opinion, or is it something in regulation that sort of exemplifies behaviour as in regulation number 956, that they have curly hair or certain facial features or whatever?

Mr. Wilkinson: If you read on, it says "reasonable grounds."

Mr. O'Toole: Reasonable, probable grounds.

Mr. Wilkinson: One's hair colour is a not a reasonable consideration as to whether or not there's a significant threat to drinking water.

Mr. O'Toole: If you get an ugly Ministry of the Environment official on your property, you're in big trouble.

Mr. Wilkinson: And I say to Mr. O'Toole, this will all be based on science, something that the good taxpayers of Ontario are paying for.

1350

Mr. O'Toole: We asked for that in amendment number 8, that we have in regulation what the science has described.

Mr. Wilkinson: But you went far beyond that and wanted to gut the bill, and we refused. We've settled that issue.

The Chair: Perhaps, since the fruit of this conversation has been exhausted, we'll proceed now to the vote. Those in favour of government motion 121? Those opposed? Carried.

Shall section 50, as amended, carry? Carried.

PC motion 122.

Mr. O'Toole: Chair, usually you recognize the person.

The Chair: Mr. O'Toole, please.

Mr. O'Toole: Yes, thank you.

I move that the bill be amended by adding the following section:

"Compensation

"50.1 If a business or farm must cease its activities as a result of a decision under section 49 or 50, the owner of the business or farm shall be compensated for the loss."

I think this is self-explanatory, and it's hopefully addressed by the government's amendment which was introduced at the beginning of these sessions by the minister, the $7 million.

Mr. Wilkinson: I'm surprised you didn't withdraw it, since you agreed on section 87.1.

Mr. O'Toole: Quite frankly, it's a question. If you had a pork farm, which up until recent times has been a growing agribusiness, and all of a sudden these are now banned, what about all those operations? There are certainly some issues with effluent, nutrient management—Lake Huron, whatever. Is there any court application? Can I go to civil court or the Ontario court to deal with this?

Mr. Wilkinson: We've been clear that there will be a stewardship fund. It's enshrined by law, assuming that we get around to actually getting this bill back into the House and getting it passed, which I'm sure all parties who have said that they're for the Clean Water Act, particularly the principle, are eager to do.

The second thing is that the government has been very clear that there will be cases, in our opinion, of hardship, and the government will play its appropriate role in ensuring that Ontario is a fair and just place to conduct your business in.

The Chair: We'll proceed to the vote. Those in favour of PC motion 122? Shall section 50.1 carry? Those in favour? Those opposed? Defeated.

Section 41, NDP motion 123.

Mr. Tabuns: Withdrawn.

The Chair: Thank you. Government motion 124.

Mr. Wilkinson: I move that subsections 51(1), (2), (3) and (4) of the bill be struck out and the following substituted:

"Restricted land uses

"51(1) If a source protection plan that is in effect designates a land use as a land use to which this section should apply and an area within which this section should apply,

"(a) a person shall not make an application under a provision of the Planning Act prescribed by the regulations for the purpose of using land for that land use at any location within that area; and

"(b) despite section 50, a person shall not construct or change the use of a building at any location within that

area, if the building will be used in connection with that land use,

"unless the risk management official issues a notice to the person under subsection (2).

"Issuance of notice

"(2) The risk management official shall, on application, issue a notice to a person for the purpose of subsection (1) if, and only if, the applicant has paid all applicable fees and,

"(a) neither section 49 nor section 50 applies to the activity for which the land is to be used at the location where the land is to be used; or

"(b) section 50 applies to the activity for which the land is to be used at the location where the land is to be used and a risk management plan that applies to that activity at that location has been agreed to or established under section 48 or 50.

"Time for application

"(3) If section 50 applies to the activity for which the land is to be used at the location where the land is to be used, an application for the issuance of a notice under subsection (2) may be made at the same time that an application is made in respect of the activity under section 50 or 52.

"Copies

"(4) If a risk management official issues a notice under subsection (2), he or she shall give a copy of the notice to the persons prescribed by the regulations."

The Chair: We'll proceed to the vote. Those in favour of government motion 124? Those opposed? Carried.

Shall section 51, as amended, carry? Carried.

NDP motion 125.

Mr. Tabuns: Withdrawn.

The Chair: Government motion 126.

Mr. Wilkinson: I move that section 52 of the bill be struck out and the following substituted:

"Risk assessment can exclude application of ss. 48, 49 and 50

"52(1) Sections 48, 49 and 50 do not apply to an activity that is engaged in at a particular location if,

"(a) a risk assessment relating to the activity at that location has been submitted to the risk management official;

"(b) the risk assessment concludes that the activity, if engaged in at that location is not a significant drinking water threat at that location; and

"(c) the risk management official has accepted the risk assessment under this section.

"Acceptance of risk assessment

"(2) On application, the risk management official shall accept a risk assessment that concludes that an activity is not a significant drinking water threat if, and only if, all applicable fees have been paid and,

"(a) the risk management official is satisfied that the activity has been assessed in accordance with the regulations and the rules; or

"(b) in circumstances prescribed under clause 47(1)(h), a person with qualifications prescribed by the regulations has stated, in a form obtained from or approved by the director, that the person is satisfied that the activity has been assessed in accordance with the regulations and the rules."

The Chair: Any further commentary? Government motion 126: Those in favour? Those opposed? Carried.

Shall section 52, as amended, carry? Carried.

NDP motion 127.

Mr. Tabuns: Withdrawn.

The Chair: Government motion 128—it's a notice, actually. Government notice 128.

Shall section 53 carry?

Mr. O'Toole: Recorded vote.

Nays

Kular, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 129.

Mr. Wilkinson: We should have a section 53.1.

I move that the bill be amended by adding the following section:

"Report on activity

"53.1(1) A risk management official may, by order, require a person who engages in or proposes to engage in an activity to which section 48 or 50 applies to provide the risk management official with a report that describes the manner in which the activity is being or is proposed to be engaged in, including any risk management measures that are being or are proposed to be taken with respect to the protection of drinking water sources.

"Same

"(2) A person who is required to provide a report under subsection (1) shall ensure that it is prepared and submitted to the risk management official in accordance with the order."

So moved.

The Chair: All in favour of government motion 129? Carried.

Shall section 53.1 carry? Opposed? Carried.

Section 54, PC motion 130.

Ms. Scott: I move that section 54 of the bill be amended by adding the following subsections:

"Compliance with regulations

"(2.1) A person entering property that is used as a farm shall ensure that the biosecurity of the farm and the health standards of the farm are not compromised by the entry and that the standards with respect to ensuring that the biosecurity and health standards are not compromised prescribed by regulation are strictly adhered to.

"Notice of entry

"(2.2) A person shall not enter property unless,

"(a) the person gives notice 30 days before entry; and

"(b) the notice sets out the reason for the proposed entry and the nature of the information that is to be collected during the entry."

The Chair: Any comments?

Mr. Wilkinson: After consultations with agriculture, we believe that government motions at sections 45.3,

54(1.1), 58(1.1) and 79(1.1) address the concerns raised by agriculture.

The Chair: Thank you. Those in favour of—

Mr. O'Toole: Just a question; a couple of comments I want to put on the record. This section here is, I think, superseded by 56 and 57, because there are provisions where an inspector, without an order or other document, can enter. They pretty well can do whatever they want. If you look at sections 56 and 57, if they suspect or if you resist, they can do whatever they want. So they've got total control. That isn't respect for property rights. I just want that on the record.

The Chair: Thank you. Those in favour of PC motion 130? Those opposed? Defeated.

PC motion 131.

Ms. Scott: I move that subsection 54(1) of the bill be amended by striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (2), (2.1) and (2.2)".

The Chair: I'm advised by the clerk that this amendment is out of order, seeing that the preceding amendment was defeated. Therefore, we'll move on.

Mr. Wilkinson: I move that subsection 54(1) of the bill be struck out and the following substituted:

"Inspections

"54. (1) Subject to subsections (1.1) and (2), a risk management inspector may, for the purpose of enforcing this part, enter property, without the consent of the owner or occupier and without a warrant, if,

"(a) the risk management inspector has reasonable grounds to believe that an activity to which section 48, 49 or 50 applies is being engaged in on the property; or

"(b) the risk management inspector has reasonable grounds to believe that there are documents or data on the property that relate to an activity to which section 48, 49 or 50 applies.

"Training

"(1.1) A risk management inspector shall not enter property unless the risk management inspector has received training prescribed by the regulations."

1400

The Chair: Any commentary?

Mr. O'Toole: I was making my point there in 56, 57, but this is clear in here that they can basically go on the property irrespective of the biosecurity issues and all the rest. Yes, they have to have training, but they have to get the documents or the computer files or whatever. It's rather draconian, I'd say.

Mr. Wilkinson: Under the bill, unless there is a significant health hazard, it's my understanding that the landowner must always be given notice in advance in every instance.

The Chair: Thank you. Those in favour of government motion 132? Those opposed? Carried.

Mr. Wilkinson: I move that subsections 54(2) and (3) of the bill be amended by striking out "permit inspector" wherever it appears and substituting in each case "risk management inspector".

The Chair: Commentary?

Mr. O'Toole: I just want to put on the record that the reference I have now is correct. Under section 79—we're not there yet—"may enter property, without the consent of the owner or occupier and without a warrant if," and it goes on to underline circumstances around that where they can exempt themselves from any warrant or anything. Even that allows them pretty serious liberties to do pretty well—and the other person, the person in the home, the family, the children would have to go to court to actually defend their right to say, "No, we have a reason why you shouldn't be here."

Mr. Wilkinson: And all the people who are trying to have safe, clean drinking water from the common source of water have rights as well.

Mr. O'Toole: Section 79 is worth a second look, guys.

Mr. Wilkinson: We haven't got there yet.

Mr. O'Toole: What I'm saying is it just reinforces this draconian approach here.

The Chair: Thank you. Those in favour of government motion 133? Those opposed? Carried.

Government motion 134.

Mr. Wilkinson: I move that subsection 54(10) of the bill be struck out and the following substituted:

"Warrant for entry

"(10) A justice may issue a warrant authorizing a risk management inspector to do anything set out in subsection (1) or (7) if the justice is satisfied, on evidence under oath or affirmation by a risk management inspector, that there are reasonable grounds to believe that it is appropriate for the enforcement of this part for a risk management inspector to do anything set out in subsection (1) or (7) and that a risk management inspector may not be able to effectively carry out his or her duties without a warrant under this subsection because,

"(a) no occupier is present to grant access to a place that is locked or otherwise inaccessible;

"(b) a person has prevented a risk management inspector from doing anything set out in subsection (1) or (7);

"(c) there are reasonable grounds to believe that a person may prevent a risk management inspector from doing anything set out in subsection (1) or (7);

"(d) it is impractical, because of the remoteness of the property to be entered or because of any other reason, for a risk management inspector to obtain a warrant under this subsection without delay if access is denied; or

"(e) there are reasonable grounds to believe that an attempt by a risk management inspector to do anything set out in subsection (1) or (7) without the warrant might not achieve its purpose."

The Chair: Commentary?

Mr. O'Toole: I want to keep on that same thing. I think due process is something we can't just assume and ignore. I'd say people have rights. I'm almost visualizing this. In some of the discussions made, may I presume to say, that Randy Hillier puts on quite a demonstration, if you will, of defiance. Some of the people down in that part of the country have had some run-ins with the

Ministry of the Environment that would be deemed, as was in previous sections, to be not in co-operation with the ministry. Now the ministry, basically, if you act in contempt in any way, under some of these sections we're dealing with, they can throw you in jail immediately, without process or anything else. This section here, I think, is going too far.

I think there is due process here. They can be issued, they can call the police and have the person charged with some kind of violation of some sort, so that there's a law and it can be resolved, but I don't know. I just think these last three sections, including section 79 that we're going to come to, are giving the ministry way too much power—man, oh, man. Some of these people are going to be upset, they're going to say something stupid to the inspector, and the next thing you know they're going to be in the Supreme Court of Canada.

The Chair: Thank you.

Government motion 134: Those in favour? Those opposed? Carried.

Page 135: government motion.

Mr. Wilkinson: I move that subsection 54(18) of the bill be amended by striking out "permit inspector" and substituting "risk management inspector".

The Chair: Commentary? Those in favour of government motion 135? Those opposed? Carried.

Shall section 54, as amended, carry? Carried.

Government motion 136.

Mr. Wilkinson: I move that section 55 of the bill be struck out and the following substituted:

"Enforcement orders

"55(1) If a risk management inspector has reasonable grounds to believe that a person is contravening subsection 49(1) or 50(1), the inspector may make an order requiring the person to do any one or more of the following things:

"1. Comply, by a date specified in the order, with directions set out in the order relating to achieving compliance with subsection 49(1) or 50(1).

"2. Cease engaging in the activity that constitutes the contravention.

"3. Report to the risk management inspector on compliance with the order, in such manner and at such times as are set out in the order.

"Information to be included

"(2) An order under subsection (1) shall briefly describe the nature and location of the contravention.

"Order to comply with directions

"(3) If an order under paragraph 1 of subsection (1) requires a person to comply with directions by a date specified in the order, the order may, during the period from the date the order is issued until the date specified in the order, relieve the person from strict compliance with subsection 49(1) or 50(1), subject to such conditions as are set out in the order.

"Enforcement of risk management plan

"(4) If a risk management inspector has reasonable grounds to believe that a person is failing to implement a provision of a risk management plan agreed to or established under section 48 or 50, the inspector may make an order requiring the person to do any one or more of the following things:

"1. Comply, by a date specified in the order, with directions set out in the order relating to implementing the provision of the risk management plan.

"2. Seek an amendment to the risk management plan.

"3. Report to the risk management inspector on compliance with the order, in such manner and at such times as are set out in the order.

"Information to be included

"(5) An order under subsection (4) shall briefly describe the nature of the failure to implement the provision of the risk management plan.

"Order to comply with directions

"(6) If an order under paragraph 1 of subsection (4) requires a person to comply with directions by a date specified in the order, the order may, during the period from the date the order is issued until the date specified in the order, relieve the person from strict compliance with subsection 48(11) or 50(18), subject to such conditions as are set out in the order."

The Chair: Commentary on government motion 136? Seeing none, we'll proceed to the vote. Those in favour? Those opposed? Carried.

Shall section 55, as amended, carry? Carried.

Government motion 137.

Mr. Wilkinson: Mr. Chairman, if you could just give me a second so I can switch binders here, I'll be right with you.

I move that section 56 of the bill be amended by,

(a) striking out "permit official" wherever it appears and substituting in each case "risk management official"; and

(b) striking out "permit official's" wherever it appears and substituting in each case "risk management official's".

The Chair: Commentary?

Mr. O'Toole: Just a point of clarification. We dealt with this in a couple of previous amendments where there was a difference between this "permit official" and now this "risk management official." The risk management official is actually going to be a government employee? Who are they? Are they going to be municipal employees? Who are they going to be working for? I guess it's just a change in name, isn't it? But they're appointed by the minister?

Mr. Wilkinson: No. I think we've already answered that question. It falls to the municipality, but the municipality can enter into an agreement with the province of Ontario and delegate the enforcement powers. So it just depends on the situation. It's the municipality or the municipality may choose to enter into an agreement with the government of Ontario.

Mr. O'Toole: Could the ministry decline to appoint that person if there were something in their purview to do that?

Mr. Wilkinson: I'm sure you were paying attention: All of those people are, by statute, now required to be trained. So that's why they could be denied.

Mr. O'Toole: Yes, okay. Earlier on, you said the permit official, or, in these cases here, the risk management official—that qualification is going to be defined in regulation?

Mr. Wilkinson: Yes.

Mr. O'Toole: So what are they going to have to have: a Ph.D., or what?

Mr. Wilkinson: What they are going to have to do is have appropriate training for the job that they're taking on.

Mr. O'Toole: Yes, but they're going to be like—who's going to pay them?

Mr. Wilkinson: Just like many of our other civil servants. I know that the people who represent our conservation authorities are trained.

Mr. O'Toole: We've had this in previous bills.

Mr. Wilkinson: I know that the people who are building inspectors in municipalities are trained. I know many of the people who work for us are trained. I think it's reasonable that we expect those people to be trained.

Mr. O'Toole: My point is, though, that if you require that they be—a lot of the professions want a person with a designation, with a P. Eng. or whatever it is, which means they're in a whole professional designation of pay, which means you start them at $90,000 or $100,000, not at $62,000. Are you going to specify engineers, or can a technologist be a person—

1410

Mr. Wilkinson: I know that my very reasonable minister is right now consulting with municipalities to come to an agreement that works for all of us, those of us who are concerned about protecting drinking water, that we have adequate training. That is something that is being worked on.

Mr. O'Toole: You haven't made an agreement with the professional engineers, off the record kind of thing, to endorse this bill by saying that they've got to be professional engineers?

Mr. Wilkinson: I learned a long time ago—I've only been here three years—that I don't speculate and answer hypothetical questions offered by the opposition, I'm sure in the friendliest of tones.

Mr. O'Toole: Well, let's wait and see. The municipality is going to have to pay them. I would say it's okay if the government of Ontario is paying them. I know there's only one taxpayer. Okay, thanks very much. I appreciate that. It pretty well answers it.

Mr. Wilkinson: I thought it was interesting when the county of Oxford said it was about $1.65 per household per month.

The Chair: Those in favour of government motion 137? Those opposed? Carried.

PC motion 138.

Ms. Scott: I move that subsection 56(1) of the bill be amended by adding "or" at the end of subclause (a)(iv) and by striking out clause (b).

This amendment eliminates the provision involving bankruptcy, which was called for by many stakeholders and presenters.

The Chair: Any commentary?

Mr. Wilkinson: [*Inaudible*] things to be done, we are opposed.

The Chair: Thank you. Those in favour of PC motion 138? Those opposed? Defeated.

PC motion 139.

Ms. Scott: I move that subsection 56(2) of the bill be amended by adding "and" at the end of clause (a), by striking out "and" at the end of clause (b) and by striking out clause (c).

This is similar to the previous motion. It eliminates the provision involving bankruptcy.

The Chair: Commentary?

Mr. Wilkinson: We are opposed for the same reason.

The Chair: Those in favour of PC motion 139? Those opposed? Defeated.

PC motion 140 is a notice of which we take note and pass on.

Shall section 56, as amended, carry? Carried.

Government motion 141.

Mr. Wilkinson: I move that section 57 of the bill be amended by striking out "permit official" wherever it appears and substituting in each case "risk management official".

The Chair: Commentary?

Those in favour of 141? Those opposed? Carried.

Shall section 57, as amended, carry? Carried.

Government motion 142.

Mr. Wilkinson: I move that section 58 of the bill be amended by adding the following subsection:

"Training

"(1.1) A person shall not enter property for the purpose of doing a thing unless the person has received training prescribed by the regulations."

The Chair: Commentary?

Those in favour? Those opposed? Carried.

PC motion 143.

Ms. Scott: I move that section 58 of the bill be amended by adding the following subsections:

"Compliance with regulations

"(2.1) A person entering property that is used as a farm shall ensure that the biosecurity of the farm and the health standards of the farm are not compromised by the entry and that the standards with respect to ensuring that the biosecurity and health standards are not compromised prescribed by regulation are strictly adhered to.

"Notice of entry

"(2.2) A person shall not enter property unless,

"(a) the person gives notice 30 days before entry; and

"(b) the notice sets out the reason for the proposed entry and the nature of the information that is to be collected during the entry."

The Chair: Commentary? Debate?

Seeing none, those in favour of PC motion 143? Those opposed? Defeated.

PC motion 144 is out of order, given 143 has been defeated.

Interjections.

Ms. Scott: Yes, I do 144 and then—

The Chair: The Chair retains his right to be right.

Interjections.

Mr. Wilkinson: Despite the assertions by the member from Durham, I believe Ms. Scott is still in the opposition and we're still in the government at the moment.

The Chair: Government motion 145.

Mr. Wilkinson: I move that subsection 58(1) of the bill be amended by striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (1.1) and (2)".

The Chair: Commentary? Debate? Questions?

Those in favour of government motion 145? Those opposed? Carried.

Shall section 58, as amended, carry? Carried.

PC motion 146.

Ms. Scott: I move that section 59 of the bill be amended by striking subsections (3) and (4) and by striking out "subsection (1), (2) or (3)" in the portion of subsection (5) before clause (a) and substituting "subsection (1) or (2)".

Again, it goes back to similar previous motions to seek to eliminate the provisions dealing with bankruptcy.

The Chair: Commentary? Those in favour of PC motion 146? Those opposed? Defeated.

Government motion 147.

Mr. Wilkinson: I move that section 59 of the bill be amended by striking out "permit official" wherever it appears and substituting in each case "risk management official".

The Chair: Commentary? Those in favour of 147? Those opposed? Carried.

Shall section 59, as amended, carry? Carried.

PC motion 149. We'll come back to 148.

Ms. Scott: Okay. I move that section 60 of the bill be amended by adding the following subsection:

"Right of appeal

"(1.1) Before an order to pay costs may be filed with a local registrar, a person affected by the order may appeal the order to the tribunal and the order shall not be enforced until the appeal is decided. The order may only be enforced if it is upheld or modified by the tribunal, but shall not be enforced if it is struck down."

This amendment will allow anyone charged the right of appeal prior to having to pay any costs or fines.

Mr. Wilkinson: The government reminds the member that under section 62, which we'll be getting to, persons affected by a cost recovery order already have the right to appeal, so we won't be voting in favour.

The Chair: Those in favour of PC motion 149? Those opposed? Defeated.

PC motion 148.

Ms. Scott: I move that subsection 60(1) of the bill be amended by adding "Subject to subsection (1.1)" at the beginning.

That's to follow the motion I just made.

The Chair: Motion 148 is out of order. Shall section 60 carry?

Interjection.

The Chair: Motion 148 is out of order; the section is not out of order. Shall section 60 carry? Carried.

Section 61. Government motion 150.

Mr. Wilkinson: I move that section 61 of the bill be amended by striking out "permit official" wherever it appears and substituting in each case "risk management official".

The Chair: Commentary on government motion 150? Seeing none, we'll proceed to the vote. Those in favour of government motion 150? Those opposed? Carried.

Shall section 61, as amended, carry? Carried.

Section 62. Government motion 151.

Mr. Wilkinson: I move that section 62 of the bill be struck out and the following substituted:

"Hearing by tribunal

"Orders

"62 (1) When the risk management official or a risk management inspector makes an order listed in subsection (2), he or she shall serve written notice, together with written reasons for making the order, on the person against whom the order is made.

"Application of subs. (1)

"(2) Subsection (1) applies to:

"1. An order under section 48 or 50 establishing or amending a risk management plan.

"2. An order under section 53.1, 55, 59 or 72.

"Refusals

"(3) When the risk management official refuses to make an order under section 50 establishing or amending a risk management plan or refuses to issue a notice under section 51, he or she shall serve written notice, together with written reasons for the refusal, on the person who made the application for the establishment or amendment of the plan or the issuance of the notice.

"Notice requiring hearing

"(4) A person who receives a notice under subsection (1) or (3) may require a hearing by the tribunal by serving written notice, within 60 days after the service of the notice under subsection (1) or (3), on the tribunal and on the risk management official or risk management inspector who served the notice under subsection (1) or (3)."

The Chair: Further commentary or debate? Seeing none, those in favour of government motion 151? Those opposed? Carried.

Shall section 62, as amended, carry? Carried.

Section 63. Government motion 152.

Mr. Wilkinson: I move that section 63 of the bill be struck out and the following substituted:

"Extension of time for requiring hearing

"63. The tribunal shall extend the time in which a person may give a notice under subsection 62(4) requiring a hearing on an order or refusal where, in the tribunal's opinion, it is just to do so because service of the notice under subsection 62(1) or (3) did not give the person notice of the order or refusal."

1420

The Chair: Any further commentary? Those in favour of government motion 152? Those opposed? Carried.

Shall section 63, as amended, carry? Carried.

Government motion 153.

Mr. Wilkinson: I move that subsections 64(1) and (2) of the bill be struck out and the following substituted:

"Contents of notice requiring hearing

"64(1) A person who requires a hearing by the tribunal shall state in the notice requiring the hearing,

"(a) the portions of the order on which the hearing is required, if the hearing is required on an order; and

"(b) the grounds on which the person intends to rely at the hearing.

"Effect of contents of notice

"(2) Except with leave of the tribunal, at a hearing by the tribunal, the person who required the hearing is not entitled to appeal a portion of an order, or to rely on a ground, that is not stated in the notice requiring the hearing."

The Chair: Commentary? Those in favour of government motion 153? Those opposed? Carried.

Shall section 64, as amended, carry? Carried.

Government motion 154.

Mr. Wilkinson: I move that subsections 65(1), (2) and (3) of the bill be struck out and the following substituted:

"Stays on appeal

"65(1) The commencement of a proceeding before the tribunal under section 62 does not stay the operation of an order on which the hearing is required, unless the order was made under section 59.

"Tribunal may grant stay

"(2) The tribunal may, on the application of a party to a proceeding commenced under section 62, stay the operation of the order on which the hearing is required.

"When stay may not be granted

"(3) The tribunal shall not stay the operation of an order under subsection (2) if doing so would result in a drinking water health hazard."

The Chair: Any further commentary? Seeing none, those in favour of government motion 154? Those opposed? Carried.

Shall section 65, as amended, carry? Carried.

Government motion 155.

Mr. Wilkinson: I move that section 66 of the bill be struck out and the following substituted:

"Parties

"66. The parties to the hearing are:

"1. The person requiring the hearing.

"2. The risk management official or risk management inspector who was served under subsection 62(4).

"3. Any other person specified by the tribunal."

The Chair: Further debate? Those in favour of government motion 155? Those opposed? Carried.

Shall section 66, as amended, carry? Carried.

Government motion 156.

Mr. Wilkinson: I move that section 67 of the bill be amended by striking out "permit official" and substituting "risk management official".

The Chair: Any commentary? Those in favour? Those opposed? Carried.

Shall section 67, as amended, carry? Carried.

Motion 157, government.

Mr. Wilkinson: I move that section 68 of the bill be amended by,

(a) striking out "permit official" wherever it appears and substituting in each case "risk management official"; and

(b) striking out "permit inspector" wherever it appears and substituting in each case "risk management inspector".

The Chair: Further commentary? Those in favour? Those opposed? Carried.

Shall section 68, as amended, carry? Carried.

PC motion 158.

Ms. Scott: I move that section 69 of the bill be amended by striking out subsection (2).

That's similar to previous motions, eliminating the provisions dealing with bankruptcy.

The Chair: Commentary? Those in favour of PC motion 158? Those opposed? Defeated.

Shall section 69 carry? Carried.

Government motion 159.

Mr. Wilkinson: I move that section 70 of the bill be struck out and the following substituted:

"Records

"70(1) Every person required to retain a record pursuant to an order issued under this part or pursuant to a risk management plan that is agreed to or established under sections 48 or 50 shall make the record available to a risk management inspector for inspection on his or her request.

"Copies or extracts

"(2) The risk management inspector may, on giving a receipt, remove any record referred to in subsection (1) for the purpose of making copies or extracts and shall promptly return the record.

"Records in electronic form

"(3) If a record is retained in electronic form, the risk management inspector may require that a copy of it be provided to him or her on paper or in a machine-readable medium or both."

The Chair: Any further commentary? Those in favour of government motion 159? Those opposed? Carried.

Shall section 70, as amended, carry? Carried.

PC motion 160.

Ms. Scott: I move that section 71 of the bill be amended by striking out "other than a trustee in bankruptcy" in subsection (4) and by striking out subsections (5), (6) and (7).

Again following previous motions to eliminate the provisions dealing with bankruptcy.

The Chair: Commentary? Those in favour of PC motion 160? Those opposed? Defeated.

Government motion 161.

Mr. Wilkinson: I move that section 71 of the bill be struck out and the following substituted:

"Successors and assigns

"71(1) An order under sections 53.1, 55, 59 or 72 is binding on the executor, administrator, administrator

with the will annexed, guardian of property or attorney for property of the person to whom it was directed, and on any other successor or assignee of the person to whom it was directed.

"Limitation

"(2) If, pursuant to subsection (1), an order is binding on an executor, administrator, administrator with the will annexed, guardian of property or attorney for property, their obligation to incur costs to comply with the order is limited to the value of the assets they hold or administer, less their reasonable costs of holding or administering the assets.

"Receivers and trustees

"(3) An order under section 55, 59 or 72 that relates to property is binding on a receiver or trustee that holds or administers the property.

"Limitation

"(4) If, pursuant to subsection (3), an order is binding on a trustee, other than a trustee in bankruptcy, the trustee's obligation to incur costs to comply with the order is limited to the value of the assets held or administered by the trustee, less the trustee's reasonable costs of holding or administering the assets.

"Exception

"(5) Subsection (3) does not apply to an order that relates to property held or administered by a receiver or trustee in bankruptcy if,

"(a) within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order, the receiver or trustee in bankruptcy notifies the risk management official that they have abandoned, disposed of or otherwise released their interest in the property; or

"(b) the order was stayed under part I of the Bankruptcy and Insolvency Act (Canada) and the receiver or trustee in bankruptcy notified the person who made the order, before the stay expired, that they abandoned, disposed of or otherwise released their interest in the property.

"Extension of period

"(6) The risk management official may extend the 10-day period for giving notice under clause (5)(a), before or after it expires, on such terms and conditions as he or she considers appropriate.

"Notice under subs. (5)

"(7) Notice under clause (5)(a) or (b) must be given in the manner prescribed by the regulations."

The Chair: Any further commentary? Those in favour of government motion 161? Those opposed? Carried.

Shall section 71, as amended, carry? Carried.

Government motion 162.

Mr. Wilkinson: I move that section 72 of the bill be struck out and the following substituted:

"Authority to order access

"72. (1) If a person is required by a risk management plan agreed to or established under section 48 or 50 to do a thing on or in any place, the risk management official may order any person who owns, occupies or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing.

"Same

"(2) A risk management inspector who has authority under this part to require that a thing be done on or in any place also has authority to order any person who owns, occupies or has the charge, management or control of the place to permit access to the place for the purpose of doing the thing."

The Chair: Any commentary? Those in favour of government motion 162? Those opposed? Carried.

Shall section 72, as amended, carry? Carried.

Government motion 163.

Mr. Wilkinson: I move that section 73 of the bill be struck out and the following substituted:

"Annual reports

"73. Each risk management official shall annually prepare and submit to the appropriate source protection authority in accordance with the regulations a report that summarizes the actions taken by the risk management official and risk management inspectors under this part."

The Chair: Any commentary? Those in favour of government motion 163? Those opposed? Carried.

Shall section 73, as amended, carry? Carried.

PC motion 164.

Ms. Scott: I move that the bill be amended by adding the following section:

"Protection from action

"73.1 No action or other proceeding lies or shall be instituted against a municipality for any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty under this part or for neglect or default in the good faith exercise or performance of such a power or duty."

This was brought to us by many municipalities so that they'll not be held liable for the actions they'll be forced to take under this act.

The Chair: Any further comment?

Mr. Wilkinson: The government believes that section 89 of the bill adequately addresses the liability issue.

The Chair: Those in favour of PC motion 164? Those opposed? Defeated.

Government motion 164.1.

Mr. Wilkinson: I move that part V of the bill be amended by adding the following section:

"Existing aboriginal or treaty rights

"73.1 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."

This motion is made to add a new section to the bill stating that nothing in the act abrogates or derogates from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples recognized and affirmed in section 35 of the Constitution Act, 1982. The addition of this section is not intended to affect or expand the protection of aboriginal and treaty rights provided under section 35 of the Constitution Act. It is simply an acknowledgement of those protections.

1430

Mr. Tabuns: I'm pleased to see that yesterday's predictions that including this in the act would be highly problematic, in terms of being redundant and the act already recognizing constitutionality—I'm glad those arguments have been set aside. I'm glad the government is taking the lead of the NDP and Conservative Party in this matter.

The Chair: Shall section 73.1 carry?

Mr. Tabuns: Recorded vote.

Ayes

Kular, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed? Carried.

Shall section 74 carry? Carried.

Shall section 75 carry? Carried.

Government motion 165.

Mr. Wilkinson: I move that subsection 76(1) of the bill be struck out and the following substituted:

"Great Lakes targets

"76(1) The minister may establish targets relating to the use of the Great Lakes as a source of drinking water for one or more source protection areas that contribute water to the Great Lakes.

"Same

"(1.1) Targets may be established under subsection (1) respecting the quality or quantity of water."

The Chair: Further commentary? Those in favour of government motion 165? Those opposed? Carried.

Government motion 166.

Mr. Wilkinson: I move that subsection 76(5) of the bill be struck out and the following substituted:

"Reports

"(5) If a target is established for a source protection area under this section, the minister may direct the source protection authority for the source protection area to prepare and submit to the minister, in accordance with the direction,

"(a) a report that recommends policies that should be set out in the source protection plan for the source protection area to assist in achieving the target;

"(b) a report that recommends other steps that should be taken to assist in achieving the target; or

"(c) a report that recommends,

"(i) policies that should be set out in the source protection plan for the source protection area to assist in achieving the target, and

"(ii) other steps that should be taken to assist in achieving the target."

The Chair: Further commentary? Those in favour of government motion 166? Those opposed? Carried.

Government motion 167.

Mr. Wilkinson: I move that section 76 of the bill be amended by adding the following subsection:

"Environmental Bill of Rights, 1993

"(7) A target established under this section is a policy for the purpose of the Environmental Bill of Rights, 1993."

The Chair: Commentary? Those in favour of government motion 167? Those opposed? Carried.

Shall section 76, as amended, carry? Carried.

NDP motion 168.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Municipal water-taking fees

"76.1(1) The council of a municipality may pass bylaws requiring any person who takes water in excess of 50,000 litres per day from a water source located in the municipality to pay a fee to the municipality in the amount determined in accordance with the bylaw.

"Agricultural uses

"(2) A bylaw under subsection (1) does not apply to the taking of water for agricultural purposes."

Mr. Chair, as you are well aware, no commitment has been made to implement water-taking fees as a way of funding or underwriting the necessary monitoring regulation implementation of this act. Municipalities will be saddled, if they're to do this properly, with substantial costs. They need to be given an opportunity to deal with those costs.

Water-taking by large water-bottling companies or other industrial enterprises is something they should be able to charge for. It's consistent with the Liberal election platform 2003. To quote, "We will stop allowing companies to raid our precious water supplies."

I would say that the government is facing a conundrum: How do you fund all of these activities that are absolutely necessary without more money coming out of the provincial pocket? This gives municipalities not the best solution, because I think the funds should be spread across the province for equity purposes, but at least gives some of them an opportunity to raise the funds necessary to provide the protection of the water that we know has to be provided.

The Chair: Those in favour of NDP motion 168?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 169.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"Source protection fund

"76.1(1) Within 90 days after this act receives royal assent, the Minister of Finance shall establish a special purpose account in the consolidated revenue fund, to be known as the source protection fund.

"Water-taking fees

"(2) Within 120 days after the source protection fund is established, the Lieutenant Governor in Council shall make regulations requiring any person who takes water in excess of 50,000 litres per day from a water source located in Ontario to pay a fee to the Minister of Finance in the amount determined in accordance with the regulations.

"Agricultural uses

"(3) A regulation under subsection (2) does not apply to the taking of water for agricultural purposes.

"Fees paid into account

"(4) The fees received by the Minister of Finance under the regulations made under subsection (2) shall be paid into the source protection fund.

"Special purpose

"(5) Money standing to the credit of the source protection fund is, for the purpose of the Financial Administration Act, money paid to Ontario for a special purpose.

"Payments out of fund

"(6) The minister shall direct that money be paid out of the source protection fund, in such amounts and upon such terms as the minister considers advisable, to any person, agency, ministry, municipality, entity or organization that requests financial assistance in order to implement an approved source protection plan.

"Annual report

"(7) The minister shall ensure that a report is prepared annually on the operation and financial affairs of the source protection fund.

"Same

"(8) The minister shall submit the report required by subsection (7) to the Lieutenant Governor in Council and shall table the report with the Speaker of the Legislative Assembly."

Again, we had a commitment from the leader of the Liberal Party in 2003 to go to water-taking fees. We have a need for those fees to fund this protection.

The Chair: Mr. Tabuns, I'm advised under standing order 56 that your NDP motion 169 is out of order, as it is a money bill. We'll now proceed to the next section.

Shall section 77 carry? Carried.

Government motion 170.

Mr. Wilkinson: I move that subsection 77(2) of the bill be struck out and the following substituted:

"Same

"(2) Without limiting the generality of subsection (1), a municipality shall, on request, for a purpose listed in subsection (3),

"(a) provide a source protection authority, source protection committee, municipality or ministry with copies of any document or other record in the possession or control of the municipality that relates to the quality or quantity of any water that is or may be used as a source of drinking water, including,

"(i) any technical or scientific studies undertaken by or on behalf of the municipality, and

"(ii) any document or other record relating to a drinking water threat; and

"(b) assist a source protection authority, source protection committee, municipality or ministry in obtaining information.

"Purposes

"(3) The purposes referred to in subsection (2) are:

"1. The preparation, amendment, updating or reviewing of terms of reference, an assessment report or a source protection plan under this act.

"2. The preparation of a report under this act."

The Chair: Any further commentary? Those in favour of government motion 170? Opposed? Carried.

Shall section 77, as amended, carry? Carried.

Government motion 171.

Mr. Wilkinson: I move that section 78 of the bill be struck out and the following substituted:

"Obligations of others

"78(1) On request, a person or body listed in subsection (2) shall, for a purpose listed in subsection (3), provide a source protection authority, source protection committee, municipality or ministry with copies of any document or other record in the possession or control of the person or body that relates to the quality or quantity of any water that is or may be used as a source of drinking water, including,

"(a) any technical or scientific studies undertaken by or on behalf of the person or body; and

"(b) any document or other record relating to a drinking water threat.

"Persons and bodies

"(2) The persons and bodies referred to in subsection (1) are:

"1. A local board.

"2. A ministry, board, commission or agency of the government of Ontario.

"3. A designated administrative authority within the meaning of the Safety and Consumer Statutes Administration Act, 1996 that is prescribed by the regulations.

"Purposes

"(3) The purposes referred to in subsection (1) are:

"1. The preparation, amendment, updating or reviewing of terms of reference, an assessment report or a source protection plan under this act.

"2. The preparation of a report under this act."

The Chair: Those in favour of government motion 171? Those opposed? Carried.

Shall section 78, as amended, carry? Carried.

Government motion 172.

Mr. Wilkinson: I move that section 79 of the bill be amended by adding the following subsection:

"Training

"(3.1) A person shall not enter property unless the person has received training prescribed by the regulations."

The Chair: Commentary? Those in favour of government motion 172? Those opposed? Carried.

PC motion 173.

Ms. Scott: I move that section 79 of the bill be amended by adding the following subsections:

"Compliance with regulations

"(4.1) A person entering property that is used as a farm shall ensure that the biosecurity of the farm and the health standards of the farm are not compromised by the entry and that the standards with respect to ensuring that the biosecurity and health standards are not compromised prescribed by regulation are strictly adhered to.

"Notice of entry

"(4.2) A person shall not enter property unless,

"(a) the person gives notice 30 days before entry; and

"(b) the notice sets out the reason for the proposed entry and the nature of the information that is to be collected during the entry."

1440

The Chair: Further commentary? Those in favour of PC motion 173? Those opposed? Defeated.

PC motion 174 is out of order since 173 has just been defeated. We move now to government motion 175.

Mr. Wilkinson: I move that subsection 79(1) of the bill be amended by striking out "Subject to subsection (4)" at the beginning and substituting "Subject to subsections (3.1) and (4)".

The Chair: Commentary? Those in favour of government motion 175? Those opposed? Carried.

PC motion 176 is out of order.

Government motion 177.

Mr. Wilkinson: I move that subsection 79 (3) of the bill be amended by striking out "Subject to subsection (4)" at the beginning and substituting "Subject to subsections (3.1) and (4)".

The Chair: Those in favour of government motion 177? Those opposed? Carried.

Shall section 79, as amended, carry? Carried.

NDP motion 178.

Mr. Tabuns: I move that subsection 80(1) of the bill be amended by striking out "imminent drinking water health hazard" and substituting "drinking water health hazard".

We don't have a definition of "imminent drinking water health hazard." I don't know what that is. Any drinking water health hazard should require notification of the ministry, not simply an imminent and undefined one.

The Chair: Questions, comments?

Mr. Wilkinson: The proposal, in our opinion, sets the bar too low. Notices under section 80 are only necessary where there is an imminent drinking water health hazard. These notices are meant to be used where there is an immediate emergency. Interim order authority under section 48 can be used to manage risk in the interim period.

We can't forget that there are also other provincial statutes that enable the province to deal with threats to drinking water: for example, the Ontario Water Resources Act.

The Chair: Those in favour of NDP motion 178?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

PC motion 179.

Ms. Scott: I move that subsection 80 (1) of the bill be amended by striking out "notify the ministry" and substituting "notify the ministry and the medical officer of health for the affected area".

The Chair: Commentary?

Mr. O'Toole: This was actually quite a specific one, because in the Walkerton situation one of the problems was the failure to notify the medical officer of health in a timely manner. There was an amendment made under the NDP, which formed the Ontario Clean Water Agency, which confused the reporting mechanisms, whether it was the operator at the plant or the medical officer of health who had a duty to inform. I think this clarifies that, and I would ask in a friendly way for the government to adopt this friendly amendment.

Mr. Wilkinson: Under this bill people are not relieved of their legal obligation to notify the Spills Action Centre or the Ministry of the Environment when they are of the opinion that a deleterious substance has entered into a watercourse. This motion would not provide the local medical officer of health with any authority to take action as a result of being notified. The medical officer of health does not normally deal with discharges to the natural environment; the MOE does. The section should not require the notification of the local medical officer of health as in the case of the Safe Drinking Water Act where, under that statute, the local medical officer of health is given authority to direct what corrective action—for instance, the local officer of health may issue a boil-water advisory—should be taken where there is a report of an adverse test result in relation to a drinking water system. The ministry, though, I can tell you, plans to put in place a procedure to ensure that the medical officer of health is consulted about any follow-up action the ministry takes in response to a notice.

The Chair: Any further comments? Those in favour of PC motion 179? Those opposed? Defeated.

Government motion 180.

Mr. Wilkinson: I move that subsection 80(1) of the bill be struck out and the following substituted:

"Notice of health hazard

"80(1) A person who has authority to enter property under sections 54 or 79 shall immediately notify the ministry in accordance with the regulations if,

"(a) the person becomes aware that a substance is being discharged or is about to be discharged into the raw water supply of,

"(i) an existing municipal drinking water system that serves a major residential development, or

"(ii) any other existing drinking water system that was considered or is required to be considered in an assessment report or source protection plan; and

"(b) the person is of the opinion that, as a result of the discharge, an imminent drinking water health hazard exists."

The Chair: Those in favour of government motion 180? Those opposed? Carried.

NDP motion 181.

Mr. Tabuns: I move that section 80 of the bill be amended by adding the following subsection:

"Ministry action

"(1.1) The ministry shall, within 30 days after receiving a notice under subsection (1), take action intended to ensure that,

"(a) the drinking water health hazard is eliminated, if the notice was given under clause (1)(a); or

"(b) the raw water supply of the drinking water system meets all standards prescribed by the regulations, if the notice was given under clause (1)(b)."

This requires the ministry to act within 30 days, not just send out a notice saying what they've done.

The Chair: Commentary? Those in favour of NDP motion 181?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 182.

Mr. Tabuns: I move that subsection 80(2) of the bill be amended by striking out "any action taken by the ministry" in the portion before clause (a) and substituting "the action taken by the ministry".

We don't just want them to be required to take a vague action; we want them to be reporting on corrective action that's been taken.

The Chair: Commentary? Those in support of NDP motion 182?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 80, as amended, carry? Carried.

Shall section 81 carry? Carried.

Government motion 183.

Mr. Wilkinson: I move subsection 82(1) of the bill be amended by striking out "a permit official or a permit inspector" and substituting "a risk management official or a risk management inspector".

The Chair: Any further commentary? Those in favour? Those opposed? Carried.

Shall section 82, as amended, carry? Carried.

PC motion 184.

Ms. Scott: I move that that section 83 of the bill be amended by adding the following subsection:

"Expropriations Act applies

"(2) Nothing in subsection (1) affects the application of the Expropriations Act to any action taken under that subsection."

Reference to all expropriations under this act accompanied by fair compensation.

The Chair: Any further commentary?

Mr. Wilkinson: Section 83 is already subject to the Expropriations Act.

The Chair: Those in favour of PC motion 184? Those opposed? Lost.

Shall section 83 carry? Carried.

Shall section 84 carry? Carried.

NDP motion 185.

Mr. Tabuns: I move that section 85 of the bill be amended by adding the following subsections:

"Limitation

"(2) The minister shall not grant an extension of time under subsection (1) unless,

"(a) the person requesting the extension of time has applied in writing to the minister for the extension and has provided reasons in support of the request;

"(b) the person requesting the extension of time has given notice of the request to the public and an opportunity has been provided for submitting comments to the minister; and

"(c) the minister is satisfied that an extension of time is in the public interest and is necessary in order to achieve the purposes of this act.

"Minister's authority

"(3) In granting an extension of time under subsection (1), the minister may specify such further deadlines or impose such terms as the minister considers advisable.

"Maximum extension

"(4) The minister shall not grant an extension of time under subsection (1) for a period that exceeds one year."

This puts a time limit on extensions so that they cannot go on indefinitely and requires the minister to be open about why the extension has been given and gives the public an opportunity to comment on these extensions.

The Chair: Commentary? Those in favour of NDP motion 185?

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 85 carry? Carried.

Shall sections 86 and 87 together carry? Carried.

Government motion 186 was presented by Minister Broten to be voted on. We'll now proceed to government motion 187.

Mr. Wilkinson: I move that clause 88(1)(d) of the bill be amended by striking out "permit official" and substituting "risk management official".

The Chair: Commentary? Those in favour of government motion 187? Those opposed? Carried.

PC motion 188.

1450

Ms. Scott: I move that section 88 of the bill be amended by striking out subsection (6).

The Chair: Commentary?

Mr. O'Toole: Section 88 is a fairly onerous section. As far as I can see here, there's no liability on the part of the officials. Is that what that means? In terms of liability of a person making a wrong judgment or assessment, it says, "No costs, compensation or damages are owing or payable to any person and no remedy, including but not limited to a remedy in contract, restitution, tort or trust, is available to any person, in connection with anything referred to" in these sections.

I just want to make sure that there is some access to justice when somebody in this area makes a mistake.

Mr. Wilkinson: As I mentioned earlier, there was all-party support, including your own voting record in regard to the Oak Ridges Moraine Conservation Act, which this is modelled after. That was the situation in 2001 where you thought that this was acceptable and you said that there was a fund for the Oak Ridges that was set up. I know we've done this with all-party agreement to set up the stewardship fund. So I would think the situation is identical.

My sense of it from the stakeholders I've talked to is that they feel that the bill has struck the appropriate balance. We appreciate the support that we received from the opposition on the enshrinement of the Ontario drinking water stewardship fund.

Mr. O'Toole: I have no problem with that. I just want to make sure that there is, in all cases, a mechanism for redress and appeal. If I go down to subsection (5) of that, it says, "Any proceeding referred to in subsection (3) commenced before the day that subsection comes into force shall be deemed to have been dismissed, without costs...." This is the retroactivity issue. In other words, if there's any legal action in process when this thing comes into force, it's all null and void. There's no redress at all. "No expropriation or injurious affection": We deal with this in one of our amendments. "Nothing done or not done in accordance with this act or the regulations, other than an expropriation under section 83, constitutes an expropriation...." In other words, there's no place to move. There's no place to run and hide for anyone except the government. The government can have made a mistake, poorly assessed a situation, and there's no access to justice for the individual, the farm, the small community, the municipality by some action. That whole section deals with that.

I know that 87, which we supported, sets up a little fund. I think you said that there's about $5 million probably, at least at this point in time.

Mr. Leal: It's $7 million, and growing.

Ms. Scott: And growing. There's more now?

Mr. O'Toole: Oh, there's more money.

Interjection.

Mr. O'Toole: So you're going to have to amend that.

Mr. Wilkinson: No, no.

Mr. O'Toole: The ministry estimates start tomorrow. We should get that to the—

Mr. Wilkinson: In the 2007-08 budget. We haven't got to that one yet, have we? We're in 2006-07.

Mr. O'Toole: I think you get what I'm talking about, respectfully. Is there any access to redress through the courts for lack of due diligence?

Mr. Wilkinson: I would ask Mr. Flagal to answer that question.

Mr. Flagal: My name is James Flagal. I'm with the Ministry of the Environment, legal services branch.

You have to remember that there's section 88 and then section 89. The reason why I say that is because section 89—if you're thinking in your mind about when a risk management official or a risk management inspector has been negligent on a property, for instance, no, that's not what 88 is meant to provide protection for. That's why 89 is there.

Section 89 is very similar to other protection from liability provisions you see, like in the Environmental Protection Act, the Building Code Act. When you look at 89, it means that if you have an inspector or an official who is doing their job—for instance, they're making a decision that they have to require a risk management plan under section 50—that would be subject to the same standard, meaning they could be subject to regulatory negligence suits, as an example, just as the case is right now with respect to municipal officials when they're acting under other statutory legislation, like the Municipal Act, as an example. That is why section 89 is there. You should not read section 88 in isolation.

There's one instance where the risk management official, risk management inspector, is protected from liability, including the municipality. That is during the interim period. So during the interim period—and when I'm talking about that, I'm sorry, I'm talking about section 48 risk management plans. One of the things is, it was identified that during the interim period, before the source protection plan takes effect, for taking early action during that time, those decisions would be protected from liability under section 88. But after the source protection plan comes into effect, it's section 89 that applies. That is similar to other standards that are in legislation, protection from liability, that you see in the Building Code Act, the Environmental Protection Act etc.

Mr. O'Toole: That's great. I appreciate that, because if you look at 89, you'd have to almost define "any act in good faith." That's the legal term, "done in good faith." Perhaps the training you mentioned earlier was inappropriate for the complex issues that they're dealing with. I

don't want to make more out of it. I just don't think that it's clear enough. Entry to property, immunity from prosecution—all these things bundled together in these three sections, almost from 79 to about 89, almost build a wall around—

Mr. Flagal: But entry to property is not covered in 88. If there was an entry to property and an official was negligent, just like under other existing statutes, if the official acted in good faith they're protected personally, but for that tort you can go after the employer or their principal. That's the case under the Municipal Act right now, or the Building Code Act.

Mr. O'Toole: I think I've made my point. Thank you very much for the technical response.

The Chair: If there's no further commentary, we'll proceed to the vote. Those in favour of PC motion 188?

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Item 189 is a PC notice, of which we take due note.

Shall section 88, as amended, carry?

Ms. Scott: Recorded vote.

Ayes

Kular, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott.

The Chair: Carried.

Government motion 190.

Mr. Wilkinson: I move that paragraphs 1 and 2 of subsection 89(1) of the bill be struck out and the following substituted:

"1. Risk management officials.

"2. Risk management inspectors."

The Chair: Any further commentary? Those in favour of government motion 190? Those opposed? Carried.

Shall section 89, as amended, carry? Carried.

New section, 89.1, PC motion 191.

Mr. O'Toole: It's out of order. I just want to put on the record here that I appreciate the government respecting the work done by Ms. Scott, as well as John Tory. Setting up the stewardship fund was the right thing to do, and I would expect that you would have supported our motion. You copied—like the NDP; you've copied many of their amendments.

Ms. Scott: But we do ask in our motion that there would be full funding awarded to the costs associated with the bill.

The Chair: Are you withdrawing the motion at this time?

Ms. Scott: Do we have to withdraw it?

The Chair: If you'd like to read it—it will be ruled out of order, but you do have the opportunity to read it.

Ms. Scott: All right, then; I'll read it. I move that the bill be amended by adding the following section:

"Stewardship fund

"89.1(1) In order to ensure that landowners are confident that they will be compensated for additional costs they incur under this act and in the public interest, the minister shall create a separate account, referred to as the stewardship fund, in the consolidated revenue fund.

"Special purpose account

"(2) For the purposes of the Financial Administration Act, money deposited into the stewardship fund is deemed to be money paid to Ontario for a special purpose.

"Payments out of fund

"(3) The minister may direct that money be paid out of the stewardship fund for the following purposes:

"1. To compensate landowners and other persons or bodies for any additional costs they incur as a result of actions they take resulting from anything arising under this act.

"2. To provide financial assistance to persons or bodies who undertake projects to protect existing and future sources of drinking water.

"3. Such other purposes as are prescribed by regulation."

Can we have a recorded vote, please?

1500

The Chair: The motion is out of order and therefore dismissed. Shall section 90 carry?

Mr. O'Toole: I'm going to question that ruling of the Chair, and I'll tell you why: We're actually calling for full funding, and you're not near covering that. So I don't think this is redundant; I think, in fact, it's asking you to strengthen—

The Chair: It's out of order, sir, under standing order 56, money bills. Shall section 90 carry? Carried.

PC motion 192.

Ms. Scott: I move that subsection 91(3) of the bill be struck out and the following substituted:

"Exception

"(3) Subsection (1) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner or lessee of the vehicle, as the case may be."

The Chair: Thank you. Any further commentary? Those in favour of PC motion 192? Those opposed? Defeated.

PC motion 193.

Ms. Scott: I move that subsection 91(5) of the bill be struck out and the following substituted:

"Non-application of subs. (4)

"(5) Subsection (4) does not apply if the number plate was displayed on the vehicle without the consent of the holder of the permit."

These amendments are brought forward to eliminate the reversal in this section of this bill.

The Chair: Commentary? Those in favour of PC motion 193? Those opposed? Defeated.

Government motion 194 is a notice, of which we take note.

Shall section 91 carry? The section is lost.

Shall section 92 carry? Carried.

Government motion 195.

Mr. Wilkinson: I move that section 93 of the bill be struck out and the following substituted:

"Proof of certain documents

"93. A copy of a document that purports to be certified by the minister, the director or a risk management official as a copy of any of the following documents shall be received in evidence as proof, in the absence of evidence to the contrary, of the document and of the facts certified, without proof of the signature or office of the person who signed the certification:

"1. A source protection plan in respect of which notice has been published under section 27.

"2. An assessment report that has been approved by the director.

"3. An order issued under part IV.

"4. A risk management plan that has been agreed to or established under section 48 or 50."

The Chair: Any further commentary on government motion 195? Seeing none, those in favour of government motion 195? Those opposed? Carried.

Shall section 93, as amended, carry? Carried.

Government motion 196.

Mr. Wilkinson: I move that section 94 of the bill be struck out and the following substituted:

"Proof of facts stated in certain documents

"94(1) A document described in subsection (2) that purports to be signed by the minister, the director, a risk management official or a risk management inspector shall be received in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the facts stated in the document without proof of the signature or position of the person appearing to have signed the document.

"Application

"(2) This section applies to the following documents:

"1. A certificate as to service of a notice given under part IV.

"2. A certificate as to whether or not any document or notice was received or issued by the minister, the director, a risk management official or a risk management inspector.

"3. A certificate as to the custody of any book, record or report or as to the custody of any other document."

The Chair: Any further commentary? Those in favour of government motion 196? Those opposed? Carried.

NDP motion 197.

Mr. Tabuns: I move that subsection 96(1) of the bill be amended by striking out "a regulation made under another act" and substituting "a regulation or instrument made, issued or otherwise created under another act".

I have to say that, given that the government has a motion after mine that is identical, I assume that they find my motion both satisfactory and maybe sparkling and wonderful.

Mr. Wilkinson: It's all of those things.

Mr. Tabuns: It's all of those things. So I'm assuming that they and other colleagues will vote in favour of this amendment, which will make our day a little brighter all around.

Mr. Wilkinson: Recorded vote.

Ayes

Kular, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

Government motion 198, as a duplicate, is out of order.

PC motion 199.

Ms. Scott: I move that subsection 96(2) of the bill be struck out and the following substituted:

"Nutrient Management Act, 2002

"(2) Despite subsection (1), if there is a conflict between a provision of this act and a provision of the Nutrient Management Act, 2002 or a regulation or instrument made, issued or otherwise created under that act, the provision of that act or the regulation or instrument made, issued or otherwise created under that act prevails."

Mr. Wilkinson: On a point of order, Mr. Chair: I believe we missed—

Interjection.

Mr. Wilkinson: Okay. So we'll stick on this and we'll come back to it? I believe 94 and 95—

The Chair: Shall section 94, as amended, carry? Carried.

Shall section 95 carry? Carried.

Ms. Scott, please proceed with PC motion 199.

Ms. Scott: I did already. Is that okay?

The Chair: Further commentary?

Mr. Wilkinson: Yes, Mr. Chairman. In the government's opinion, the motion is inappropriate, as the Nutrient Management Act is not intended to directly protect sources of drinking water. That is why section 96 provides that in every case of a conflict with the Nutrient Management Act, the act would prevail, because this legislation will always be more protective of drinking water than the Nutrient Management Act. That doesn't mean that the Nutrient Management Act is more appropriate than the Clean Water Act, but there will never be a case to the contrary, which is what you're arguing. We have to have primacy, and we would not put the Nutrient Management Act with primacy over the Clean Water Act when we say that it's the Clean Water Act or any other act that has—whatever one does the best job. I think it's wrong to assume that the Nutrient Management Act in every case would be the best way to protect drinking water, and that's why we can't vote for the amendment.

Mr. O'Toole: This is another case where they're required—I think they have to apply under a nutrient management plan at a large number of animal units at the moment, but as it works its way down the system, they have to have a plan. They have to get a scientist to do that. They submit the plan to the MOE and it's approved. Now, if it's approved and subsequently we find, through technology, science and modernization, that that nutrient management plan, whether the land-based side or treatment or making biomass, using it for energy or something, changes somewhat—do you understand what I'm saying?—they may not be in compliance with the act under this particular source water protection plan. They could be in conflict.

These are the kinds of things that I don't think there's a proper dispute mechanism for. Agriculture is under siege now. The Nutrient Management Act, the large animal units and all this, is working its way down. There's no funding for it, or insufficient, if anything. I think the point that Ms. Scott is making is to provide some certainty for the investment they made. If you come in and change the rules after the game has started, they want to be in compliance, but they've already spent the $50,000. Do you follow me? The government should be providing help to them to achieve—

Mr. Wilkinson: Is there a question there?

Mr. O'Toole: Yes. Are they willing to provide financial support to be in compliance with the highest possible standard?

Mr. Wilkinson: Well, perhaps you missed a bit of history. I know that when the Nutrient Management Act was brought in by your government, there wasn't funding.

Mr. O'Toole: Yes, there was.

Mr. Wilkinson: There was a promise, but an unstated member—I remember my good friend Helen Johns running all over this province trying to duck that question. What our government did was provide that funding, much, I think, to the relief of the agricultural community.

Let's just be clear: Let alone that we put money into nutrient management, something that you talked about but you actually didn't do and left us to do and to find that money, I think we have to be very careful. The Nutrient Management Act is all about making sure that nutrients are applied in a scientifically based way so that farms themselves are sustainable. That's what nutrient management was about. It wasn't supposed to be the Clean Water Act; it was about the management of nutrients.

Your point is, what is the relationship between those two bills? What we say is that we will not allow the Nutrient Management Act, which is not designed specifically, when it is to deal with the application of nutrients, to protect sources of drinking water, when we have the Clean Water Act. But I say to you that if the nutrient management plan that a farmer already has does a sufficient job of ensuring that there is no significant threat to drinking water, this act will recognize that and allow that to be the way of dealing with it. So we're willing to go the one way, and I think that is reasonable, but we're not willing to go the other way: throw the baby out with the bathwater and somehow think that a nutrient act is going to protect our sources of drinking water in every instance. If it does, it does, but if it doesn't, it's the Clean Water Act that shall prevail.

1510

Mr. O'Toole: Yes, well, I hear what you're saying, and I don't think I'm being out of order by suggesting that the Nutrient Management Act, in our case—first of all, you're incorrect. It was still in the regulation stage there. You committed to fund all three, and haven't. In fact, you changed the regulations and the implementation plan. I think you've allocated $60 million or something—

Mr. Wilkinson: Because agriculture asked us to.

Mr. O'Toole: —to the 300-animal-unit level.

Mr. Wilkinson: That is very well received.

Mr. O'Toole: So we won't go down that road, because that is another broken promise. You want to be on record here—

Mr. Wilkinson: We were happy that we fixed your mistake.

Mr. O'Toole: You brought it up. You haven't got the plan fully implemented at all and, quite frankly, that is your record. You aren't even near, but—

Mr. Wilkinson: Oh, I'll be on the campaign trail about the Nutrient Management Act any time, any place, anywhere in rural Ontario if you want to go with that one.

Mr. O'Toole: Well, good luck. You haven't got it working except for the large animal units.

Mr. Wilkinson: They always remember who came up with that bill.

Mr. O'Toole: Funding for manure storage and handling facilities—

The Chair: Gentlemen, I would invite you, Mr. O'Toole and Mr. Wilkinson, to speak one at a time for the purposes of recording for Hansard in order to immortalize your words.

Mr. O'Toole: Thank you very much for that. Thank you for coming to my defence, Chair. It's good to see your neutral position on this debate here. Anyway, we'll let that go. We've made our point. We'll lose the vote anyway, because you won't support agriculture and you won't support us in our attempt to support agriculture here.

Mr. Wilkinson: Mr. Chair, I'm so happy that in regard to this bill the Ontario Federation of Agriculture has a difference of opinion with the member for Durham.

The Chair: Those in favour of PC motion 199? All opposed? Defeated.

PC motion 200.

Ms. Scott: I move that section 96 of the bill be amended by adding the following subsection:

"Same

"(3) Nothing in this act shall be more onerous or duplicate anything required or done under the Nutrient Management Act, 2002."

It follows a similar amendment, that there isn't a need to duplicate the processes under the Nutrient Management Act.

Mr. Wilkinson: There's no need to duplicate, but if there is a significant threat to drinking water and the Nutrient Management Act doesn't look after it, it's going to be the Clean Water Act that shall prevail. I'm surprised, actually, that you would suggest otherwise in your amendment.

The Chair: Thank you. If there is no further commentary, I'll proceed to the vote. Those in favour of PC motion 200? Those opposed? Defeated.

Shall section 96, as amended, carry? Carried.

NDP motion 201.

Mr. Tabuns: I move that the bill be amended by adding the following section:

"No defence

"96.1 Nothing done to comply with this act, a source protection plan, or a rule, regulation or instrument under this act may be relied on as a defence in any prosecution for an offence under any other act the purpose of which is to protect the environment."

In the course of the presentation by Lake Ontario Waterkeeper—it was a while ago, a few weeks ago on a Monday here in this room—they were very concerned that this act had the potential to set a standard lower than one set in the Environmental Protection Act or the Ontario Water Resources Act. One of their concerns was that a person or corporation or entity operating within the framework of a risk management plan approved by the government of Ontario, by the source protection committee, may use the fact that they are operating within that plan as a due-diligence defence in court should they be out of compliance with or should they break another act. They were concerned that they had in fact come across such cases in the past where compliance with one environmental law that in a particular situation set a lower standard allowed a winning defence in a case where damage was done to the environment.

So, in order to eliminate that due-diligence defence, particularly given that the standard is a "significant" threat to water rather than "drinking water threat," we are putting forward this amendment. We think it is necessary to ensure that no one will be able to use, at times, that standard set in a source protection plan to protect themselves against action against other acts.

The Chair: Thank you. Further commentary?

Mr. Wilkinson: I distinctly remember the presentation that you referenced. I know I'm not a lawyer, but I believe the comments I made at that time were clear. Common law is very, very clear on this matter. If there is anyone under the misapprehension that they could use this act to justify that they don't have to comply, that is bizarre, just bizarre. I followed the argument and I was surprised by the argument itself. It struck me as bizarre. I then subsequently talked to our legal people.

There's no suspension of common law because we're passing the Clean Water Act. There is no defence that you can have due diligence to say, "Oh, yes, because of the Clean Water Act, because of my interpretation of it, I have the right to go and dump a deleterious substance into a watercourse." We have all of these other laws. They can't just be taking this out of context.

The common law is the common law, and the courts have been very, very clear about this. I was mystified by the concern raised, as to the validity of the concern raised, because it just seemed to be stretching almost to the absurd how one could even connect those dots. I think my testimony at the time was quite clear. The common law applies, unless there's something I'm missing here.

Mr. Tabuns: I think we're going to disagree on this point.

Mr. Wilkinson: I hope you're never a defence lawyer.

The Chair: Those in favour of NDP motion 201?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Government motion 202.

Mr. Wilkinson: I move that subsections 97(1), (2) and (3) of the bill be struck out and the following substituted:

"Offences

"97(1) Every person who contravenes subsection 49(1) or 50(1) is guilty of an offence.

"Same

"(2) Every person who fails to comply with an order made under section 53.1 or 55 is guilty of an offence.

"Same

"(3) Every person who fails to comply with an order made under subsection (9) is guilty of an offence."

This motion is merely to remove the references to permits, for greater clarity, given the package of amendments in regards to permits versus risk management.

The Chair: Thank you. Further commentary? Seeing none, we'll proceed with the vote. Those in favour of government motion 202? Those opposed? Carried.

Government motion 203.

Mr. Wilkinson: Mr. Chair, I move that paragraph 2 of subsection 97(9) of the bill be struck out and the following substituted:

"2. An order requiring the person, within the period or periods specified in the order, to comply with an order under part IV or a risk management plan agreed to or established under part IV."

The Chair: Further commentary? Those in favour of government motion 203? Those opposed? Carried.

Government motion 204.

Mr. Wilkinson: I move that paragraph 2 of subsection 97(11) of the bill be amended by striking out "a permit

official, a permit inspector" and substituting "a risk management official, a risk management inspector".

The Chair: Commentary? Those in favour of government motion 204? Those opposed? Carried.

Shall section 97, as amended, carry? Carried.

NDP motion 205.

Mr. Tabuns: Withdrawn.

The Chair: Thank you. Shall section 98 carry? Carried.

Government motion 206.

Mr. Wilkinson: Mr. Chair, I move that section 99 of the bill be amended by adding the following clauses:

"(j.1) governing the number of members of source protection committees;

"(m) governing the operation of source protection committees."

The Chair: Any further commentary or debate? Seeing none, those in favour of government motion 206? Those opposed? Carried.

Shall section 99, as amended, carry? Carried.

Government motion 207.

Mr. Wilkinson: I move that subclause 100(1)(a)(ii) of the bill be struck out and the following substituted:

"(ii) governing consultation during the preparation of terms of reference, assessment reports and source protection plans,"

This is a motion made for clarification.

The Chair: Thank you. Any further commentary? Those in favour of government motion 207? Those opposed? Carried.

Government motion 208.

Mr. Wilkinson: I move that subsection 100(1) of the bill be amended by adding the following clause:

"(a.1) governing the amendment of terms of reference under section 11.1, including, for the purpose of subsection 11.1(1), prescribing the circumstances in which a source protection committee may propose amendments under that subsection;"

The Chair: Further commentary? Those in favour of government motion 208? Opposed? Carried.

Government motion 209.

Mr. Wilkinson: I move that clause 100(1)(f) of the bill be amended by striking out "preparation" and substituting "preparation and content".

1520

The Chair: Those in favour of government motion 209? Those opposed? Carried.

Government motion 210.

Mr. Wilkinson: I move that clauses 100(1)(i) and (j) of the bill be struck out and the following substituted:

"(i) resolving conflicts between the provisions of significant threat policies and designated Great Lakes policies set out in source protection plans and the provisions of plans and policies mentioned in subsection 35(5), including determining which provisions prevail or how the plans or policies must be modified to resolve the conflict;

"(j) governing and clarifying the application of subsections 35(7), 38.1(1) and 39(1), including determining when a prescribed instrument does not conform with a significant threat policy or designated Great Lakes policy set out in a source protection plan for the purpose of those subsections, and determining the nature of the non-conformity;

"(j.1) dealing with any problems or issues arising as a result of the application of subsections 35(7), 38.1(1) and 39(1);

"(j.2) resolving any non-conformity between provisions of prescribed instruments and provisions of significant threat policies and designated Great Lakes policies set out in source protection plans, including determining how prescribed instruments must be amended to resolve the non-conformity;"

The Chair: Any further commentary? Those in favour of government motion 210? Those opposed? Carried.

Government motion 211.

Mr. Wilkinson: I move that subsection 100(1) of the bill be amended by adding the following clause:

"(k.1) governing the provision of financial assistance under subsection 87.1(2);"

The Chair: Those in favour of government motion 211? Mr. O'Toole, you have a comment?

Mr. O'Toole: Could you clarify that? This is governing the provision of financial assistance?

Mr. Wilkinson: Yes. This motion was made to add regulation-making authority with respect to providing financial assistance under the stewardship program. This amendment is complementary to the motion adding section 87.1 of the bill and allows it to be fully implemented, assuming that we would have all-party support.

The Chair: Any further commentary?

Mr. Leal: Recorded vote.

Ayes

Kular, Leal, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Government motion 212.

Mr. Wilkinson: I move that clause 100(1)(l) of the bill be amended by striking out "by-laws under section 142 of the Municipal Act, 2001" and substituting "by-laws referred to in section 142 of the Municipal Act, 2001 or section 105 of the City of Toronto Act, 2006". That's for clarity.

The Chair: Commentary? Those in favour of government motion 212? Those opposed? Carried.

Government motion 213.

Mr. Wilkinson: I move that clause 100(1)(m) of the bill be amended by striking out "set out in section 142 of the Municipal Act, 2001" and substituting "referred to in section 142 of the Municipal Act, 2001 or section 105 of the City of Toronto Act, 2006". Same reason.

The Chair: Any further commentary? Those in favour of government motion 213? Those opposed? Carried.

Government motion 214.

Mr. Wilkinson: I move that clause 100(1)(n) of the bill be amended by striking out "permit official or permit

inspector" and substituting "risk management official or risk management inspector".

The Chair: Any further commentary? Those in favour of government motion 214? Those opposed? Carried.

Government motion 215?

Mr. Wilkinson: I move that clause 100(1)(q) of the bill be amended by striking out "groundwater recharge area" and substituting "significant groundwater recharge area".

That is to make the bill consistent with previous amendments.

The Chair: Commentary? Those in favour of government motion 215? Those opposed? Carried.

Government motion 216.

Mr. Wilkinson: I move that section 100 of the bill be amended by adding the following subsections:

"Use of work produced by municipality

"(3.1) A regulation under clause (1)(a) governing the contents of assessment reports or source protection plans may govern the use by the source protection committee of anything that is produced by a municipality pursuant to a provision in the terms of reference that requires the municipality to perform tasks set out in the terms of reference.

"Remediation plans

"(3.2) A regulation under clause (1)(f) may require a risk management plan to contain provisions dealing with the remediation of adverse effects caused by the activity to which the plan relates."

The Chair: Any further commentary? Mr. O'Toole.

Mr. O'Toole: Yes. Who would actually own those? If the municipality had done work and had these studies done, would they own the material, the information, and would the government be prepared to reimburse them for time and staff and talent?

Mr. Wilkinson: I could say to my friend that the Association of Municipalities of Ontario, in addition to several individual municipalities that came before us, wanted limitations placed on the source protection committee's ability to change or alter municipal work, municipal portions of the assessment reports and source protection plans.

This motion addresses that concern, and it is to provide regulation-making authority to allow regulations to be made outlining how work prepared by the municipalities pursuant to the terms of reference should be used in the preparation of assessment reports and source protection plans. This motion also provides regulation-making authority to make regulations requiring that risk management plans contain remediation provisions.

I believe what we're talking about is different from the question you are asking, so I'm missing it.

Mr. O'Toole: Well, I honestly think that there is quite a bit of interaction between current authorities—that's conservation authorities—that are municipally funded by and large. And the boards are municipal councillors, technically. As such, they could be doing work that really the municipality is using as part of subdivision plans etc.

The point I'm making is that if the government is going to now dictate that they share those, to say, "We've got this plan in place"—it's a very technical bill. For them to say, "We have this area, this watershed," and there may be three or four municipalities, some of which are further along in doing some of the preliminary work—I guess the province will own all this material.

Mr. Wilkinson: I think in previous amendments people have a requirement to provide to the source planning committee the data required for them to do the work, and that's wise in the sense that we don't want people to spend a lot of money reinventing the wheel if those data already exist. So I would believe the data would be held for the common good by the source planning committee, because it is empowered by this act to do something that we all agree is in the public good, which is the protection of drinking water.

So, to me, the municipalities were well within their rights to address to all of us, particularly to the government, their concerns about liability, and I think their anxiety that perhaps some of the work that they had already done—as you said, Mr. O'Toole, maybe even more advanced—would somehow be ignored and they would be forced to redo this work.

So this does make sure that municipalities that have done the work—I think of the county of Oxford and the region of Waterloo—and if that material is out there, that is something that can be used to inform of the work that is done by the municipalities as they work collegially with their neighbours to create the source planning committee.

Mr. O'Toole: Is there any estimate at all anywhere that could be tabled in this committee of what these assessment plans for this huge province of Ontario are going to be, to do all this necessary due diligence across the province, from Manitoba to Quebec—

Mr. Wilkinson: I had the advantage of going out and spending five days on committee as the parliamentary assistant, and I can tell you that probably the best number that we were able to see, from practical experience, was the county of Oxford. They believe that their implementation cost was about $1.65 per household per month over a 10-year period. We asked them, and people questioned them quite extensively—I think we were in Walkerton—about how realistic they thought that number was. We asked similar questions to the region of Waterloo, also in a very complicated watershed. They thought their costs were in the neighbourhood of 75 cents per household per month.

Again, we can't jump ahead of the science. The province has uploaded the entire cost of doing the scientific work with money provided by both the Ministry of the Environment and the Ministry of Natural Resources. That work is going on, and, to get a real handle on what the cost and any potential hardship would be, we have to wait for that work to be done. But that doesn't mean that we do not need to, right now, move forward with this bill to create the framework so that that work actually comes to life in a system wherein people who share the same

sources of drinking water come together to protect them and keep them safe.

Mr. O'Toole: So is this coming in as part of the budget, like a new tax, sort of like the health tax?

Mr. Wilkinson: As I mentioned to you before, I've only been here three years; I don't answer speculative questions from my good friends in the opposition when it comes to issues, particularly around money. Oh, yes, I can just think of the call from the Minister of Finance I would receive on that. So thanks for asking the question, but I think the well is dry over here to try to get an answer on that one.

1530

The Chair: Those in favour of government motion 216? All opposed? Carried.

Government motion 216.1.

Mr. Wilkinson: I move that section 100 of the bill be amended by adding the following subsection:

"Drinking-water systems that serve reserves

"(3.3) A regulation may not be made under clause (1)(s) that prescribes, for the purpose of subclause 13(2)(e)(iv), a drinking-water system that serves or is planned to serve a reserve as defined in the Indian Act (Canada), unless the minister has received a resolution of the council of the band, as defined in that act, requesting that the minister recommend to the Lieutenant Governor in Council the making of the regulation."

In explanation, this motion is made to limit the regulation-making authority of the Lieutenant Governor in Council to make a regulation adding a First Nation drinking water system to the source protection planning process. A regulation adding a First Nation system cannot be made unless the minister has received a resolution of the council of the First Nation requesting that the regulation be made. We are very happy to be able to move this government motion to provide greater clarity.

The Chair: Any further comments on 216.1?

Mr. O'Toole: Just a clarification there for me, anyway: I guess if there's anything done on a reserve that's in the overall plan for a risk management plan that falls within a reserve area, the band has to pass a resolution or a band motion with respect to that. Is that it?

Mr. Wilkinson: Just give me one second so we're clear. Just so we're absolutely clear on this, I would ask perhaps Cynthia or Jamie to come forward. Now, this is Jamie Flagal. He is with the legal branch of the Ministry of the Environment.

Mr. O'Toole: That's excellent. When you do a Google search, you'll be in there.

Interjection: Spelled correctly.

Mr. Wilkinson: I'm with you, Jamie.

Mr. Flagal: There was a motion that has already been made and accepted by committee where in the assessment report it says the type of drinking water system that the assessment report has to consider—municipal residential systems, other systems the minister includes—plus, for systems that serve reserves, the LGIC could include them by regulation. What this does is put a constraint. It says the LGIC cannot make a regulation unless the minister has received a resolution from the band council saying, "We want the system that serves our reserve to be included in the source protection planning process."

The issue that the member raised about the way that risk management plans may apply to First Nation reserves is just again a constitutional issue. It's like any piece of environmental protection legislation in the province. Yes, provincial laws of general application apply in reserves, but there are exceptions. When it comes closer to land use and that sort of thing, it's definitely federal legislation which applies, but those are the things that the courts grapple with all the time with respect to the enforcement of provincial environmental protection legislation. In other words, it's an evolving issue.

That's not what this is meant to address. This is meant to address when you can consider or when the source protection planning can consider First Nation drinking water systems. Okay?

Mr. Wilkinson: Great. Thank you.

Mr. O'Toole: No, I'm not finished there. Let's say the reserve is within a source protection area. I may not have listened carefully; I was looking through. Do you follow me? Now, in the area, most of it's a municipal area, but there's one small portion that falls within a reserve. That reserve may have a recharge area in it which does affect off-reserve properties. Do you follow me? If they have not written that they want to be inside the plan, does that matter?

Mr. Flagal: That's not what this provision is about. We need to go back again. This provision is about when a First Nation system can be considered as part of the source protection planning process.

One thing you have to remember is, how does a system get considered? When you look at the assessment provision, if it's a well, a wellhead area is going to be drawn around that well. Right? They talk about this thing as like a 25-year travel time. So the key thing is that if the First Nation sends a resolution to the minister and says, "We want our system to be protected by the source protection plan. We want a wellhead area delineated for the well that serves our First Nation reserve," then what would happen is, the LGIC could entertain making a regulation and then there would be an obligation, obviously, on the source protection plan to begin (1) delineating the wellhead area for the well, and then (2) following through the process, looking for the threats to that particular well and that sort of thing.

That's why in your question it's a different issue. It's more of a constitutional issue that is just characteristic of any provincial law. You could say the same thing about, how does the Ontario Environmental Protection Act apply on a reserve? Well, that's a complicated answer. This provision is just meant to deal with First Nation drinking water systems, when they can be included as part of the source protection plan.

Mr. O'Toole: Actually, most reserves, I can tell you, today are not covered by municipal regulations. I have in my riding all sorts of reserves that have built septic systems, and there are no permits, nothing. In fact, they

built the casino without a single building permit, well inspection. So I'm not sure exactly what you're saying. They come under federal regulations under the Indian Act. They don't comply with the municipal building code at all. Jeff Leal would know, because he has reserves in his riding as well. They could build 50 houses and never get one building permit, pay one cent of development charges or have one well or septic system inspected.

Mr. Wilkinson: Thanks for sharing that with us.

Mr. O'Toole: It's true.

Mr. Wilkinson: But I think what we're dealing with here—I could be wrong. I believe we're dealing with government motion 216.1, and probably the salient issue is, are we all in favour of this or are we opposed to it? That would be the question that I think should be posed, Mr. Chair.

Mr. O'Toole: I have to admit in public I don't understand it because, quite honestly, if there's a reserve in the middle of a watershed and it has a problem and they don't have to comply in any way—they can't come on the land for some governance reason to do any kind of assessments. I mean, you're a lawyer—

Mr. Flagal: That's not what this motion does.

Mr. O'Toole: I know that. You've told me that.

Mr. Wilkinson: It has nothing to do with that, and I think we're at 216.1.

Mr. O'Toole: Go ahead. Call the question on it. I don't have a problem with it.

The Chair: Are there any further comments? Those in favour of government motion 216.1?

Mr. O'Toole: Recorded vote.

Ayes

Kular, Leal, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Shall section 100, as amended, carry? Carried.

Shall section 101 carry? Carried.

PC motion 217.

Ms. Scott: I move that the bill be amended by adding the following section:

"Publication of proposed regulations

"101.1(1) Before a regulation is made or amended under this act, the ministry shall,

"(a) post the proposed regulation or proposed amendment to a regulation on a website for at least 150 days before proposed regulation or amendment is made;

"(b) directly contact all persons who have an interest in the proposed regulation or proposed amendment to a regulation before posting the proposed regulation or amendment on the website in accordance with clause (a); and

"(c) publish notice of the proposed regulation or proposed amendment to a regulation in a newspaper that has circulation throughout the province and in a newspaper that is circulated in the area that is most directly affected by the proposed regulation or amendment.

"Public hearings

"(2) At the request of any political party that is represented in the Legislature, a committee of the Legislature shall hold public hearings on any proposed regulation or any proposed amendment to a regulation made under this act and the hearings shall be for at least three days and, as determined by the committee, shall be held in appropriate locations across the province."

This was brought in to ensure that the very important regulations that will be following this bill are allowed adequate public scrutiny. That's why we mention the 150 days preceded by direct notification to appropriate stakeholder groups, preceded by notification published in the provincial press and appropriate regional papers as well as on the Internet, and this is called before public hearings at the request of one of the political parties.

1540

The Chair: Any commentary? Those in favour of PC motion 217? Those opposed? Defeated.

Shall section 102 carry? Carried.

NDP motion 218.

Mr. Tabuns: Redundant. Withdrawn.

The Chair: Government motion 219.

Mr. Wilkinson: I move that subsection 7(8.1) of the Building Code Act, 1992, as set out in subsection 103(7) of the bill, be amended by striking out "section 398 of the Municipal Act, 2001 applies, with" at the beginning and substituting "section 398 of the Municipal Act, 2001 or section 264 of the City of Toronto Act, 2006, as the case may be, applies, with".

That is to be in compliance.

The Chair: Any further commentary? Those in favour of motion 219? Those opposed? Carried.

Government motion 220.

Mr. Wilkinson: I move that subsection 103(9) of the bill, amending subsection 16(1) of the Building Code Act, 1992, be struck out and the following substituted:

"(9) Subsection 16(1) of the act is amended by striking out the portion before clause (a) and substituting the following:

"Entry to dwellings

"16(1) Despite sections 8, 12, 15, 15.2, 15.4, 15.9 and 15.10.1, an inspector or officer shall not enter or remain in any room or place actually being used as a dwelling unless,"

The Chair: Those in favour of government motion 220? Those opposed? Carried.

Shall section 103, as amended, carry? Carried.

Shall section 104 carry? Carried.

NDP motion 221.

Mr. Tabuns: I move that section 105 of the bill be struck out and the following substituted:

"Consolidated Hearings Act

"105. The schedule to the Consolidated Hearings Act is amended by adding the following:

"Drinking Water Act, 2006".

This is a sort of truth-in-advertising amendment. We have before us what's called the Clean Water Act. I know there was a lot of confusion on the part of the public when they came and made deputations: Is this municipal water? Is it all kinds of water? Well, we know that it's

drinking water. It's not the rest of the water supply. It's a fairly narrowly focused bill. To have it continue under the present name may well confuse some of those in the public who don't read the text of the bill. So I think it makes sense for us to proceed with an amendment to the title to reflect what we've really got on our hands.

Mr. Wilkinson: I say to my friend, the government has no intention of changing the name of the bill at this stage.

The Chair: Those in favour of NDP motion 221?

Mr. Tabuns: Recorded.

Mr. O'Toole: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 105 carry? Carried.

Government motion 222.

Mr. Wilkinson: I move that the English version of subparagraph 3.1 ii of subsection 34(1) of the Planning Act, as set out in section 106 of the bill, be amended by striking out "a sensitive ground water feature or a sensitive surface water feature" and substituting "a sensitive groundwater feature or a sensitive surface water feature".

It is a terminology change for clarity. One word was changed: "groundwater." I had to look at it twice myself.

The Chair: Thank you, Mr. Wilkinson. Those in favour of government motion 222? Those opposed? None. Carried.

NDP motion 223.

Mr. Tabuns: Section 106: I move that subparagraph 3.1 iii of subsection 34(1) of the Planning Act, as set out in section 106 of the bill, be amended by striking out "Clean Water Act, 2005" and substituting "Drinking Water Act, 2006".

All of you who were in the room when I spoke to my earlier amendments have heard the arguments. They still stand. I gather, so does the government's opposition. Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 106, as amended, carry? Carried.

Shall section 107 carry? Carried.

Government item 224 is a notice, which we duly note.

Shall section 108 carry?

Interjection: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 109 carry? Carried.

NDP motion 225.

Mr. Tabuns: It's redundant at this point. We've had two votes on it. I think the record is clear.

The Chair: Formal withdrawal?

Mr. Tabuns: Yes.

The Chair: PC motion 226.

Ms. Scott: I'll try this one. I move that section 110 of the bill be struck out and the following substituted:

"Short title

"110. The short title of this act is the Municipal Source Water Act, 2005."

It has been brought forward by many presenters that the Clean Water Act, as it stands, is a misrepresentation of what the bill really does. A recorded vote, please.

Ayes

O'Toole, Scott, Tabuns.

Nays

Kular, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 110 carry? Carried.

Shall the title carry? Carried.

Shall Bill 43, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Yes.

I would like to thank all members of the committee and staff for their endurance and patience. This, I am told, is the bill that contained the most amendments in this, the first McGuinty mandate, and possibly in the history of parliamentary democracy.

Mr. O'Toole?

Mr. O'Toole: Thank you, Chair. I do appreciate the indulgence of the government as well as the staff who have been a valuable resource to the government, and also note that this is a bill that has been drafted through amendments. There are more amendments than there is content; a 35-page bill with 226 amendments. I'm amazed how they can draft this so quickly, on the fly, on such an important thing. I'm disappointed. But we all want safe, clean drinking water, certainly Ms. Scott and John Tory have assured me.

The Chair: Mr. Tabuns?

Mr. Tabuns: I want to thank you for efficient chairing, Mr. Chair, and the staff for giving us solid support.

The Chair: Thank you, sir.

This committee stands adjourned.

The committee adjourned at 1547.

CONTENTS

Tuesday 12 September 2006

Clean Water Act, 2006, Bill 43, *Ms. Broten* / **Loi de 2006 sur l'eau saine,**
projet de loi 43, *M^me^ Broten* SP-1195

STANDING COMMITTEE ON SOCIAL POLICY

Chair / Président
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)

Vice-Chair / Vice-Président
Mr. Khalil Ramal (London–Fanshawe L)

Mr. Ted Chudleigh (Halton PC)
Mr. Peter Fonseca (Mississauga East / Mississauga-Est L)
Mr. Kuldip Kular (Bramalea–Gore–Malton–Springdale L)
Mr. Jeff Leal (Peterborough L)
Mr. Rosario Marchese (Trinity–Spadina ND)
Mr. John O'Toole (Durham PC)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
Mr. Khalil Ramal (London–Fanshawe L)
Ms. Kathleen O. Wynne (Don Valley West / Don Valley-Ouest L)

Substitutions / Membres remplaçants
Ms. Laurie Scott (Haliburton–Victoria–Brock PC)
Mr. Peter Tabuns (Toronto–Danforth ND)
Mr. John Wilkinson (Perth–Middlesex L)

Also taking part / Autres participants et participantes
Ms. Cynthia Brandon, counsel, legal services branch,
Ministry of the Environment
Mr. James Flagal, counsel, legal services branch,
Ministry of the Environment
Mr. Ian Smith, director, drinking water program management branch,
Ministry of the Environment

Clerk / Greffier
Mr. Trevor Day

Staff / Personnel
Mr. Doug Beecroft, legislative counsel