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ISSN 1180-5218

Legislative Assembly
of Ontario

Second Session, 37th Parliament

Assemblée législative
de l'Ontario

Deuxième session, 37e législature

Official Report of Debates (Hansard)

Monday 19 November 2001

Journal des débats (Hansard)

Lundi 19 novembre 2001

Standing committee on general government

Municipal Act, 2001

Waste Diversion Act, 2001

Comité permanent des affaires gouvernementales

Loi de 2001 sur les municipalités

Loi de 2001 sur le réacheminement des déchets

Chair: Steve Gilchrist
Clerk: Anne Stokes

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Published by the Legislative Assembly of Ontario

Service du Journal des débats et d'interprétation
3330 Édifice Whitney ; 99, rue Wellesley ouest
Toronto ON M7A 1A2
Téléphone, 416-325-7400 ; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

Monday 19 November 2001

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Lundi 19 novembre 2001

The committee met at 0958 in the Sheraton Hamilton Hotel, Hamilton.

SUBCOMMITTEE REPORT

The Chair (Mr Steve Gilchrist): Good morning. I'll call the committee to order for consideration of Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities. The first item on our agenda is the report of the subcommittee on committee business. Mr Levac, I wonder if you'd be kind enough to move adoption of the report.

Mr Dave Levac (Brant): Certainly, Mr Chair.

The standing committee on general government report of the subcommittee on committee business:

Your subcommittee met on Thursday, November 8, 2001, to consider the method of proceeding on Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities, and recommends the following:

(1) That the clerk place an advertisement on the Ontario Parliamentary Channel and on the Internet. Additionally, notice will be provided to provincial newspapers by press release.

(2) That the Ministry of Municipal Affairs and Housing be requested to provide notice of the committee's public hearings by press release.

(3) That groups be offered 20 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations.

(4) That the Chair, in consultation with the clerk, make all decisions with respect to scheduling.

(5) That each party provide the clerk of the committee with their prioritized list of potential witnesses, together with complete contact information, to be invited to appear at the committee's hearings in Windsor by no later than 12 noon on Friday, November 9, 2001.

(6) That each party provide the clerk of the committee with their prioritized list of potential witnesses, together with complete contact information, to be invited to appear at the committee's hearings in Hamilton, Toronto and Ottawa by no later than 12 noon on Friday, November 16, 2001.

(7) That the subcommittee determine whether reasonable requests by witnesses to have their travel expenses paid will be granted.

(8) That there be no opening statements.

(9) That the research officer prepare a summary of recommendations.

(10) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of the bill.

So entered, Mr Chairman.

The Chair: Thank you, Mr Levac. Any comments? Seeing none, all those in favour of the adoption of the subcommittee report? Carried.

MUNICIPAL ACT, 2001
LOI DE 2001 SUR LES MUNICIPALITÉS

Consideration of Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities / Projet de loi 111, Loi révisant la Loi sur les municipalités et modifiant ou abrogeant d'autres lois en ce qui concerne les municipalités.

ONTARIO MUNICIPAL ADMINISTRATORS' ASSOCIATION

The Chair: Our first presentation this morning is from the Ontario Municipal Administrators' Association. Good morning and welcome to the committee. We have 20 minutes for your presentation. If you choose, you can leave some of that time for a question-and-answer period.

Mr Roy Main: Good morning, Mr Chairman and members. My name is Roy Main. I am here on behalf of the Ontario Municipal Administrators' Association. As president of that organization, I bring you representations from our membership.

Just to give you a little background of what the OMAA is all about, we represent our members, the chief administrative officers from municipalities throughout Ontario. At present we have over 150 members. We represent the very largest cities and communities in our province, many of the very small ones as well, and everything in between. Our role as an organization is to work toward continuous improvement of municipal government. It's a pleasure to be afforded this opportunity to make some of our representations to you.

The tack, the approach that I and my association have opted to take is to leave some of the specifics to organizations such as AMO, AMCTO, which is the clerks and treasurers association, and the municipal finance officers group. My comments this morning will be of a much

broader, general nature, to look at the general administrative issues that are contained in the act.

We, as an association, share the opinion—and I think what you will hear from the other municipal associations that attend before you—and believe that this act is an excellent first step toward revising the legislation, granting municipalities powers and authority. As well, the government embarked upon one of the most massive changes of services and realignment of responsibilities shortly after their first election through the infamous Who Does What program. Forgive me for my slight editorial comment about "infamous," but it certainly did change the world in which municipalities operate.

At that time, and this takes us back to the mid-1990s, we were promised, as municipalities, legislative changes to accompany that realignment. It was often referred to as providing municipalities with a toolbox full of tools to carry on in the new world. We perceive the new Municipal Act as one of the most important tools that will fit into that box.

Municipal administrators across Ontario are particularly pleased that the legislation recognizes and acknowledges municipalities as "responsible and accountable governments." It's the first time I think we've seen that embodied in a piece of legislation. Equally, the OMAA is pleased that there is a commitment to consultation between the province and the municipal sector. Without consultation and joint understanding, it is difficult for a municipality to carry out the policies and programs the province wishes it to do.

With that brief prelude, I would like to get into a few specifics, some constructive criticisms and eight recommendations we would like this committee to consider.

The first issue is the granting of powers of a "natural person" to municipalities. As we know, many other provinces in Canada, perhaps most notably British Columbia, have made this provision, and we believe it is long overdue. We do have a concern, however, and that concern is that there's an apparent unlimited ability of the province to restrict those powers through legislation and/or regulation. The opening comment I would like to make to you is that we trust this type of restriction will not be exercised lightly by the province. In simple terms, either you are a person of natural powers or you're not.

On the topic of regulation, we note the municipal sector is being required to express an opinion on this bill with incomplete knowledge as to the regulations themselves. Obviously this is like buying a car without knowing what the interior is. We are concerned that those regulations come after the act or come too late before the implementation date of January 1, 2003.

Our first recommendation is that we encourage the government to move as quickly as possible to publish draft regulations in order that the municipal sector might provide comment well in advance of the January 1, 2003, implementation date.

In terms of the transition from the existing Municipal Act and related legislation, we also are concerned that the transition process be effectively managed.

Our second recommendation is that the government embark on a comprehensive program to achieve awareness, understanding, education and training with respect to the provisions and changes that will be required to be effected by municipalities in order to comply with this new act. The effects will be different for different municipalities and this process must—emphasizing "must"—be completed prior to July 1, 2002, in order that municipalities can undertake the steps they need individually to be prepared for the January 1 implementation date. The OMAA is willing to be an active participant in this process on behalf of its members and in concert with the province and other municipal associations.

As mentioned earlier, the OMAA believes this bill is an excellent first step, and as such would like to see steps taken to ensure the process of maturation in municipal legislation in Ontario continues. The new Municipal Act is but one of the many tools needed by municipalities, and all applicable acts must be kept current and appropriate.

Our third recommendation is that appropriate sunset provisions and/or processes for automatic review be incorporated in this act and the associated regulations in order to prevent a recurrence of municipal legislation not keeping current with changing provincial mandates, new business practices and the demands of a modern and dynamic society.

The broad scope of the sections up to and including section 23 are appreciated as they provide for creativity and flexibility in the administration of council-approved policy. However, the sections that follow tend to parallel to a very high degree the existing legislation, which is in many instances overly prescriptive.

Our fourth recommendation is that the province, in consultation with the municipal sector, undertake to begin no later than January 1, 2004, one year after the act becomes valid, a process of review of the act to determine if the detailed sections on items such as financial administration, as an example, could be recast in order to provide greater flexibility while still maintaining transparency and accountability. So what we are saying there is that one year after the implementation date we start to look at this act.

There are in fact specific examples of additions to highly restrictive or prescriptive procedures that have been added to this bill. A couple cause us concern. The first is section 275, which extends the period of a lame duck council and expands the actions that shall not be done after nomination day under the lame duck provisions, particularly to hire or dismiss any employee of the municipality. It is unclear to our association whether this section limits the ability of the council to delegate this responsibility to administration. If this is not the case, the filling of vacancies during this period, the dismissal for cause of any employee, and/or the hiring to replace those who retire or leave of their own volition would be unreasonably restricted.

Our recommendation to the amendment is that section 275 be amended to remove clause 275(1)(b).

1010

Also new are sections that require establishment of a procurement policy and adoption of a policy on the hiring of relatives of councillors, local board members or existing employees. Similarly, in section 271, detailed prescriptive requirements for a policy with respect to the procurement of goods and services and associated regulations are required by this bill. Through an informal canvass of our membership, virtually all the municipalities we represent, including all larger municipalities, certainly have policies that deal with these very things. We find it inconsistent that this type of policy should be incorporated in the new act. It seems to indicate a lack of confidence in municipal administrative policies and processes. This seems inconsistent to us, given the stated purpose of the act: to recognize municipalities "to be responsible and accountable governments."

Our recommendation is that sections 270 and 271 be deleted from the act in the absence of any data that would indicate municipalities do not currently act in an appropriate fashion in two key policy issues.

We also note that various sections have been incorporated and reordered with respect to accountability and reporting by municipalities. Our association actively supports openness, transparency, public reporting and accountability, and our association has been an active participant in the municipal performance measurement program and the municipal benchmarking initiative. These are two key issues. These represent those key and fundamental issues of openness and accountability. The OMA is concerned, however, that municipalities and our members will find themselves faced with a plethora of redundant reporting requirements and has expressed this concern most recently in a meeting with most deputy ministers implicated with municipal legislation.

In particular, our concern is one of duplication between the new Municipal Act and its requirements and potential regulations and Bill 46. It is recognized we're not here to talk about Bill 46, but if you are familiar with that piece of legislation, a great deal of what is included in Bill 46 is contained within the new Municipal Act. It seems redundant; it seems unnecessary duplication; it seems to add a layer of red tape.

Our recommendation is that Bill 46 be amended so as not to duplicate or provide for the opportunity of duplication of municipal accountability and reporting requirements that would only serve to add duplication and red tape to municipal administration.

Again, it is recognized that you are not here to deal with Bill 46, but rather Bill 111. We are comfortable with what's in Bill 111. We suggest to you that a statement be made that Bill 46 is redundant as it applies to the municipal sector.

We applaud the requirement in this bill for ongoing consultation between the province and municipalities in relation to matters of mutual interest. There is to be a memorandum of understanding considered between the province and representatives of the municipal sector. While the OMAA respects the ability of AMO to represent municipal issues, we would encourage both parties, the province and AMO, to accept consultation with municipal professional organizations such as ours. We feel there are others as well: AMCTO, the MFOA, the OGRA and the MEA. They're all vital municipal organizations in this province.

We therefore strongly encourage both parties to incorporate regular contact with professional organizations in this process of ongoing consultation. To make this act the best it can possibly be, speak to the people who are going to be implementing and using it.

We are somewhat sure that there very well may be buried in this very large bill—and we have to go through it much more closely. It is difficult without cross-referencing to existing legislation, but there are likely sections that will require amendment prior to January 1, 2003.

We assume that another act which will deal with the consequential amendments to other legislation will provide an opportunity to correct some of the technical shortcomings that will be discovered in this bill. As an example, I refer you to subsection 472(2), which appears to appoint a person who is currently a tax collector to be the deputy treasurer as of January 1. This requirement may have significant compensation or managerial impacts for a municipality, with no apparent benefit. We wish to catch items such as that one where we are unsure as to the intent. Where there may be flaws, not of a significant nature but of a minor nature, throughout this act, we would appreciate the opportunity of correcting them prior to January 1, 2003, at least to put the act in accord with what the intentions and the directions are.

Our recommendation is that the government actively provide an opportunity to all municipal associations through the consequential amendments to this act required in 2002 for corrections and opportunities for improvements to this bill. This is a significant opportunity for this government, and certainly for municipalities, to create a new Municipal Act that is appropriate and applicable. Can it be perfect the first time out? Perhaps not. Can we make it as perfect as possible? I think that should be our joint ambition. Our association is prepared to work with the province to see that that becomes reality.

In summary, while this act does not take municipal government in Ontario as far as the existing and proposed legislative amendments in some other provinces, it is, as I have stated, a very good first step. As general managers for municipalities, we believe that there is a need for ongoing examination and a review and renewal of our administrative structures and processes. We live in a dynamic world. We, as municipalities, must stay dynamic. We encourage the province to do the same, with its municipal legislation in particular, in order that the people of Ontario can be progressively and proactively served by the municipal order. OMAA would be pleased to provide input to any and all of the ongoing review process on any of what I have spoken to this morning.

Mr Chairman, I thank you for this opportunity and would welcome any questions.

The Chair: Thank you very much. Unfortunately, that leaves us with just under a minute. You've timed your presentation very well. Thank you for kicking off our hearings here this morning. We appreciate your comments.

CITY OF LONDON

The Chair: Our next presentation will be from the city of London. Good morning, and welcome to the committee.

Mr Gordon Hume: Thank you, Mr Chairman. Good morning, members of the committee. My name is Gord Hume. I'm a member of the board of control of the city of London. I've been asked by our mayor and city council to present to you this morning.

I'm joined by Grant Hopcroft, who is our deputy city solicitor, and perhaps of equal importance, if not more, he is a former city councillor and comptroller for the city of London who has extensive municipal experience and has been very active with both AMO and FCM over the years. He is the primary author of our brief.

I know committee members have a copy of our brief. I would like to highlight a few of the items, if I could, because we think that Bill 111, the Municipal Act is tremendously important.

It is an important step because we are recognizing municipalities as responsible and accountable governments. As you know, municipalities generally in Ontario have pressed the province for a number of years for a new Municipal Act. We accept that the intent of this new legislation is to grant municipalities broader authority and more flexibility in providing services to our citizens.

1020

While Bill 111 does not contain everything that London and, I suspect, the municipal sector wanted, it represents a significant improvement to the current act and overcomes many of the shortcomings of the 1998 draft. We will focus today on several issues and have some suggestions for the committee to consider that we believe would improve and strengthen the act. Perhaps we will start with the spheres and natural person powers. We are pleased with the extension of natural person powers to municipalities in a number of spheres of jurisdiction, and hope that this is but a first step in recognizing the needs of municipal governments for access to modern tools to meet our constituency needs. We also welcome the bill's endorsement of the principle of ongoing consultation between the province and municipalities. We think this is tremendously important. I hope that will be enshrined in the act.

Dealing with limitations on municipal authority, we suggest with respect that the same voters who elect members of our provincial Parliament are also the same voters who elect members of our municipal councils. We believe that the councils are accountable, open, responsible and fair. The ultimate accountability of course is the ballot box, as you will recognize. We are a little troubled by some of the limitations that Part II of the bill includes. While the 10 new spheres of jurisdiction will grant municipalities greater authority to act and regulate in a number of areas—and we welcome that—the limitations in many situations, at least in the short term, will create as much uncertainty and difficulty for us about the extent of municipal authority as the current legislation does. For example, why is the broad interpretation provision in subsection 9(2) limited only to sections 8 and 11, rather than the entire bill? Greater clarification of these limitations and their intent would assist the municipal sector as the new act is implemented.

The third area deals with economic development, something that I think is important to all of us in the municipal sector and I know to the government as well. In fact, it is critically important, and we want to spend a moment dealing with this. The new economic development services sphere is very narrowly defined in the bill to mean promotion through dissemination of information and the acquisition, development and disposal of land for industrial, commercial and institutional purposes. We suggest this definition unduly limits the scope of local economic development activities, and it should be amended to grant greater flexibility to the municipal sector. Our suggestion, for example, would mean if you change the words "mean promotion" to "include promotion," that would allow greater flexibility for municipalities. We think that's tremendously important.

The fourth area is bylaw enforcement. We are supportive of what the bill and the committee is proposing on that.

On the area of licensing, however, we do have a couple of issues. Except as otherwise provided in the act, licensing powers may only be exercised for three purposes, including consumer protection. "Consumer," however, has not been defined in the bill. We suggest a broader definition of consumer or the addition of "protection of the public" to the list of purposes would clarify the scope of this part of the bill. Secondly, public meetings will be required prior to passage of licensing bylaws. We are concerned there's an apparent conflict between the procedural expectations of a public consultation meeting during development of the bylaw, and the conduct of a licensing hearing that is subject to the provisions of the Statutory Powers Procedure Act.

The sixth area we would like to comment on deals with the corporations. Mr Hopcroft is on the working committee that is involved with this, so if the committee would like any further thoughts, we have an acknowledged expert in this area as well. My comments would be that new powers include municipal authority to incorporate corporations for limited purposes and subject to conditions that will be defined by regulation. This is a welcome change, but we remain concerned that its full potential may never be realized if the regulations are too restrictive. We would encourage the government to continue consulting the municipal sector during the development, implementation and evolution of these regulations and the regulations contemplated elsewhere in the bill to ensure their ongoing feasibility and relevance.

Dealing with the open meetings question, the bill contains, as the committee is aware, a variety of new provisions with respect to open meetings, and now includes disposition as well as procurement of lands among those matters that can be discussed by council in camera. The latter change is most welcome. However, the bill does not resolve discrepancies between a municipality's obligations to protect privacy regarding commercial information under the Municipal Freedom of Information and Protection of Privacy Act and the requirement in the bill for discussion in public session of these same matters when they are brought before council. We would urge the committee to harmonize these provisions so that we can realize the potential for innovation in public-private partnerships.

The eighth deals with procurement policy. Frankly, we believe in the need for all governments to create policies regarding employment and procurement in the interests of fairness, accountability and delivery of the best value for our citizens. London has extensive policies and regulations that deal with this; I think most municipalities do. I think Roy Main referred to that in his comments, and we would certainly agree with that. We question specifically the need for and usefulness of the regulation-making powers in subsection 271(2). We do not accept that one set of rules can or will fit the needs of every municipality in every procurement decision that is made. These provisions are an unnecessary intrusion into municipal procurement practices.

The ninth area is the lame duck provisions, and this is troubling to us. The lame duck provisions of the existing act are going to be expanded so that municipal councils will be prohibited from dealing with an expanded list of matters between nomination day and the end of their term of office—that's roughly a two-month period—unless it can be determined that 75% of the members of the existing council will be returning to office on the new council. While council will have greater powers to delegate certain of these responsibilities, we believe the provision is overly restrictive.

One example of difficulty that would be caused by this would relate to the sale of industrial land and our city's capacity to respond in a timely way to investors who approach municipalities from time to time wanting to buy land and invest in our communities. The result is, if all Ontario municipalities are under the same restrictions for a couple of months, it's going to make it very difficult for new investors, outside investors from the US or Europe or wherever, to get answers or to do business in the province of Ontario. We're very concerned that there's potential for a loss of investment in this province because of this provision.

We suggest the section should be amended to shorten the lame duck period and to permit councils to exercise their normal powers unless it can be demonstrated that a majority of council will not be returning after their term of office expires.

Bill 46, the Public Sector Accountability Act, 2001: The financial administration part of the bill implements new standards and procedures of accountability for the municipal sector. These are very similar to the provisions of the Public Sector Accountability Act, 2001, insofar as municipal governments are concerned. We recommend that Bill 46 be withdrawn or amended to remove its application to the municipal sector.

Eleven deals with municipal liability and, quite candidly, the bill contains no new relief for municipalities in the area of municipal liability. We have expressed a need for continued and extended protection from liability claims and we continue to urge the committee and the government to reform the laws pertaining to municipal liability arising out of joint and several liability judgments.

Dealing with the fees for occupation of highways, we are rather unhappy with the proposed new provision in subsection 477(8) that removes municipal authority to charge a fee to third parties to occupy a highway. We believe it is a setback for municipalities in Ontario. Occupation of our road allowances by others will cost the citizens of London millions of dollars. When our roads, sewers and watermains are reconstructed or repaired, we incur additional costs working around the pipes, wires and ductwork of a growing number of third parties. We also incur liability if such services are damaged or cut off during construction.

We believe municipalities should have the power to recover such costs and this subsection of the bill should be deleted. As the committee will be aware, FCM has appealed a recent CRTC decision that refers to this matter as well. It's a matter of real, serious concern, I think, to municipalities.

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Finally on a specific matter, I would ask the committee's consideration of the impact of the London-Middlesex Act, 1992. Section 483 of the bill repeals many of the remaining sections of that act, but a noteworthy exception is the formula in section 48 of that act that requires the city of London to make payments on account of suburban roads to the county of Middlesex. Our payments this year will exceed $1.1 million.

To the extent that these payments may be altered or eliminated in the future, we believe use of regulation rather than statute would give the minister, the city and the county more flexibility to deal with circumstances as they change and evolve in the years ahead. We strongly recommend that section 48 of the London Municipal Act, 1992, be repealed and replaced by regulation.

In conclusion, municipalities in Ontario have waited 150 years for modernization of our enabling legislation. While the new act addresses many concerns recognizing and regarding modernization of the legislative framework, explicit provisions for review of the act at timely intervals would ensure that municipal powers evolve to deal with new developments and challenges that are facing all of us in the years ahead. We suggest perhaps a five- to 10-year review each time.

Overall, we appreciate the work of the committee and the government in this regard. We are broadly supportive

of the act, but we do have the specific suggestions that I've presented to you this morning.

The Chair: Thank you very much. That affords us two minutes per caucus for a quick question from each caucus, beginning with the official opposition, Mr McMeekin.

Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Thank you, Gordon and Grant, for your presentation this morning. As we anticipated, it was very thorough and quite helpful.

Mr Hume, you mentioned in your segue to some of your specific comments that Bill 111 doesn't respond to all of the concerns that you would have liked to have seen addressed. Could you elaborate for us what specific concerns you would have liked to have seen the act address that were not addressed?

Mr Hume: I'll start perhaps with a general comment, if I could, and then I'll ask Mr Hopcroft for some specifics.

We believe very strongly that municipalities in Ontario are open, they are publicly elected, the power is in the hands of the people to make the changes at the ballot box and that municipalities are, frankly, evolving and changing and assuming a greater role in our society and in our Canadian government in the broad federal sense. We think there are going to be important new challenges ahead for municipalities, everything from economic development to how we handle environmental issues and so on.

We think local government should be recognized as a responsible role, a role that gives local governments authority and power that's appropriate to their issues and responsibilities, and while we have great respect for the province and the federal government, I have a personal belief, frankly, that municipalities should receive constitutional recognition in this country. That's a personal belief, I would add, not necessarily from London.

Perhaps I could ask Mr Hopcroft to summarize any additional points he would like as well.

Mr Grant Hopcroft: If I could summarize in general terms, I guess more spheres, be those narrowly defined or otherwise, fewer limitations and, I think, greater adherence to the flexibility of municipal governments to do what's right for their constituents.

Mr Michael Prue (Beaches-East York): I have two questions. Hopefully I can get them both in in two minutes. The first deals with the lame duck provisions. You have put in your memorandum here that you want to shorten the lame duck period, and generally I have no problem with what you're suggesting. Would you accept a period between election day and the swearing in of the new council? I do see some difficulty in allowing votes and trying to calculate 50% or 75%.

Mr Hume: That's broader than what we have down. That would be much more acceptable to us, yes.

Mr Prue: The second question relates to the fees for occupation of highways, subsection 477(8). I want to commend you, because in my reading of this, that went right over my head. You are saying that this section should be deleted because of the "growing number of third parties." Can you tell me in terms of London at least what kind of revenues are being generated from fees from these third parties?

Mr Hume: Mr Prue, could I ask Mr Hopcroft to respond to that?

Mr Prue: Sure.

Mr Hopcroft: To put it bluntly, they're inadequate at the present time, predominantly because of issues with the CRTC and telecommunications companies. We'd prefer to fight that one out at the federal level without both arms tied behind our back by provincial legislation that would preclude use of those fees even if that court challenge is successful at the federal level.

We see increasing costs as we rebuild and renew our infrastructure—our roads infrastructure, our sewer infrastructure, our water infrastructure--and we see a growing need to put the costs that arise from the occupation of our road allowances directly on those that benefit from them, which are the utilities and businesses that profit from the use of public property. In fact, this provision will create a bias in favour of use of public highways as opposed to other rights of way, such as railways or other existing private rights of way, that under the present law would be considered by utilities or others. This creates a bias where the public highways will be free and it will create increasing congestion particularly in some of our older road allowances in the core of our urban communities.

The Chair: For the government, Mr Kells.

Mr Morley Kells (Etobicoke-Lakeshore): I appreciate your presentation and the one previous because you touch on similar points, and that's to be expected. There seem to be two common threads as we listen to presentations. One is that it's long overdue, and it's so obvious that it hits us in the head. The only comment I can make to that is that the province has been ruled by a number of governments over that period of time. The Conservatives have been here for a great deal of that, so we should take our share of the responsibility and it's probably fitting that we are applying ourselves to the bill.

The second point that seems to flow in any conversations I have is the concern that corporations and people involved in the municipal process have for regulations. It's the fear of the unknown sometimes, and I think it's probably very logical. In that sense, your comments on procurement and your worry there: the ministry's position obviously is that if a municipality has a sensible, well-thought-out, efficient procurement policy, then of course there is no need for the provincial government to interfere in any way. But naturally—and I think you can appreciate this—the government, in a prudent way, has to have a safety valve and really should retain the right to have a reg in a specific way.

Before you answer, if I may, I just might get to your specific, the London-Middlesex act. I understand that you and the county seem to be in some kind of agreement as to the fact that the money is probably more than deserved or needed or required. I suspect that we could take this back to the minister with some confidence if we had

something possibly in writing between the city and the county as to that assumption. I wouldn't want to pass an assumption on unless we had some kind of proof. If you could comment on those two questions, I'd be pleased.

Mr Hume: Thank you, Mr Kells. We would be happy in the city of London to provide the committee with our purchasing policies, which are followed by our municipality for example, and also by our boards and commissions in a general sense. We have a very public, open, thorough, comprehensive policy.

On the second matter, we would be very happy to undertake to consult with our friends at the county and see if we can get a letter from them or a joint letter from the city and the county to present to the minister.

Mr Kells: That would be very helpful.

The Chair: Thank you, gentlemen. We appreciate you coming before us here this morning.

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CITY OF BURLINGTON

The Chair: Our next presentation will be from the city of Burlington. Good morning. Welcome to the committee.

Mr Rob MacIsaac: Good morning. I'm Rob MacIsaac and I'm joined by our assistant city solicitor, Nancy Shea Nicol. Nancy is here for at least two reasons. First of all, I'm fighting some kind of bug, so she's a backup voice in case my voice doesn't last, although that shouldn't make you feel that I'm going to speak for that long. She's also here in case somebody asks a really hard question. So I have somebody of substance here.

I'd like to begin by thanking the committee for the opportunity to briefly outline some of the city of Burlington's comments and concerns with respect to this legislation.

We are very pleased that the provincial government has seen fit to introduce Bill 111 in an attempt to update and modernize municipal legislation and provide new flexibility to municipalities. We congratulate the minister for undertaking this task, which no other minister has been able to do for 150 years.

The minister's announcements surrounding the bill suggested a "new, stronger and more mature relationship between municipalities and the provincial government," and we think there is no question that the bill advances the provincial-municipal relationship. However, we continue to have some concerns that the bill is not all it could be in terms of recognizing the coming of age that municipalities have seen in the last 10 to 15 years.

The province retains the ability to regulate in every area where municipalities are purported to have natural person powers and to restrict those powers, presumably if and when a municipality steps out of line. In addition, there are some new restrictions that have not previously existed. In my view, you need to give municipalities the flexibility they require to succeed in the modern environment even if it means that once in a while you are also giving them the chance to really mess up.

As I noted at the outset, there are many aspects of the bill that are positive, and I'll just review some of the sections that we think are really good.

The bill defines municipalities as persons, it defines "municipal purpose," and it contains provisions which direct a liberal interpretation of municipal powers. These provisions recognize municipalities as responsible and accountable governments and direct the courts to broadly interpret municipal powers, and rightly so, in our view. Municipalities ought to be fully responsible for and have jurisdiction over those matters that affect their residents. However, we remain concerned by impediments and restrictions to municipal powers within the legislation.

We applaud the concept that the province is endorsing consultation with municipalities. We would like to see it taken a step further and have a commitment to consultation rather than just an endorsement of the principle.

We support the provisions throughout the bill, and specifically section 251, which allow municipalities to determine what constitutes "reasonable notice."

With respect to the nuisance provisions, we think that these provisions will allow a municipality to deem a use a nuisance and thereby prohibit it. These provisions have the potential to be very helpful indeed to municipalities.

However, we are concerned that actions taken under section 130 are vulnerable, partially due to the elimination of the area of morality as contained in the old legislation. The insertion of the words "in any other act" will severely limit our authority in this area and is a prescription for litigation to determine jurisdiction. Our suggestion would be to take out those words "in any other act."

The proposed incorporation authority may potentially allow for creative public-private partnerships in order to finance infrastructure. In addition, revenue sources such as toll highways and general area rating are a move in the right direction. These areas will be crucial in moving forward, and we therefore strongly urge the government to act quickly in developing regulations under these sections. However, until the regulations are developed, we don't have the crucial details. We need to really comment.

With respect to areas we are concerned about, we'll begin with the terms "lower tier" and "upper tier." In our view, those terms suggest a hierarchy of municipalities which we think is inappropriate. We think the legislation is attempting to treat both local and regional municipalities on an equal playing field, or, if it's not, then it should be. That terminology suggests a hierarchy which shouldn't exist.

With respect to spheres, the powers contained in earlier drafts of the legislation have been reduced from 13 to 10 spheres. One of the former spheres, economic development, has been scaled back to economic development services, which is really more of a power than a sphere. In addition to scaling back the scope of the sphere, the powers under economic development are limited to acquisition of property and dissemination of information. Given the important role municipalities now play in economic development, it would have been far

preferable to leave that sphere of jurisdiction more broadly described. We're not sure why that was done.

Local municipalities can incorporate community development corporations. For example, Burlington has a Burlington Economic Development Corp. However, the region of Halton will now be given exclusive jurisdiction over the dissemination of information. That is exactly what our economic development corporation does: it disseminates information. The legislation would appear to preclude our carrying on in this fashion and appears to be getting our region into a whole new area of business. They are currently not disseminators of information for the purposes of economic development.

In this respect, we would ask that the region be given non-exclusive authority in this particular sphere. That is simply a reflection of the current state of affairs on the ground, and I don't think the region would disagree with that. In an earlier staff report from the region they also noted this very concern.

Additionally, other spheres formerly in the legislation are now entirely omitted. The former spheres, natural environment and nuisance—noise, odour, vibration, illumination and dust—are now missing and relegated to comparatively limited powers under the legislation. These are both areas where municipalities have a very significant role to play and their removal as spheres is disappointing.

The powers within the spheres are given to the regions and area municipalities. In some cases, the regions are given exclusive authority over powers within a sphere. Our first concern is that this opens up a number of areas in which regions have not been involved; for example, recreation. That area generally has been the domain of the local municipality. Under the proposed legislation, the regions can now move into that area and its bylaws will prevail.

If the intent behind the bill is to treat all municipalities the same, then the powers within the spheres should be equally available to both regional and local governments. The provisions in the bill giving exclusive authority to regions and dictating that regional bylaws prevail is rife with opportunity to cause friction between regions and local municipalities. This is most unfortunate, in our view.

Finally, in relation to the spheres, it is possible that because the bill refers to upper-tier municipal bylaws prevailing, the regions can use their bylaws under the spheres to avoid the transfer-of-service provisions.

Under licensing, the bill may restrict the areas over which municipalities currently have authority to license. There are three general areas in which municipalities can license: health and safety, nuisance control and consumer protection. This means that municipalities will have to reconsider the existing bylaws and possibly restrict the areas over which we license. In order to ensure that municipal licensing authority is not more restrictive than what is currently permitted, a fourth heading should be added, in our view: "community and public interest."

In addition, the bill will require municipalities to justify in bylaws every condition to be attached to a licence. We find that to be onerous. We don't see other levels of government doing that. For example, if you get a driver's licence or a hunting licence, you don't see every condition of the licence attached to the licence.

The tax and finance areas of the bill may well lead to some real problems. Of particular concern to us is the matter of the interim levy. Municipalities have in the past based interim levies on 50% of the assessment in the previous year, where now the interim levy is based on 50% of the taxes from the previous year. This seemingly innocuous change would mean that, in 2001, 856 properties in Burlington would be left out of the potential tax revenue to be raised through the interim levy. This may well put additional pressures on our cash flow and result in previously unseen financing costs.

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From a taxpayer's perspective, it causes an imbalance in the tax bill. A tax bill under the old system works out at a fairly even split, say, an interim bill of $1,500 and a final bill of $1,500; whereas, under this legislation, you could well see an interim bill of $200 and a final bill of $2,800. Again, we are not sure what the motivation was for that change. We think the current system of basing the interim levy on last year's assessment is preferable to what's in the legislation.

Another similar area is the preapproved tax bill form, which you've probably heard lots of complaints on before, but given that I'm here, I'll just complain about it again. We think it is micromanaging.

With respect to the lame-duck council, section 275, an additional four weeks is added to the time during which council in unable to make decisions by moving the lame-duck period back to nomination day from voting day. We are not aware that there were a lot of problems with councils doing things in that period. But we think, particularly for large municipalities, the restrictions you've put in are very onerous and they're not very businesslike for a city like Burlington or particularly for bigger cities like Mississauga or Toronto. For them not to be able to hire or fire an employee for a period of four weeks is simply onerous. It is not conducive to the municipality doing business effectively, in my view.

With respect to section 130, we are disappointed with the rewording of the peace, order and good government provisions, the old section 102 versus the new 130. The removal of the references to morality of residents likely neutralizes the Supreme Court of Canada's decision in the Hudson pesticide bylaw case. That case was based on very similar wording to our old section 102. By changing the wording, there seems to be a growing consensus that we will not have the power to regulate pesticides as under that Supreme Court of Canada decision. We object to that.

The city of Burlington will be submitting a comprehensive report to this committee. We are appreciative of the many positive features of the legislation. However, we have some very real concerns about some aspects of the legislation. We see it as giving pre-eminence to regions over local area municipalities. We would have

preferred that the original spheres of jurisdiction remained.

Of particular concern to Burlington is our apparent loss of power in the area of economic development. The licensing and lame-duck council provisions are cumbersome and more restrictive than the current state of affairs. The section on taxation presents some real problems for us. Finally, we are disappointed that the province appears to be removing from us the power that the Supreme Court of Canada conferred in the Hudson decision. I thank you very much for listening patiently.

The Chair: Thank you. That affords us a strict one and a half minutes per caucus. This time we'll begin with Mr Prue.

Mr Prue: OK, one and a half minutes; let's deal with the Hudson-proofing municipal bylaws. I'd like you to expand a little bit on this. Peace, order and good government provisions have been taken out. I'm not familiar with what 102 said. How is 130 changed from 102?

Mr MacIsaac: Nancy can probably supplement my answer, but the very basic, simplistic reply to your question is that there was a specific set of wording in the Quebec legislation which we also had under the old section 102 of the Municipal Act. By changing that wording, we think it likely nullifies the applicability of that decision to municipalities in Ontario.

Mr Prue: The legislation here does say that it is related to the health, safety and well-being of the inhabitants, which would surely capture that. But if not, I'd just like to know how much stronger the other one was.

Ms Nancy Shea Nicol: The other one included morality provisions as well. That has been deleted from the new section 130. I think the second limitation that we see is the inclusion of the words "in any other act." Under the existing legislation, basically municipalities are precluded from enacting in those areas if there's a specific power in the existing Municipal Act. Now that would include any other form of provincial legislation. Whereas now you'd go through an analysis that would look at constitutional conflict of laws, that has been precluded, in our estimation, in the proposed legislation.

Mr Ernie Hardeman (Oxford): Thank you very much for the presentation. First of all, just very quickly, the interim tax billing issue seems like a very innocuous change and yet it would seem rather strange that if last year I had a vacant lot, my interim tax bill this year will be half of the tax bill of a vacant lot instead of half of a $200,000 home. We appreciate that and thank you.

Again it doesn't seem like much, but the one I wanted to get your comments on is the upper- and lower-tier municipalities and single-tier municipalities and the problem that creates with the appearance that the upper tier has authority over the lower tier. I think I can accept that; not accept that they have, but accept that that's the appearance of it. As we look at the two-tier municipal government, in every case, at one point in time, we have a problem with the jurisdictional issues, whether the lower tiers agree with the upper tier and whether they don't. For some reason, we don't seem to be able to solve that problem when the representatives from the lower tier go to the upper tier and do their voting. There seems to be a discrepancy there. We need to clearly define who's responsible for what. Do you have any suggestions on how you would accomplish that without the appearance that there is presently in the act? Do we just take out the two words and more clearly define the responsibilities?

Mr MacIsaac: From a purely aesthetic point of view, if you just called them regions and local area municipalities or something like that, that would be a step toward removing that appearance. Frankly, in terms of getting down into the substance of things, we are dancing as fast as we can on this legislation in terms of developing a reply. I don't think we have all the answers for you today. But we will continue to work on this, and hopefully you would continue to be receptive to suggestions.

Mr Hardeman: I just wanted to point out that we could consider calling them regions, but then we would have 26 counties not covered. If we covered the counties, then the district of Muskoka would no longer be covered. So we would have to have all the words in every part of the legislation. It does create a bit more of a dilemma than one would first envision.

Mr MacIsaac: You could consider renaming counties and districts as regions or calling regions counties. I don't think it matters. The connotation of upper and lower tends to give an appearance that I don't think you're trying to do, but it does.

Mr McMeekin: Your Worship, I appreciate your comments, particularly those related to the region or local potential for conflict and the issues of business development. I would suggest, just listening to the answer, that maybe some segue in the legislation, a statement clarifying the specific point, might preclude the need for a name change. I'm picking up between the lines what I'm sensing is a desire for maybe some more time to look at this bill. Could your municipality use some more time to look at it? Representing a significant portion of your wonderful city, specifically I'm concerned about the morality aspects, particularly in the Aldershot area. Could you comment on having more time and what you'd like to see on the morality side?

Mr MacIsaac: On the time issue, we wouldn't object to some more time, although the last time we asked for more time we got three years, which would be too much more time.

Mr McMeekin: So you weren't looking for that much.

Mr MacIsaac: No, we were hoping for less time than three years. Certainly if the process was slowed somewhat, without derailing it, that would be our first choice. Maybe Nancy can comment further on the morality issue.

Ms Shea Nicol: With respect to the morality provisions, there has been an attempt by this proposed legislation to encompass it in other areas. You've beefed up the public nuisance provisions, for example. Our concern is that to some extent those provisions may be somewhat illusory in the sense that the way in which the

legislation is proposed, it would give municipalities a fair bit of anticipatory power. While that seems on its face to be a good thing, the question is, will a court uphold that legislation in the end?

On the one hand, you've attempted to build in alternative provisions. But I'm not too sure in the end it is going to give the municipality any more teeth.

The Chair: Thank you for coming before us this morning. We appreciate it.

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BRANTFORD POWER INC

The Chair: Our next presentation will be from Brantford Power Inc. Good morning, welcome to the committee. Please proceed.

Mr George Mychailenko: Good morning. My name is George Mychailenko. I am CEO of Brantford Power. I'm here representing our company to bring something to the attention of the panel, an issue we feel needs to be addressed in the new Municipal Act. You may be aware that the city of Brantford, like other municipalities in Ontario, has been required by the Electricity Act to incorporate its municipal electric utility pursuant to the provisions of the Electricity Act. In our case, the city incorporated three companies: a holding company, Brantford Energy; a regulated company which is Brantford Power, ourselves; and an unregulated retail company which is Brantford Hydro. The city of Brantford owns all the shares of the company in Brantford Energy. In turn, Brantford Energy owns the shares of the other two companies.

We are an incorporated company like other private companies that exist in Ontario today. These companies require infusion of funds in order to finance expansion of their systems. To do so, they borrow money from banks or obtain funds from their shareholders. It is our position that the shareholder should be able to deal with our company as any other shareholder in the province of Ontario who has a wholly-owned company. The Municipal Act prevents this relationship with our shareholder. As you know, banks and other commercial lending institutions routinely request shareholders to guarantee when approving loans for corporations. This puts our corporation in a completely different class from other businesses borrowing in the province.

The problem is simply with section 111 of the current act and section 106 of the new proposed act prohibiting municipalities from assisting any commercial enterprise, including your own subsidiaries. This means that no matter how dire the need we have for cash, the city cannot give the energy corporations any additional money or guarantee their borrowing. While we understand the continuing need for municipalities to be subject to the antibonusing provisions of the act, we request that these provisions not apply to the municipally owned electrical utilities which are wholly owned by the municipality.

We learned the social housing corporations, which were established pursuant to the Social Housing Reform Act, 2000, are not subject to similar constraints. Section 23 of the act expressly stipulates that they are deemed not to be commercial enterprises to which section 111 of the act is applied. It is our request that the government consider including within the new Municipal Act a similar provision for electrical utilities to that contained in the Social Housing Reform Act. Thank you.

The Chair: That affords us lots of time for questions. We've got about four minutes per caucus.

Mr Norm Miller (Parry Sound-Muskoka): Since we have lots of time, perhaps you could explain this problem a little bit more for us.

Mr Mychailenko: Specifically we, as a corporation, need an infusion of money. The easiest place for us to obtain these funds is from our shareholder, which is the municipality. We originally started out in a deficit position when the new Electricity Act was incorporated. That isn't similar to a lot of utilities. A lot of utilities were actually at the other end of the spectrum financially. We are in a position where we need an infusion of funds in order to expand our system. This means that we have to go out and borrow money from banking institutions or our shareholder. Our shareholder is quite willing to provide these funds for us and loan them to us, but unfortunately, due to the antibonusing provisions of the act, that's prohibited.

Mr Kells: I'm trying to get a little bit of a grip on your specific problem. I did mention it to the honourable member Dave Levac. It would be helpful for the government side to get a better grip on your specific—and I know that the honourable member will carry the message to us. After today is over, I know I'll probably receive something in writing and we will be able to make a specific reply back through the honourable member to your corporation.

Mr Levac: I'll dovetail into that. Mr Kells was kind enough to ask me for a situation. To clarify and make it very simple, section 106 prevents you from going to your shareholder to get money to run your company, and what you're asking is for the permission or the removal of the legislation that stops you from doing that, to do what any other corporation would do, which would be to go back to their shareholder and say, "We need more money to make it a viable company."

Mr Mychailenko: Exactly.

Mr Levac: To the offer that Mr Kells gave me, I will definitely be bringing that situation very clearly to the government side. Mr Kells has made it very clear that they would be open to trying to get a handle on and understand the situation very clearly. I'm convinced that if it proves to be what we just said, the government would be very interested in allowing the shareholder to lend its own company money in order to be a viable corporation. Unless there are other issues, and we need to have those clarified so that we would open a dialogue for both the municipality—because I understand that not a lot of municipalities have gone to the length that Brantford has in owning its own power.

Mr Mychailenko: That's correct, yes. We would clarify that for you if you're interested.

Mr Levac: Great. We will open that dialogue and make sure the government side understands it. I note for the record that Heather Wyatt is here. Heather, could you give us your title and what you do for the city of Brantford?

Ms Heather Wyatt: I'm the executive officer for Brantford Power and I'm also the secretary to the boards of the three companies that were incorporated as the result of deregulation of the electricity industry.

Mr Levac: And because of that, the relationship with the municipality is such that somebody's participation has allowed the municipality to take this corporation on, if that's correct?

Mr Mychailenko: That's correct.

The Chair: To the third party.

Mr Prue: My question relates again directly to Brantford. Section 106(2)(d) says, "giving a total or partial exemption from any levy, charge or fee." Does the city of Brantford at all give Brantford Power any exemption on the taxes, any reduction? Do you pay any taxes?

Mr Mychailenko: We are obligated to pay property taxes under the Electricity Act. The property taxes flow to the provincial government to pay down the electrical debt. These things are flowing toward the provincial government, not with regard to the property tax issue.

Mr Prue: OK, so the property taxes that are levied don't go to the city of Brantford.

Mr Mychailenko: No, they don't.

Mr Prue: Are there any other charges or fees that the city of Brantford either collects or does not collect from you? I'm trying to understand the relationship.

Mr Mychailenko: Yes, there are a number of charges and fees. For example, there's a loan which was established between the company in its initial forming, which the municipality owns. This was done with all the municipal restructuring within the electrical industry. This was done, but because of our financial position, the city is not collecting on those interests because, simply put, we just can't afford to pay them. The city has forgone those charges with us, but we still need additional funds to expand our system. That's the problem we are at right now.

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Mr Prue: I trust I have enough time. What will happen, what kind of consequences do you think will happen to Brantford Power, should this act remain as it's written?

Mr Mychailenko: The problem we're going to run into is that due to our cash flow problem—and that's what I alluded to originally, that Brantford was actually in a loss position going into the restructuring of the electricity market. Since the thing was prolonged quite a bit, our loss just continued to be there. The problem we're running into now is we're trying to come out of this situation, and with the Ontario Energy Board allowing us rate increases as we move forward through this electricity restructuring program we will eventually come out of this, but what we need is some infusion of cash short-term per se to get us past our deficit position that we're in right now.

The Chair: Thank you both for coming before us here today. We appreciate your comments.

CANADIAN AUTOMOBILE ASSOCIATION OF ONTARIO

The Chair: Our next presentation will be from the Canadian Automobile Association of Ontario. Good morning and welcome to the committee.

Mr David Leonhardt: Thanks very much for, on this short notice, giving us the opportunity to comment. I think most of you know who we are as CAA, but just to summarize, we represent about two million motorists in this province. We have a long tradition in the province of working for both mobility and safety, among other motoring needs.

We should begin by congratulating you for getting something going on this after, I guess, several attempts certainly in the last three or four years I've been in Toronto working in this position. I know there were a couple of attempts to get the Municipal Act updated, and it's long overdue. By government standards, this particular attempt has gone through at what I would call lightning speed.

There's no one who knows better, though, the double-edged sword of moving fast. Our members of course want to get from one destination to the other as quickly as possible, and at the same time as safely as possible. One of the concerns we do have is that the speed hasn't left the time for consultation on one particular area—probably on others, but there's one that I do want to raise, and that's section 40 on tolls. The reason the speed is of concern is because this is brand new and there hasn't really been the opportunity to have the kind of public discourse there needs to be when you're looking at this kind of change.

It's very different, by the way, tolls in the municipality versus tolls on a provincial highway such as Highway 407, which do get a lot of very public debate. One of the things you would find if you did throw this section open to some public discourse is that motorists feel they're paying enough already with almost $4 billion paid to the provincial government and almost $3 billion to the feds. Only $1.5 billion of all that is spent on roads, and all of that from the provincial level, none from the feds. But that's still just a small fraction of what we're paying in direct motoring fees.

Tolls can also be particularly, more so in a municipal context than a provincial context, very much a punitive tax—more than a tax; an effort to remove people from their driving privileges within a city. We've seen that in some of the cities. Some of the municipal councillors would like to levy tolls on the entire downtown areas of a city in an effort to force people out of their cars, whether transit is an option for them or not. Ultimately it could kill the downtowns of some of our cities, so there's a little concern about that.

Last year and the previous year, we surveyed our members on the issue of tolls generally. Only 29% approve; 54% said they disapprove of tolls. It's not something that you will find a lot of popularity on.

That being said, we're realists. We know that if the government has chosen to put this in, I'm unlikely today to be able to convince you to strike it, which would be our first choice and strongest recommendation. But given that there hasn't been a great amount of discourse and given that this is something that is going to touch people very closely in their communities and that the Municipal Act has a long shelf life before it's likely next to be amended, we would like to suggest that if you do keep section 40 in, a couple of additional provisions be added. This is just from a perspective of accountability and ensuring that as municipalities come to the government for authority on individual roads—because that's what the section says, that the municipality may designate and operate and maintain a road as a toll road, but only with a regulation for that particular road by the government.

So the two provisions we would suggest are, first of all, that any provincial regulation pertaining to a municipal toll highway be passed prior to construction of the lanes that would be allowed to be tolled by the regulation. This would ensure that only new construction is covered, so that a city can't apply and some future government just give a blanket approval either for any road that they come forward on or for an entire downtown area.

Second, we recommend that there be an official call for public input as part of the regulatory process, that it be written into the legislation, and that that call go both to the residents of the municipality as well as to anyone else living within a commuting distance. We're not defining that; we'll leave that for the government to define. But it's so that before a given road is made a tollway—Red Hill Creek Expressway, for example—those people who would be affected by that particular road have the opportunity, and a public opportunity, not just interest groups such as us and the others here but that the people actually have an opportunity to have some input.

Given that this is a very brand new provision and that roads are very local in nature, especially municipal roads, we would respectfully submit that if the government in its wisdom chooses to keep section 40, those two provisions be added.

Thank you very much for hearing us.

The Chair: Thank you very much for your comments. That has afforded us about three and a half minutes per caucus for questions. This time we'll start with the official opposition. Mr McMeekin.

Mr McMeekin: I have no questions, Mr Chairman.

The Chair: Mr Kormos.

Mr Peter Kormos (Niagara Centre): Thanks for that submission. I guess I'm one of the 54%, because I am a CAA member. When you drive a seven-year-old pickup truck, you should be a CAA member.

Mr Leonhardt: Thank you.

Mr Kormos: You're suggesting—I want to be clear about this, because I agree with your proposal—that no existing highway would ever be designated a toll road by the municipality, with the participation of the government by way of the Lieutenant Governor in Council?

Mr Leonhardt: Exactly. The way the wording is right now, on the one hand it's very stringent. Municipalities cannot do anything without the provincial government saying so. There's that control, but there's no stipulation at all from the provincial government perspective. It is very much a blank cheque. Who knows what some future provincial government will decide to do, or this government? We don't know down the road, as things progress and people change. We know there are some interests that would like to see entire downtowns tolled in the assumption that that will force people out of their cars and into transit. It's a false assumption. It's likely instead to kill downtowns and leave some people without options for travel, and we think incentives and transit funding are probably going to be better options rather than tolling an existing road.

Mr Kormos: Thank you.

Mr Prue: Just one question, because again this is such a huge bill, and in my reading of this I didn't catch it first time round. You are saying that new highways potentially could be, but existing highways cannot. But some of the highways have just been downloaded to the municipalities. I'm thinking particularly of the west end of Toronto. Highway 27 and I guess the Gardiner have now come under municipal jurisdiction.

Mr Kells: Right through my riding.

Mr Prue: Yes, in your riding.

One of the councillors in the city of Toronto, Howard Moscoe, wants to set up and has been quite vociferous and vocal about setting up tolls on there. I didn't see this as sort of allowing that, but is that what you're afraid of?

Mr Leonhardt: We're not keen on tolls anywhere, as I pointed out. If I can use a different example, on the Don Valley Parkway, there was a proposal before Toronto city council that would toll new lanes.

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We have a big struggle with this and our members do too. We need the extra capacity; we don't like tolls. In the end, there was the possibility it could have been an interesting option, but unless there is some stipulation in the act to that effect, that proposal could have put tolls on all the lanes, which I think would have made the decision as to whether it is something we should support or not a lot easier, because our members would not have seen that as reasonable, given that they'd already paid for that construction.

Mr Raminder Gill (Bramalea-Gore-Malton-Springdale): I'm sure you do international surveys. How many countries do charge tolls versus countries that don't charge tolls?

Mr Leonhardt: I don't have any international surveys of how many charge tolls in cities. There are different kinds of restrictions within municipalities. Singapore is a good example where you have to have a different licence plate—and it is very expensive to buy those licence plates—I think it is odd-even, or different days of the

week, to get into the centre of the city. But Singapore is the kind of society in which you go to jail if you spit or chew gum on the subway. I'm not sure that's the society that certainly our members see Ontario becoming.

Mr Gill: I do know from experience that most of the countries do charge a substantial amount of tolls. Is that your experience as well?

Mr Leonhardt: Our members tend to drive in Canada and the United States. There are several sections of the United States that have tolls but not generally on municipal roads. These tend to be interstates and long-distance commuting routes, similar to the 407 perhaps. What is being proposed in this act would allow for—and I'm not saying it is necessarily going to happen, which is why we think there should be the stipulation to ensure it doesn't—a municipal government to say, "Hey, we'd like to designate all the roads going into downtown Toronto, or downtown Brampton, or downtown Hamilton, as toll roads, because we think that will force people on to buses or subways."

Mr Gill: In one of the surveys you had 54% who don't want the tolls and the rest do. If you ask people, "Do you want the tolls or do you not want the tolls?" generally speaking, the majority would say, "I don't want tolls." "Do you want higher taxes or lower taxes?" "I don't want higher taxes; I want lower taxes."

Mr Leonhardt: With respect, motorists are already paying roughly four or five times as much between the federal and provincial government as they're getting from those levels and roads. There is tax room if the government wished to use it. When I say the "government," I should say the "governments," because both the federal and provincial governments are collecting those fees.

Mr Kells: Following up on Mr Gill's comments, obviously I agree that if you ask somebody if they want to pay an extra tax of some kind, they're going to say no. I'm surprised it didn't ring up a higher number than that. I do find it interesting in the discussion with the third party member, where we talked about tolling entrances into the city of Toronto specifically. When it first came up in discussions, I found it somewhat appalling. It seems to me it is like a medieval town. It is like bridging the place and then you pay to get in and you pay to get out. I for one, just a personal comment, can't see that ever happening, but in the scheme of things in municipal politics, maybe anything can happen.

I somewhat agree with you that if a municipality is going to do it at all, it must be on a new road. But I think the new lane proposition, if that be the case, has a great amount of validity. It is quite possible to make that work in any kind of well-used stretch of road. We as a government do commend the previous government for building the toll road. We have gridlock, as everybody knows, all over particularly 905, if I may use that description. If it wasn't for that toll road, I don't know where we'd be. We will take your two suggestions in for discussion.

The public has normally plenty of input into this kind of process simply because it would be a brave government that dared do something as punitive as this may seem without a great deal of discussion. I don't think it is a transparency problem. I don't think it is a problem of haste. I would think that it would be an act of folly to try and get too expansive with tolling.

Just to finalize that, though, as you pay tolls as you travel around other jurisdictions outside of Canada, it seems to be what has got the infrastructure built and running. Possibly we have to face up to that as taxes dwindle and the amount of money that's being placed in infrastructure seems to dwindle in relation to the other costs that governments face. I'm not asking a question. It is just comments in relation to your two points.

Mr Leonhardt: I certainly appreciate that it's hard to imagine this could ever happen, that the entrance to a whole downtown would be tolled. At the same time, I would find it hard to imagine that you would have highways—my mother-in-law lives in Gatineau. I often go up to Ottawa and have to cross through the city. You literally have to weave through city streets, because the highways on the two sides of the river don't connect. You would think that could never happen again. No one would actually plan for something that ridiculous, and yet that's what some people, a lot of people, are thinking of maybe doing in Toronto: tearing down the expressway and forcing all that through traffic to weave through city streets. Don't underestimate the possibilities that can happen, please. We respectfully suggest to the committee, if the committee agrees that this is something we would not want to see happen, simply put the provisions in to ensure that down the road—

Mr Kells: If I may, just a final comment. It is sort of a vision that the city of Toronto seems to be putting itself through. Visions are one thing. Planners love visions and we pay them big money to propagate visions, but visions have to be paid for. I for one can't understand how that possibly could be financed.

The Chair: Thank you very much for coming before us here this morning.

ST CATHARINES ASSOCIATION OF CONCERNED CITIZENS

The Chair: Our next presentation will be from the St Catharines Association of Concerned Citizens. Good morning, and welcome to the committee.

Mrs Samantha Phibbs: Thank you for the opportunity to present our case to this committee today. Our presentation will focus on section 433 of Bill 111: closing premises, public nuisance. I feel I need to tell you a little bit about us. We are not an easily recognized group. But I do represent the St Catharines Association of Concerned Citizens Inc. We are a rapidly growing organization—

The Chair: Forgive me. I had hoped you would start off by introducing yourselves for the purposes of the Hansard reporter.

Mrs Phibbs: Oh, sorry. My name is Samantha Phibbs and this is Carolyn Toth. I am the president and she is the vice-president.

We have a current membership of more than 300 individuals, and we are not just speaking on behalf of St Catharines. We are also affiliated with other resident groups from numerous municipalities: Guelph, Kingston, London, Hamilton and Waterloo. We were formed as a result of the escalating problems with the proliferation of illegal rooming houses in our residential neighbourhoods. Absentee landlords are buying and/or building single detached or semi-detached dwellings that were meant to house a single family, or three or four individuals—for example, a 1,000-square-foot three-bedroom bungalow—and retrofitting it and renting to anywhere from five to 12 individuals, usually students. This is a popular form of student housing. If you think back to the municipalities that we are linked with, they are all homes of universities.

Our mission statement and principal objective are as follows: to promote the creation and maintenance of a peaceful, safe and enjoyable residential environment for the residents of the city of St Catharines and the elimination of the current and possible future difficulties for many residents in St Catharines by troublesome rooming houses, lodging houses and/or boarding houses.

We believe that section 433, closing premises, public nuisances, can give municipalities the power to help residents achieve their goal and your stated objective of a peaceful, safe and enjoyable quality of life for the residents of Ontario. As stated in this section, these illegal rooming houses have a detrimental impact on the use and enjoyment of property in the vicinity of the premises. In the bill it states some examples of impact. I'm just going to go through those and how they relate to these dwellings.

1130

Trespass on property: parties with so many people that they spill over on to neighbours' property, destroying lawns and gardens. Some partygoers have gone as far as to urinate, defecate and vomit on neighbours' lawns. This isn't a one-time experience or an isolated incident, but it's to be expected when you have more than 100 people in a small home with one or two bathrooms. The mornings after these parties the whole neighbourhood must pick up garbage and beer bottles that are strewn all over their private property. We're even sweeping the streets and sidewalks of broken glass so that young children and others will not be injured.

Interference with the use of highways and other public places: if a family or any three or four individuals live in a home, parking is rarely a problem. If the house is operating as a rooming house with six, eight or 12 individuals and they all have cars, where do they park? Until this past spring, often they parked on front lawns, but St Catharines and other municipalities now have bylaws prohibiting this. Many cars park on both sides of the street, boulevards and even sidewalks, denying access to pedestrians. So many cars are parked on our residential streets, it's effectively restricting traffic, so that if emergency vehicles are needed, they may not be able to reach the area because they cannot get past the parked cars. The same can be said of school buses and snowplows in the winter. The excessive number of unnecessarily parked cars on city streets creates a very serious safety issue.

An increase in garbage, noise, or traffic or the creation of unusual traffic patterns: garbage—I'm just going to pass around some pictures while I'm talking here. Unfortunately we couldn't afford to make copies for all of you, but the pictures speak for themselves. In September, December, January, April and August, our streets are lined with mountains of garbage, not properly contained, put out days, sometimes weeks before pickup day and exceeding the allowable amount. When an individual rents a room in a house, that person does not assume responsibility for looking after the entire house, and this results in a lack of snow removal, lawn maintenance, gardening, general cleaning, regular maintenance and garbage removal. Some of these homes put numerous very large items of furniture, such as chairs and couches, at the curb each year. It is no surprise that our local landfill site is closing; it is full. Many of these houses use what you and I would classify as garbage as furniture and place this furniture in the front yard—couches left out for weeks, even in the rain, broken-down La-Z-Boy chairs etc. All of this garbage has also caused an increase in the vermin population.

Noise: doors slamming, brakes and tires squealing, cars honking, taxis honking, yelling, often obscenities, loud music and noise at all hours. The sheer number of people in these homes, which were designed for small families, increases the noise pollution.

Traffic: once again, the sheer numbers of people living in these homes, and therefore the number of cars, increases the traffic in neighbourhoods where the driveways and roads were built for families with one or possibly two cars.

Activities that have a significant impact on property values: many of our members have expressed deep concern and fear that their large investment in their property has significantly declined over the past few years. Who would want to buy a home next to a rundown, poorly maintained rooming house with a weed-choked, garbage-strewn lawn? Meanwhile, the absentee landlords are renting an 1,100-square-foot home, originally a three-bedroom, to seven students, at $350 each, for a total of $2,450, way above the fair market rental price, which would be between $800 and $1,100 a month. They're not doing this as a favour to the students. These rental properties are a business venture in residential areas, and these landlords are making a huge profit but are still paying the same property taxes as the residents.

An increase in harassment or intimidation: many elderly residents are actually afraid to speak out for fear of identification and being targeted by tenants and landlords. Some residents have been threatened with physical and sexual assault as well as property damage. One

couple has had their backyard fences knocked down due to their neighbouring tenants roughhousing. Police intervention has been sought on numerous occasions, only after the residents have tried to reason with their tenants. Often this is followed by verbal assaults directed at those who dare to seek assistance from all available authorities. For example, the students said to one elderly couple, "This is a school zone. Students live here. Deal with it. Go back in your house and leave us alone."

Our community has a large aging population. These residents have worked hard to purchase a home, raise their families and support their community. Their single expectation is to live peacefully and with quiet enjoyment of their property. There is a feeling of intimidation and a loss of security in our own neighbourhoods.

Graffiti: in our neighbourhood, traditional graffiti is not a problem, but we must deal with another form. There are pictures going around. These are signs that decorate the outside walls, the windows and front lawns of many of these illegal rooming houses. Some of these signs are quite offensive. A few Christmases back we had a giant penis made of Christmas lights in a large picture window. Other signs include: "Open 24 hours" "Open" "Dope area"—there is a picture of that one—"MasterCard" "Visa" and lots of different types of alcohol advertisements and even ads for local bars. Many of these signs are illuminated. None of these signs are appropriate in a residential neighbourhood.

The premises we have described that exist in our neighbourhoods have caused a crisis. We feel that they fit the description of a public nuisance as detailed in Bill 111, section 433, on all levels. We want to be assured that the intent of Bill 111, section 433, closing premises, public nuisance, is to deal with all types of public nuisance, not just the obvious ones: crack houses and gang clubhouses. We ask that all nuisances be included. The illegal rooming houses in our neighbourhoods will continue to create a crisis, and their numbers are growing at an alarming rate. We need assurances that municipalities can and will be able to eliminate the crisis in our neighbourhoods.

I just want to add that in the package I handed out there is actually a list of these houses in our neighbourhoods. That list was updated two years ago. It was a lot of work to get to that list. I just put it in there to let you see the groupings. For example, Jacobson Avenue—they're in alphabetical order of the streets—is a small residential street. You can see from that list that there are numerous homes on that one street. We don't have one in a six-square-block radius; we have 150 in one ward in the city of St Catharines.

The Chair: Thank you very much for your interesting presentation. That leaves us about three minutes per caucus.

Mr Kormos: Thanks for bringing this here. I'd also ask the committee to note that in the material filed with you is a judgment of Judge Taliano of the Ontario Superior Court. It illustrates the difficulty that the city has faced attempting to prosecute owners of these properties to date for what appeared to the city and its bylaw department to be prima facie violations of bylaws.

I also want to indicate that these folks—I've met with them numerous times both as a group and individually—are not NIMBY people. They acknowledge that students living in any number of locations—it is not the student living there that is, in and of itself, the problem; it is the nature of the accommodations. One can tour this community, this part of south St Catharines, just at the bottom of the escarpment, any day of the week, any week of the year, and readily identify the homes, the accommodations, the buildings, the premises that are being referred to.

My concern—and I put this to the parliamentary assistant, because I've read 433 very carefully. The presenters have made reference to the notorious intent—and I say that in the most appropriate use of the word—notorious purpose to which Bill 111 was drafted to apply. I have concerns because the language "public nuisance" may be considered to be so high a threshold by a judge, for instance, that it would be very difficult to meet that. In other words, "public nuisance" might require some broad-based public nuisance, a health risk, for instance, as compared to just a nuisance to the immediate neighbours, because it is acknowledged that people in north St Catharines are not impacted by the nature of this housing.

Other MPPs from similar university towns and everyone I've spoken to have identified a similar problem in their communities. Nobody is attempting to drive students out of the community; on the contrary. Nobody is trying to do that. Students sometimes have unique lifestyles that some of them grow out of as they mature. But these people are living with this on a daily basis. The illuminated penis, the window display at Christmastime, would be cute perhaps, maybe, in a student residence, but it wasn't cute to the folks who had to take their kids inter alia past it on a daily basis.

1140

The police have been involved regularly. Inspector Dagenais from the St Catharines number 1 division has limited resources. The police find it very difficult. They'll attend if they have the resources. But again, they feel that they are handcuffed in terms of any effective enforcement tools.

I'm asking Mr Kells if he can please, before these committee hearings end, reflect on the issue that these folks have raised and be able to address this committee, or with ministry staff, as to whether or not this section would respond to the issue that's being presented. If not, then we should be talking about some—if the committee feels that this is the sort of scenario that should be dealt with in section 433, the committee then, I submit, should be considering some appropriate amendments to extend the scope of 433 so it does respond to this scenario.

Mr Kells: The honourable member's comments set up my answer very well. After I deliver this little answer, I think if you dig into the act you're going to be reassured. If there is some doubt after that, then again we would be happy to receive anything, in writing particularly.

Under section 128, public nuisances, it reads, "128(1) A local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances." Then subsection (2), "The opinion of council under this section, if arrived at in good faith, is not subject to review by any court." Finally, in section 129, "A local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors."

If you take that section and put it into section 433, then we do believe that your municipality certainly has the ability to take some action, either specifically or generally, on your problem. I recognize your problem. You have ample proof. But also I think it is a fairly well documented problem in many towns that are lucky enough to have universities, from an economic point of view.

But if the honourable member—and if you have any other counsel, and I'm sure you have—feels that this in some way is not adequate, then I can speak for the government in the sense that we'd be very happy to review the situation, whether it needs a reg or it needs an amendment. But your point's well taken. The concerns of the opposition are well taken and we will be happy to respond to any further comments you might make.

Mr McMeekin: Just briefly, I too want to thank the presenters. It is great to see, in addition to the municipal organizations that come out and present, some grassroots representation. I know in my riding we have a number of ratepayer groups who are very concerned with the peace, safety and enjoyment of their communities.

By way of question to Mrs Phibbs, Samantha, directly, is it your contention that Bill 111 goes far enough and you're here to affirm it, or is it your contention that the bill falls short? If the latter, could you comment for members of the committee as to what specific changes you'd like to see?

Mrs Phibbs: The best way for me to answer that is, when I read this bill, I thought it had been written after I had done the report that I put in the package. The subheadings fit perfectly. It's describing exactly these dwellings that we're dealing with. I just wanted to make sure, as Peter said, that the intent was not just the obvious public nuisances, that it would be able—I am by no means an expert. This was a very difficult document for me to pick up, considering I got it Friday. I feel that the descriptions fit perfectly; I just want to make sure. I can't judge on my own as to whether it will be enforceable against these types of public nuisances.

Mr McMeekin: It is the kind of book you can't pick up once you put it down. I appreciate the answer because, as you went through your presentation, I was thinking to myself, as one who had gone through 433 with some care, that 433 was in fact speaking to most of the concerns that were being raised. But you're saying let's just take a moment to dot a few i's and cross a few t's and make sure that the obvious, from the community perspective, which may not be the obvious from the legislative and regulatory perspective, is also covered off. Is that—

Mrs Phibbs: Yes, exactly.

The Chair: Thank you. I'm sure the folks at legislative counsel who craft these things will be disappointed to know both the Governor General's medal and the Giller Prize have already been handed out.

Mr Hardeman: I appreciate the presentation. This is more a personal question. The presenters presented a list of the addresses. Obviously, they know the city far better than I. I wondered if they also know the names of the students who are involved. One of them could be my son, and I'd want to be sure I knew that and that I could respond appropriately when he returns home. I just wanted to check that out because he does go to the university in that city.

The Chair: We'll leave it up to you to cross-reference the list.

Mr Kormos: Chair, if I may, to legislative research, because Mr Prue has pointed out that if a municipality were to have licensing capacity for these types of accommodations, could use that, I wonder if legislative research could, before the completion of the committee hearings, assess the licensing capacity in Bill 111 and advise us as to whether or not it would permit municipalities to license or contemplate licensing these types of accommodations. If it does, that would be yet another avenue. If it doesn't, then perhaps the committee would want to readdress that section of Bill 111 as well.

The Chair: I'm sure they will report back to you directly, Mr Kormos, and to the committee.

Thank you very much for coming before us with your very interesting presentation.

CITY OF HAMILTON

The Chair: Now our final presentation, folks. There has been an addition to the agenda. That's the city of Hamilton. Welcome to the committee.

Mr David Beck: Good morning. My name is David Beck. I'm employed as assistant corporate counsel in the legal services division of the city of Hamilton, which essentially means that I am one of the municipal solicitors in the city. I have been asked to make a presentation to the committee today by the mayor of the city of Hamilton, Robert Wade. I have provided the clerk of the committee with the report which the legal services division has prepared for submission to city council. That report has not yet been considered by city council. It will be on the agenda for the meeting to be held this Wednesday, November 19. At this time the report contains the recommendations of staff only. I'd like to make that clear at the outset before I begin my remarks. We've also had input from our finance department on this report. But essentially it is the legal services division giving a more or less technical assessment of Bill 111.

I think I can very concisely take you to our overall conclusion about the legislation by directing the com-

mittee's attention to recommendation (a) on the first page of our report. We are recommending:

"That the mayor"—of the city of Hamilton—"be authorized to inform the Minister of Municipal Affairs and Housing that the city of Hamilton

"(i) supports the enactment of the Municipal Act, 2001, as a significant step forward towards the creation of a more mature and mutually acceptable relationship between the province of Ontario and municipalities."

There are essentially four main reasons why our office feels that this is a significant step forward for Ontario municipalities. To begin with, what Bill 111 will provide is a more contemporary legal framework that municipalities will be able to use to go about their responsibilities in delivering services to their communities.

1150

A key feature that we strongly support is the device of having spheres of jurisdiction set out clearly in the new act. We are a single-tier municipality, as members of the committee I am sure are aware, because of the amalgamation which took place on January 1 this year. We believe that the 10 spheres will, in a broad and liberal interpretation, give the city of Hamilton enough jurisdiction to fulfill its mandate to the inhabitants of the city.

We are also pleased with the recognition that municipalities require a clear statement that they have natural person powers, which is also set out in Bill 111. This removes a lingering degree of uncertainty when municipalities in Ontario attempt to exercise various operational or administrative functions. Frequently it is a question of looking through the provisions of the current legislation and trying to identify a specific paragraph or clause that says that a municipality may do this, may enter into this contract, may issue this sort of approval etc. That will put municipalities clearly, for the first time, on the same basis as any other business corporation or not-for-profit corporation in Ontario. We believe that is a positive element of the new act.

We also recognize the grant of specific powers in other portions of the act. Those specific powers identify areas of special interest such as noise, odour, the regulation of shopping hours and the regulation of smoking in public places. Those powers of course are subject to the limitation that the municipal bylaws that are passed under those powers must not, cannot, conflict with provincial or federal legislation. Again, speaking as a lawyer only, we recognize the need for that statement that those municipal powers are subject to provincial and federal legislation. We do recognize that there are matters of provincial or federal interest in many of those areas. We believe the municipality will be able to exercise those powers carefully and to extend the scope of its authority without running into conflicts.

A fourth element of the new legislation that we are pleased to see is the power that is conferred under section 203 for municipalities to incorporate a corporation. As other speakers have addressed the committee, this power will be subject to the development of regulations by the Ministry of Municipal Affairs in consultation with the municipal sector. The former city of Hamilton, which was amalgamated this year, and the former regional municipality of Hamilton-Wentworth, which was also amalgamated into the new city, had responded to the Minister of Municipal Affairs in 1998 specifically requesting that the power to incorporate a corporation and related powers—the power to hold equity shares in certain types of corporations—be granted to municipalities.

The reason this was an important issue to the city of Hamilton and the former region was that it will provide a legal vehicle for municipalities to explore new types of joint ventures and public-private partnerships directed at obtaining alternative methods of providing services to its inhabitants. The city of Hamilton and the region were innovative, I believe, in developing arrangements with the private sector for the operation of our waste water and water distribution system and with developing an operating agreement for the operation of the John C. Munro Hamilton International Airport, which has been advantageous to the city. We are pleased to see that.

Moving away from those four fundamental features of the legislation, which we feel are positive, again from a technical-legal perspective, we are pleased that the new act will represent a consolidation of a number of pieces of municipal legislation in one statute. It is currently very difficult at times to correlate and to cross-reference different items of legislation between specific acts: the general Municipal Act and the Regional Municipalities Act. We do have the advantage now of being single-tier, but the exercise currently remains of finding your specific authority, so it will be all captured within Bill 111.

At this point, I'd like to extend a word of appreciation from municipal solicitors in my department for the thorough, patient and excellent process of consultation that we have enjoyed over several years with the ministry, and specifically with your legal branch: Elaine Ross and Scott Gray. I'm sure many other lawyers and policy people as well have been involved in this exercise. But they have listened to us extensively and always patiently to try to give us an act that we feel is more workable. It's well conceived. From a technical aspect, I feel it's well-drafted legislation.

There are some modest refinements that at this point we would still ask the standing committee to consider. In the area of open meetings, which is addressed in section 239 of Bill 111, there is one small change that the bill contains which would permit municipalities to hold a closed meeting, or a so-called in camera meeting, when it is dealing with the disposition of municipal land as well as the acquisition of municipal land. That will assist us when the municipality is involved in sensitive negotiations with private sector entities who are proposing to purchase land for certain purposes and they are providing financial information in confidence to us. The city of Hamilton clearly believes that the process of local government should be open and accountable, but we think that's a good balance to recognize the interests of private sector parties.

We would also echo the point that was made to you by the city of London earlier this morning: we would ask that the standing committee consider making the open meeting provision entirely consistent with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, which, as was explained to you, currently protects the information of third parties in the financial and commercial area so that, when they come to a municipality and they're proposing some innovative arrangement to deliver services, some new contractual arrangement, council could properly proceed in a closed meeting to deal with that confidential information from its proponents. We believe that it is in the public interest, ultimately, to obtain the best possible arrangement for the municipality.

One thing that is echoed in our report, and I ask the committee if they could refer to paragraph (ii) of our recommendation, is that the council of the city of Hamilton earlier this year expressed its support for the Association of Municipalities of Ontario and the Municipal Finance Officers' Association of Ontario and requested that the province consider making municipalities exempt from the provisions of the proposed Public Sector Accountability Act, Bill 46. The city of London referred to this also in their submissions this morning. We would echo that request from AMO which is contained in their very recent press release. We believe in municipal accountability—it has been there for a long time and it will continue and will be expanded in Bill 111. We feel that there will be unnecessary duplication if we are also subject to the provisions of Bill 46.

Overall, in conclusion, the legal services department of the city of Hamilton is recommending to city council this week that it express strong support for the enactment of this legislation. We do thank the province for the opportunity to appear today.

The Chair: Thank you very much for your comments. That affords us two minutes per caucus for questions or comments. We'll start with the government.

1200

Mr Kells: I appreciate your presentation and the comments you made about the good things in the act and the fact that in general you support its provisions. You dwelled a bit on Bill 46, and we understand that. Some of us—and some of my comments are personal, as opposed to a government position—have wondered for some months now about the efficacy of Bill 46 and, as something that had undergone many exercises that we've undertaken as a government, whether Bill 46 really follows on one of those necessary evils of being the government.

Certainly the position of the government is that we do not want to create duplication and cause undue problems for municipalities, particularly well-run municipalities. It's safe to say in the environment that we are currently existing, in relation to the government, I would think that Bill 46 probably will be scrutinized with the thought of taking in the comments that we receive from the municipalities in particular. I haven't yet run into a presentation, written or otherwise, from a municipality that could find too many virtues in Bill 46. I think it's safe to say that it might be a debate that comes down between the Ministry of Finance and the Ministry of Municipal Affairs. Having said that, that would indicate this will be reviewed thoroughly, I would believe, just from government policy.

Mr McMeekin: Thank you, Mr Beck, for your presentation. I would agree with Mr Kells on Bill 46, that it's hardly needed. Sections 299 through 302 are virtually lifted from Bill 46 anyway. So whatever deleterious effects Bill 46 has will be endemic to the bill, regardless.

That having been said, this report hasn't gone to council yet, hasn't been approved by council?

Mr Beck: No, Mr McMeekin. It will be considered in committee of the whole on Wednesday of this week.

Mr McMeekin: Do you have any comments at all, given the concern recently about the shortfall, fiscally, with respect to downloading, on particular around health, the ongoing concern about emergency measures: that there's nothing in this bill which addresses the downloading, there's nothing anywhere in this legislation which requires the municipality to have an emergency measures plan and that there's virtually no change to the taxing policies from a revenue perspective? Have you and the mayor had a chance to chat to about that yet? If so, could you comment?

Mr Beck: I can address Mr McMeekin's comment, but first, I haven't had an opportunity to review those aspects of the legislation with Mayor Wade. I have been in touch with our treasurer, and I know that our financial policy section has taken a very close look at the provisions of the bill. I'm sure they're aware of the concerns of the fiscal impact. At this point, they did not provide me with any strongly worded suggestions on how that should be addressed in Bill 111.

Mr McMeekin: There are no new taxing authorities here at all. Are you aware of that?

Mr Beck: Yes. I appreciate that.

Mr McMeekin: Are there any components of the legislation, given your financial review and your legal review, that you think are not operationally effective?

Mr Beck: Our analysis of the operational impact is that in general, municipalities will be able to carry on with the business they have been in. We foresee the potential of some additional costs because of the additional accountability measures that are in there. We foresee additional costs in the area of more requirements before licensing bylaws are enacted. There are restrictions on licensing fees that may affect the revenue that is gathered from those sources.

Mr McMeekin: So there are some burdens there?

Mr Beck: It appears that there may well be.

Mr McMeekin: Just finally, is there any concern at all that the provision for the development of municipal service boards only includes five of the 10 spheres?

Mr Beck: Since we're now operating under the single-tier structure in Hamilton-Wentworth, I haven't

been advised that that proposes any potential problems for us, quite honestly.

Mr McMeekin: There is, as you know, a lot of talk about the service board with respect to public utilities and some other areas.

Mr Beck: I do have to confess my ignorance at this point, Mr McMeekin, on that aspect. I haven't been provided with any information about what's happening with the utilities in Hamilton.

Mr McMeekin: It would be interesting to look at this report, once it goes to council, to see how it's amended. Thanks very much.

Mr Prue: I would make the same comment too, because most of what you have said about the bill is laudatory, and I think most of what's in the bill is laudatory. But you've not narrowed down any of the criticisms, really, of the bill. I'd like your comment, because we had an earlier deputant, His Worship Mayor MacIsaac, from Burlington. You talked about the natural person, what a great thing. I quote from his deputation: "The province retains the ability to regulate in every area where municipalities are purported to have natural person powers and to restrict that power, presumably if and when a municipality appears to step out of line. In addition, there are … new restrictions that" did not exist in the past. "In my view, you need to give municipalities the flexibility they require to succeed in the modern environment even if that means … you are also giving them the chance to really mess up." What he's saying is that the government is too restrictive in the natural person power. Do you not share that view? You're the first person I've heard from a municipality who doesn't, and I'm just wondering why.

Mr Beck: I can address Mr Prue's question, I think. I should emphasize again that I'm speaking merely today as one of the lawyers in the legal services division who deals with legislation on a daily basis. We recognize that the natural person powers are given the broad interpretation within those spheres of jurisdiction as well. The other powers are subject, of course, to provincial paramountcy, if you'd like to call it that, and that is the framework that municipalities have worked in since time immemorial. We feel that we can exercise those powers as fully as possible up to the limits of the provincial interests.

I'm not answering your question from a political or policy perspective. Whether that's wise—we feel this a step in the right direction and we can go further, even with those limitations. Our council may feel differently on Wednesday.

Mr Prue: I just want to be very clear, then. What you're giving us is a total legal position, as I understand. The mayor is not here to speak to this, nor are any of the members of council. Have they even seen this report yet?

Mr Beck: This report was distributed on Friday afternoon, so it would be in the hands of members of council at this time.

Mr Prue: But there's certainly been no chance to comment.

Mr Beck: Not at this point; not until Wednesday. So it may be that our recommendation will be revised by council on Wednesday.

Mr Prue: I would think it's quite normal and natural that they will make a number of changes to any recommendations or reports and we can anticipate those.

Mr Beck: It frequently occurs.

Mr Prue: I will wait and see if they have comments as well.

The Chair: Thank you for coming before us this afternoon, because it is now this afternoon.

With that, committee, we stand recessed until 3:30, back in Toronto, for consideration of Bill 90 this afternoon.

The committee recessed from 1209 to 1537 and resumed in committee room 1.

SUBCOMMITTEE REPORT

The Chair: Good afternoon. I'll call the committee to order. The first item of business is the adoption of the report of the subcommittee, if I can have a volunteer, someone who wishes to read the report into the record and move its adoption. Mr Miller?

Mr Miller: I'd like to move the acceptance of the subcommittee report.

Your subcommittee met to consider the method of proceeding on Bill 90, An Act to promote the reduction, reuse and recycling of waste, and recommends the following:

(1) That the committee schedule clause-by-clause consideration of Bill 90 on Monday afternoon, November 19, and Monday afternoon, November 26, 2001.

(2) That any proposed amendments should be filed with the clerk of the committee by 4 pm on Friday, November 16, 2001.

The Chair: Any comments? Seeing none, I'll put the question. All those in favour of the adoption of the subcommittee report? It is adopted.

WASTE DIVERSION ACT, 2001

LOI DE 2001 SUR LE RÉACHEMINEMENT DES DÉCHETS

Consideration of Bill 90, An Act to promote the reduction, reuse and recycling of waste / Projet de loi 90, Loi visant à promouvoir la réduction, la réutilisation et le recyclage des déchets.

The Chair: Moving on to point number 2, clause-by-clause consideration of the bill.

Mr Ted Arnott (Waterloo-Wellington): I move that the bill be amended by adding the following section:

"Purpose

"0.1 The purpose of this act is to promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs."

The Chair: Do you wish to speak to it before I invite comments from other members?

Mr Arnott: Sure. The purpose of this motion is to add a purpose statement or purpose clause or preamble, whatever you want to call it, to the act. The purpose statement will help clarify the intention of the act, and it will establish upfront that not only does the act promote the 3Rs, it will also result in the establishment of sustainable waste diversion programs. It will clearly indicate that the act addresses more than just the blue box program.

Ms Marilyn Churley (Toronto-Danforth): I wish I had some government officials to write my notes for me. That was excellent.

Mr Wayne Wettlaufer (Kitchener Centre): You did have.

Mr Arnott: They do a good job.

Ms Churley: Maybe Ted wrote them himself; that's quite possible.

I support the intent of the purpose at the beginning of the bill. I think that's a good idea. However—and I don't know if this would be considered a friendly amendment to the amendment, but let me try—I would like to change the wording from "The purpose of this act is to promote" to "The purpose of this act is to require the reduction, reuse and recycling of waste and to require the development, implementation and operation of waste diversion programs."

I believe that we're now in a situation where we need an act to not just help promote, but to take a stronger role and have it actually require that these things be done. If it's not a friendly amendment, then I don't know what the procedure is. If you don't accept that, I guess—

The Chair: Actually, amendments can only be considered if they're in writing, Ms Churley. We have a somewhat soft deadline, but there is no such thing, unfortunately, as a "friendly amendment." All amendments are amendments, so if you wish to offer an amendment to this—

Ms Churley: So if I put this in writing now, I can present it a little later on?

Mr Arnott: There's a deadline, is there not?

The Chair: Unfortunately, the wording chosen in the motion was "should" as opposed to "must."

Ms Churley: We're talking about the first page?

The Chair: The original motion. The original subcommittee report.

Mr Miller: Yes, that's right. It says "should be filed." It doesn't say "must."

Ms Churley: Are we still talking about the purpose?

The Chair: Yes, we are.

Ms Churley: "To promote"—

The Chair: Right now, if you want to introduce a written amendment you can do that. Otherwise, once this issue is discussed, we have moved on and nothing short of unanimous consent would allow us to return to it.

Ms Churley: So if somebody else were to speak to this for a moment, I can very quickly do that.

The Chair: Looking for further comments.

Ms Marilyn Mushinski (Scarborough Centre): I do have a question, Chair. Is it customary to start a section of any act or bill with a zero?

The Chair: Actually what happens, once we are finished with all of the clause-by-clause consideration, is that legislative counsel goes back and renumbers all sections on the basis of any additions or deletions that are made by the committee.

Ms Mushinski: OK. Because I just don't think it looks very good to start the first paragraph of a very important bill with a zero.

The Chair: This would wind up becoming section 1, effectively, after royal assent.

Ms Mushinski: Thank you. I would question whether Marilyn's change from "promote" to "require" is a friendly amendment. It certainly sounds to me as if "required" is much more prescriptive and would probably require considerably more amendment throughout this bill, so I will not be supporting the amendment.

The Chair: Further comments?

Ms Churley: This will shake the world.

The Chair: I have received an amendment to the amendment. Since Mr Colle has just joined us, perhaps you would like to read it back into the record. Is this your only copy? You read it and then return it.

Ms Churley: I move that the wording of section 0.1, "Purpose," be amended to read:

"0.1 The purpose of this act is to require the reduction, reuse and recycling of waste and to require the development, implementation and operation of waste diversion programs."

The Chair: Everyone has heard the amendment on the floor. Any comments on the amendment to the amendment?

Ms Churley: If I may speak to the amendment, I believe that the intent of this legislation before us today should be to strengthen our commitment to making sure that reduction, reuse—may I applaud the authors of the purpose, by the way, for getting the 3Rs in the right order: reduction, reuse and recycling; that's very important. But I would like to see us put a stronger emphasis on our commitment to the reduction, reuse and recycling of waste. Therefore, I would like the purpose of the act to say that we require this to happen—the reduction, reuse and recycling—and to require the development, implementation and operation of waste diversion programs. It's simply a word change that indicates there's a stronger emphasis on making sure this happens.

The Chair: Further debate? Seeing none, I'll put the question on the amendment to the amendment. All those in favour? Opposed? The amendment to the amendment fails.

Ms Churley: Thank you for your indulgence.

The Chair: That takes us back to the motion by Mr Arnott. Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment carries.

Section 1 and section 2: any comments or amendments? Seeing none, I'll put the question. Shall section 1 and section 2 carry? Carried.

Section 3:

Ms Churley: I have an amendment which I'll read into the record. I move that paragraph 1 of subsection 3(2) of the bill be struck out and the following substituted:

"1. That number of members, appointed by the Association of Municipalities of Ontario, that is one-half of the total number of members appointed under this subsection."

The reason I'm making this amendment is that we have to bear in mind, and we know, that the municipalities are carrying the burden of having to see these programs through. I believe it's only right, and I assume they'd support me on that, that they have 50% of the members on the board.

It's my understanding, from reading through the rest of the bill, that the government and some of the amendments before us today—and correct me if I'm wrong, but this is my understanding. Right now, the way it's configured, there would be more members from industry on the board than from municipalities and that there are other sections of the bill and amendments which would allow the government to appoint more members if those amendments pass. Again, if I understand correctly, as new industries are brought on stream, those which don't exist now but are brought on to come up with a plan, they too will be able to have a representative on the board. That's my understanding. That means that municipalities will fall even further behind in terms of having fair representation on the board. My amendment deals with that so that at all times municipalities will have 50% of representatives on the board, and we particularly don't want them falling behind as we see more people appointed.

Mr Arnott: Just in response, I want to thank Ms Churley for her amendment, although I think she overlooks the fact that the Association of Municipalities of Ontario's appearance and submission before this standing committee expressed overall support for the WDA, including their membership on the WDO board of directors. This membership resulted from extensive consultation by the ministry and through the voluntary Waste Diversion Organization initiative. The board membership primarily reflects those directly affected by diversion programs, specifically those that will be asked to pay fees. It also recognizes the number of positions with municipal stakeholders, as you've indicated, being four members.

Ms Churley: I don't know if a member of the government side or staff from the Ministry of the Environment could clarify for me my assumptions, from having read the bill and the amendments, about the makeup of the board. Can we have that clarified? Was I correct in my analysis of the existing—without the government amendments that have been put forward today, which could in fact appoint two other members, but as industry develops the plan and comes forward, then they too can have an appointee to the board. It seems to indicate there are more industry reps already, in my understanding, than from municipalities. There can be more and more representatives coming on from industry, but there's no provision to make sure the municipalities keep up with those numbers. I'd like clarification on that.

1550

Mr Arnott: We have staff from the Ministry of the Environment here and from our legal branch. If you have no objection, we could ask someone to come forward to clarify that point for Ms Churley, if she wishes.

The Chair: If someone could come forward and introduce themselves for Hansard.

Mr Keith West: My name is Keith West. I'm the director of the waste management policy branch of the Ministry of the Environment.

You're correct in your assumption that the minister does have authority under the legislation, as proposed, to appoint additional members if she chose to do so related to the addition of a new program. There's also a provision within the act, though, that allows both the WDO and the minister to agree to change the board's structure. If the municipal question became an issue around representation, that could be changed through that provision as well. There is opportunity to change the board's structure, and it could address the question you're asking.

I should also point out that of the programs we see designated under the act, of the 10 we expected to see come out of this bill at this point in time, only three are municipally run. The blue box program would be one of those. The remainder of those programs will be developed, implemented and funded completely by industry. That's another reason why there's not as broad a representation of municipalities on this board initially as one might think in terms of having them represented at the 50% level.

Ms Churley: Can I ask for further clarification? You say the minister "may" appoint industry reps as they come on stream. I'd like to try to find it in the act, but if you can clarify for me where to look now. I thought it actually said that once a program comes on stream, that industry "will" have representation on the board as opposed to "may," that it's not at the minister's discretion but that it would automatically happen.

Mr West: There are two sections I refer you to. The first one is section 3, paragraph 8: "If a waste diversion program for a designated waste is being developed, implemented or operated under this act with an industry funding organization, such number of members as may be prescribed by the regulations, appointed by the industry funding organization from among those members of the organization's board of directors…." That's a "may" provision in there.

If you go to the minister's requirements under this, under miscellaneous in clause 40(1)(c), it says, "prescribing the number of members of the board of directors of Waste Diversion Ontario to be appointed under paragraph 8 of subsection 3(2)." That's the minister's authority by regulation to do that. It is a "may" scenario. Not always for a new program will a new member be

required if it is felt that the current representation already reflects somebody who can speak for that specific sector.

Ms Churley: If I may, one more question just so I'm clear: in the board that will be set up now, what is representative on that board?

Mr West: As set out in the legislation itself, there are four members from municipalities as appointed by AMO. There's one member appointed by the Brewers of Ontario; there's one member who's appointed jointly by the Canadian Manufacturers of Chemical Specialties Association and the Canadian Paint and Coatings Association; there's one member appointed by the Canadian Newspaper Association; there are three members appointed by Corporations Supporting Recycling, one member appointed by the Liquor Control Board of Ontario and one member appointed by the Retail Council of Canada. There's the added provision for other members to be appointed if it's felt necessary where a new program is being developed. There's one member appointed who is employed in the public service—that is a non-voting member under the legislation—and then there's one member who is not employed in the public service, ie, from the public, who is appointed by the minister. That's the current structure without any of the motions being included.

Ms Churley: If I could reiterate once again, after having heard the list of the representatives on the board presently, I feel it's even more of a compelling case why the amendment should be accepted so that we have a fair, even representation of municipalities at all times. I recognize what Mr Arnott said, that AMO is supporting this bill overall, although there are some concerns and issues they've raised, and I understand that. But I can't believe they wouldn't be happy with an amendment which would give them—given that despite the fact that there are certain industries that will be taking on the responsibility and costs for dealing with their own waste, nonetheless municipalities have a big responsibility to make sure these things happen, and in many cases are far ahead of the provincial government because of the pressures on them. I believe we should make the effort to give them at least half the representation on the board.

I reiterate that I hope you'll support this amendment. I can't believe AMO will come after us and complain that we actually gave them more representation.

The Chair: Further debate? Seeing none, I'll put the question on Ms Churley's amendment. All those in favour?

Ms Churley: Could I have a recorded vote, please?

Ayes

Churley, Colle.

Nays

Arnott, Miller, Mushinski, Wettlaufer.

The Chair: The amendment fails.

Mr Arnott: I move that paragraph 10 of subsection 3(2) of the bill be struck out and the following substituted:

"10. Two members who are not employed in the public service of Ontario, appointed by the minister."

The Chair: Do you wish to speak to your amendment?

Mr Arnott: The purpose of this amendment is to provide the Minister of the Environment with the authority to appoint two board members who are not employed in the public service to the board of directors. Currently within the act, the minister is able to appoint one voting member to the board who is not employed in the public service and one non-voting member who is. This additional member will be a non-voting member, as specified in the motion for subsection 11(4). This motion will allow for the appointment of a member of the general public as a non-voting member, which will help the perception that board meetings will be closed and controlled by industry, which is obviously not the case.

Ms Churley: I just wanted to ask a question about that. In some ways it'll have an impact on a further amendment of mine—I don't know if you saw it—to appoint a member of the Ontario Environment Network. I'm wondering what the purpose is of adding this amendment, if somebody could tell me what the concern was. Was it something that was being thought about, that the environmental movement had been entirely left out of this process, or is there some concern about other groups missing? What is the intent behind this?

Mr Arnott: It's my understanding that this is in response to statements that were made by some of the presentations during the public hearings, people who felt the board membership was dominated by industry. This is an effort to address that concern and obviously gives the minister one additional appointee. The minister of the day will determine who that person will be.

Mr Mike Colle (Eglinton-Lawrence): I guess I had a somewhat similar question. If the minister or the government is worried about the perception about being industry-dominated, what is the government's rationale for not having some stakeholder from the environmental community if they really want to get rid of this perception that it's industry dominated?

1600

Mr Arnott: Under this amendment, as I understand it, the minister would maintain the discretion to be able to appoint whomever he or she wanted to fill this position. It may very well be someone from the environmental movement. I wouldn't want to prejudge that, but there's a strong possibility that one of those names would be considered, I would think. It may very well accomplish what some of these groups have expressed as a concern.

Ms Churley: I guess then the question is, for those of us who feel it's really important that the environmental groups be represented on this board, particularly an organization like the Ontario Environment Network, which, as you know, represents people from all across the province—I know they came to give a deputation here,

from the north and all over—many of whom have worked on these issues for countless years and have a high level of expertise and of course not coming from the municipal or industrial side have, I suppose you could say, no axe to grind other than trying to advance an environmental agenda—I think it would be very helpful if that were specified in the motion. I'm assuming if we pass this, when we get to mine—and I'd like to ask the Chair his opinion on this.

I have an amendment that deals quite specifically with this issue by making a provision that somebody from the OEN be appointed to the board. I think that's perhaps the best environmental group in terms of it representing all of Ontario and having expertise in this area. I'm just wondering, if this motion is passed, would it make my amendment later on moot? Would it just be a contradiction or could it still be on the table?

The Chair: I would deem that your motion is substantively different and would still be in order.

Ms Churley: So it still would be in order. OK.

The Chair: Further debate? Seeing none, I'll put the question on Mr Arnott's amendment. All those in favour? Opposed? That carries.

Ms Churley: Sorry. I have my motions that I prepared in a different order, so you'll have to bear with me for a moment.

Mr Arnott: We're in no rush.

Ms Churley: No, we're not. Are we at paragraph 11, subsection 3(2)?

The Chair: That is correct.

Ms Churley: OK. I move that subsection 3(2) of the bill be amended by adding the following paragraph:

"11. One member appointed by the Ontario Environment Network."

I'll speak briefly to this again. I'm glad it's still in order, because I did, in good faith, support the previous amendment in some fear that mine won't pass. However, I will make the case again that we specify the Ontario Environment Network in this amendment because they are representatives of environmental groups across the province, many of whom have worked for a long time in this area and I believe have a tremendous amount of expertise which they could lend and help the board in its quest to try to improve the overall 3Rs in this province and reduce our landfill problem.

We have to bear in mind that this is not just about providing money to municipalities, although I know it's a major part of the bill, and municipalities are quite anxious to have it passed, I recognize that, but we have to remember that it has a lot more to do with environmental concerns and the fact that it is getting harder and harder to locate and expand landfills. Incineration is out of the question. We have to be doing more progressive things like composting and dealing with organics, which I will note is not dealt with in this bill, and having read through the submissions, even AMO suggested it was a big gap in the bill, that it wasn't dealing with the big issue of taking our organics out of landfill. Because we're trying to find a way to deal with our garbage differently, to deal with our waste differently, the experience of this group could, I think, go a long way to helping municipalities and the industry and the government to find programs and come up with the resources and new policy to make these other things happen that we need to have done in the waste management area.

That's why I'm making this amendment. I would like to see it written in stone that there will be a representative from this group. My understanding is that this would be acceptable to the other environmental groups, that there would not be an issue around, "Why them, not us?" that there is an understanding that this is the group which understands and represents this area best in Ontario. That is why I'm asking that this be done.

Let me add that perhaps the government members should bear in mind the usefulness—they didn't know it at the time, but it was a really good move appointing environmentalists to the advisory panel on the Oak Ridges moraine, and look what a difference they made; we'd all agree a tremendous difference. Although we have some issues and complaints about the final plan for the Oak Ridges moraine, which we'll continue to outline, the environmentalists on that advisory panel made such a difference to the final outcome. That's a perfect example where we had environmentalists on a panel that proved beneficial to protecting the environment. I think we should learn from that example and find a place on this board for an environmental representative who can, I'm sure, be of benefit in moving forward on the 3Rs and coming up with new programs that go beyond recycling and get us into dealing with organics, for instance, and move us forward in a progressive way.

I think it's very important, and it would be really too bad if we didn't reach agreement today that we will in fact include a representative from this environmental group. Is anybody listening over there?

Ms Mushinski: Oh, yes.

Interjection: We are.

Interjection: We are listening.

Mr Wettlaufer: We were just talking this over.

Ms Churley: Oh, good. OK. That's my say on that. I'd love to hear what other people think.

The Chair: Further debate?

Mr Arnott: Just in response, I appreciate the amendment from Ms Churley, but I have to indicate that the government does not support this amendment as proposed by the NDP, for the following reasons: the board membership has resulted from extensive consultation by the ministry and the voluntary Waste Diversion Organization. The board membership primarily reflects those directly affected by diversion programs, specifically those that will be paying fees when it's set up. It also recognizes the agreed-to number of positions with municipal stakeholders, which, as we've established, is four members. Membership also reflects those waste diversion programs that are expected to be completed in the early stages of the initiative, for example, the blue box and household special wastes.

The act also allows for the membership to change, as we've talked about already. The minister has the author-

ity to appoint members through regulation when new programs are being developed. The membership can also change by agreement between the WDO and the minister as part of the operating agreement. It's important that board membership be kept at a manageable number to be effective, and the act already allows for the appointment of a person not employed in the public service of Ontario. This representative is expected to be named by the Recycling Council of Ontario, a recognized non-governmental organization and a leading 3Rs advocate. A government motion to this bill, if passed, would allow for the minister to appoint an additional non-voting member of the public to the board.

Ms Churley: I would just like to clarify again the function of the OEN and why I'm putting that forward as the body to have a representative on this board. The OEN has no policy-making function and serves as a networking function only. They have their own appointment process for getting any representation on any board or any other body. It has 800 groups as members across the province. That's why I'm suggesting that one specifically as opposed to the government choosing, say, the Recycling Council of Ontario, which has a specific policy-making agenda that perhaps not everybody would agree with. The beauty of the OEN is that it represents all of those groups and they all have a say in who would be appointed to this body and it does not have its own axe to grind, its own particular policy. That is why this is the one I'm putting forward, because they do represent groups across Ontario.

1610

Mr Colle: I just wanted to add that I do support the amendment, because as much as the Recycling Council of Ontario and the stakeholders are mentioned here—the Brewers of Ontario and the LCBO etc—I think it's a great opportunity to tap the resources of some of the most innovative thinkers and the most knowledgeable people we have in this area, who could be of great benefit to finding lateral solutions to our problem of waste diversion. I think it would be a great signal to the grassroots stakeholders that the government is serious about looking at innovative ways of dealing with our waste diversion problems. The groups that are mentioned in the organization formed by Bill 90 are not going to really tap into the vast resources that are available at the government's fingertips. So that's why we think just appointing someone from the Ontario Environment Network would be a very progressive step that the government and all Ontarians would benefit by.

The Chair: Further debate?

Ms Churley: I wouldn't mind hearing what Mr Arnott has to say before I speak.

Mr Arnott: I don't want to speak for Ms Churley, obviously, but the root of what she is trying to propose is to create an opportunity for groups like the Ontario Environment Network to have a greater degree of say in the decision-making of this process. I just want to assure her that the government is always interested in whatever constructive input groups such as the Ontario Environment Network would want to offer the government. Certainly, there are a number of opportunities for them to have input as we move forward with this bill. Certainly, there will be extensive public consultation on all waste diversion programs and there'll be opportunities on the Environmental Bill of Rights registry for them to provide constructive input to the government.

Ms Churley: I appreciate the comments made by Mr Arnott, but he will know me well enough to know that that's not satisfactory. We need somebody on the board who is aware and has a say in the day-to-day decisions being made by that board. For instance, because Mr Arnott mentioned the Recycling Council of Ontario in particular, I'm wondering if the decision has already been made that that's who it would be.

What I want to point out to Mr Arnott is that we must not consider the Ontario Environment Network as one of the environmental groups out there. For instance, the RCO has many of the same corporations on its board as the waste diversion office. That's why we specifically picked the OEN, because it is not an environmental group out there with policy-making decisions of its own, as the RCO and many other organizations are. To simply pick them out and say they're just another environmental group and the government's always happy to listen to what they have to say—I would take issue with, but that's for another time, given the track record. The reality is that we need to have a representative such as somebody picked by the RCO from the environmental community, from the waste diversion, waste reduction stream, who will understand these issues and have a say in the day-to-day decisions.

After the legislation is passed and this is up and running, it's going to be very, very difficult for anybody outside of that to be involved in not only the day-to-day decisions that are being made around the stuff that comes forward, but particularly in terms of making sure that this body looks to the future and is coming up with plans and programs to reduce waste in a much more aggressive way than we're doing today. That's what this is all about, and that's why I'm making the point again that we need it written into the legislation. In this case, I'm specifically saying the OEN, as a representative of 800 members across the province, would be a good choice for that. I'm making my case again that it is absolutely necessary that that balance be on this board. The board is sorely lacking in a balance right now in not having that community, with its expertise, represented.

The Chair: Further debate? Seeing none, I'll put the question.

Ms Churley: Could I have a recorded vote, please?

Ayes

Churley, Colle.

Nays

Arnott, Miller, Mushinski, Wettlaufer.

The Chair: The amendment is lost.

The next amendment is yours, Ms Churley.

Ms Churley: Are we doing 22(1)? Is that where we are?

The Chair: No, paragraph 5 of subsection 3(3).

Ms Churley: I move that subsection 3(3) of the bill be amended by adding the following paragraph:

"5. One observer appointed by the Ontario Environment Network."

Now, I understand, again from reading through the bill, that there is a section dealing with observers that the government has written into the bill. Once again, those observers will be there. They, as I understand it, have no voting rights. I hope very much, given that I just lost the amendment on having a representative from the OEN actually on the board, that you will agree with me that having an appointee as an observer at least in the room, hearing what's going on, who can be reporting back and having input in that way, might be the compromise we can make here. Having failed to allow them to be on the board, to have somebody representing that organization, therefore, environmental groups across the province, that way they can have input in an observer type of way. I hope very much that you will support that amendment.

The Chair: Further debate?

Mr Arnott: Again, thank you for the amendment. However, the government is not prepared to support this motion. The appointment of observers to the board has been the subject of considerable discussion by the ministry, through its consultations as well as presentations to this committee. The current observers identified in the bill are either making financial contributions, for example, the Ontario Community Newspaper Association, the Canadian Paint and Coatings Association or the Canadian Manufacturers of Chemical Specialities Association; or have a significant stake in the management of waste, for example, groups such as the Ontario Waste Management Association and the Paper and Paperboard Packaging Environmental Council.

This act also allows for observers to change, and the observers can also change by agreement between the waste diversion organization and the minister. Nothing in the bill would prevent the WDO from adding further participants to the board process. In other words, if the WDO wishes groups such as the Ontario Environment Network to be appointed as observers, it's my understanding they can do so.

Ms Churley: The whole purpose of having an environmental NGO representing that community as an observer is to promote better transparency and accountability. I just think that this is going to look bad. Mr Arnott just outlined all of the industry reps who are going to have not only more seats on the board than anybody else, than municipalities, and observer status, but once again there are absolutely no guarantees for the environmental organizations, those groups that have been dealing with these issues for a long time, who are accountable in this case to 800 members across the province. I think the bill is going to lose credibility. If you don't want them, it's clear, sitting on the board, you're going to lose credibility if you don't at least allow that organization to sit as an observer.

Now, I understand that the government ministry had an opportunity to see these amendments in advance and that you have been told—and I know how it works, because I've been there as a minister—that for whatever reasons you don't want that position made available. But I would submit to you—I'm not quite sure from what you read out, Mr Arnott, there didn't seem to be any indication in your reasons behind this, or I should say the ministry's reasons behind this, what the problem would be—if you've got industry observers, industry representatives, it looks really, really bad to not have, in a case like this, in a situation like this, a representative from the environmental community, at least as an observer.

1620

I'm just wondering if there's any possibility. I don't know; perhaps staff here see this as a political decision and are unable to comment on it. But should staff have some reason beyond on it being a political reason, I'd like to have the opportunity to hear it. I don't want to put any staff on the spot. If this is a political reason, then that's fine. But if there is reasoning behind this which I don't understand, I would like to have an answer.

Mr Arnott: Ms Churley, I've provided you with the position of the ministry, and I think it speaks for itself.

The Chair: Further debate? Seeing none, I'll put the question. All those in favour of the amendment?

Ms Churley: Could I have a recorded vote, please?

Ayes

Churley, Colle.

Nays

Arnott, Miller, Mushinski, Wettlaufer.

The Chair: The amendment is lost.

Shall section 3, as amended, carry? It is carried.

Section 4.

Mr Arnott: I move that clause 4(a) of the bill be amended by striking out "monitor the effectiveness" and substituting "monitor the effectiveness and efficiency."

The Chair: Do you wish to speak to the amendment?

Mr Arnott: Sure. The purpose of this motion is to require Waste Diversion Ontario to monitor waste diversion programs for efficiency as well as for effectiveness. Currently, the WDO is only required to monitor programs for effectiveness, as I said. Inclusion of the word "efficiency" will ensure that programs are monitored from an efficiency standpoint as well. Monitoring for effectiveness only could result in programs being assessed against performance criteria such as increased diversion and not whether the program is run in a cost-effective manner. A well-run, cost-effective program will reduce costs both for industry and municipalities.

Ms Churley: I would like to ask some questions around that. I'm so sorry I didn't sit in on the public

hearings on this. I read through the data. As you know, I was busy doing the nutrient management bill and couldn't be in both places; I think alternative fuels as well at the same time. But in reading through the bill, I'm really concerned. I don't support this motion and let me tell you why.

First of all, how do you measure efficiency? Will some programs be considered more efficient than others, and therefore some municipalities will get more money because they've contracted out, because they have user fees? Are things like the externalities of the costs of some programs taken into account? What does this mean in terms of overall funding? How do you define what you consider efficient? Does it mean that some municipalities will have pressure put on them to get into contracting out services, charging user fees that may not, in their municipality, make sense in their overall situation for the ultimate buy-in from their residents? I want to know what that means, what the implications would be. I hope somebody can tell me.

The Chair: Further debate?

Mr Arnott: I'd like to answer that, Ms Churley, just to the extent that I think we'd all want to see these programs run efficiently as well as effectively, and to me, "efficiently" means in a way that is cost-effective, such that money isn't being wasted. It's my understanding that the WDO will be charged with the responsibility of determining some performance benchmarks that will be used to determine efficiency. It's something that the government would like to support.

Ms Mushinski: I think it's a great idea.

The Chair: Further debate?

Ms Churley: I still would like a further clarification. What kind of guidelines? How does this board determine efficiency? Again, let me remind you that this board is made up of a majority of industry reps, a smaller minority of municipalities, with absolutely no environmental input now, not even as observers, to have any say. I'm really concerned about the implications of having added "efficiency" for the reasons that I outlined.

Mr Arnott, your answer was not adequate in terms of how they will determine what is efficient. Will they have the opportunity, will they have the clout, the authority in their analysis of what is efficient vis-à-vis what is effective to defund or lower the funding of some municipalities that, in their view, should be, say, charging user fees when they're not?

There are situations right now—I think it's Belleville that is using user fees, and you could be saying, "We like that, that's efficient. So let's tell all the other municipalities that they have to start doing that as well." That's my concern.

I don't know what this word means in this context. I think it's a very dangerous thing to add without having any guidelines around how they make these determinations and what kind of an effect and influence it will have on the funding of overall good programs, particularly when you've got experimentation going on, good programs coming on stream. Sometimes it's all topsy-turvy, as in the energy field. You will find that we're charging higher costs for less environmentally dangerous power; non-renewables actually cost less. The costs that are artificially kept down are therefore seen as more efficient. They may be more efficient until you start taking into account the externalities of all the people who die in hospital cases from asthma, the nuclear plants and having to bury all that waste, all those externalities. If you don't factor those in, then, yes, on the surface it may well be that it looks like landfilling may be more cost-efficient than coming up with programs for more composting and getting the wet stuff out of the garbage.

So I'm really concerned that some innovative things that may, in some cases, cost more in the long run at first, because they won't appear to be efficient, will not be funded. That to me is a major problem. So I don't support this, and I wish that you wouldn't either. But I can see I'm not going to win this.

The Chair: Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It is carried.

Shall section 4, as amended, carry? It's carried.

Any amendments or debate on sections 5 through 10? Seeing none, I'll put the question. Shall sections 5 through 10 carry? All those in favour? Opposed? Sections 5 through 10 are carried.

Section 11: Mr Arnott.

Mr Arnott: I move that subsection 11(4) of the bill be struck out and the following substituted:

"Members not entitled to vote

"(4) The members of the board of directors appointed under paragraphs 9 and 10 of subsection 3(2) are not entitled to vote.

"Same

"(5) Despite subsection (4), the minister may authorize one of the members of the board of directors appointed under paragraph 10 of subsection 3(2) to vote."

The Chair: Do you wish to speak to the amendment?

Mr Arnott: Yes, just to explain that this motion is related to the second motion that I moved earlier, which allows the minister to appoint two members not employed in the public service to the board of directors. This motion first indicates that neither member can vote, and then allows the minister to authorize one to be a voting member. This provides the minister with greater flexibility in appointing an additional member without affecting voting patterns on the board.

The Chair: Further debate?

Ms Churley: Why? Do you have an explanation from the ministry as to what was said or what happened after the bill was proposed that indicated that this was necessary? It doesn't make any sense to me.

Mr Arnott: Again, this follows up the second motion I moved, which allows the minister to appoint up to three instead of two board members: two not employed in the public service, one voting and one not. Again, this is intended to respond to the concerns that were expressed through the hearings by some groups such as the Toronto Environmental Alliance and some municipal stakeholders

who felt that board membership was dominated by industry. Since the member is non-voting, industry should be neutral on this, we anticipate.

1630

Ms Churley: So this is a roundabout amendment without specifying that it is an environmental organization like the OEN, because if you read this, the explanation is that it's a way to get at that. But why not be specific? If you wanted to be cynical about it, you could say that government doesn't like the way things are going on the board and there's a rep out there who could possibly vote the way we want them—

Interjection.

Ms Churley: Who, me, cynical?

Ms Mushinski: No, I'm saying we're not cynics.

Ms Churley: The government could give somebody the opportunity to vote because that vote would support their program or their analysis or view of the situation. So why not be specific? Everything is left up in the air. There's a lot of discretion for the minister here instead of being more specific.

Mr Arnott: I wouldn't disagree. This still allows the minister the discretion to appoint a person he or she feels would be appropriate.

Ms Churley: So you're saying that this amendment directly came out of the concerns expressed by the OEN and others?

Mr Arnott: What I said was it's intended to respond to some of the concerns that were expressed by those groups.

Ms Churley: So can you explain to me how this would work, then? Or if not, maybe a ministry official would. I would really like to try to understand a little better how it would work, given that we don't know who these appointees are going to be and under what circumstances the minister might decide they can or cannot vote. I guess I would like a scenario where—can somebody help me with this? I don't understand it.

Mr Arnott: If you wish to hear more from the ministry staff, I'm sure they're prepared to come forward and attempt to answer your question.

Ms Churley: If I could; could I, Mr Chair?

Mr West: You mentioned the question regarding how this person or persons would vote. Clearly the minister would indicate that the additional member of the public to be appointed to the board would not be a voting member. It's not on a specific issue basis. They're appointed to the board, but the minister would indicate who of the two from the public would be allowed to vote. That's the way that would be set up.

Ms Churley: Why? What's your understanding of why the minister would want that discretion to determine which of the two—we don't know who they are at this point.

Mr West: That's correct.

Ms Churley: Why would the minister want that discretion as to who out of those two would be able to vote and under what circumstances? What is the concern here? I'm honestly trying to get at it.

Mr West: You asked under what circumstances. Right at the start when the minister appoints both of those individuals, he or she would indicate who would have the vote and who would just be a non-voting member of the board. So that's how it would work. There are two appointments. This is very much dealing, as Mr Arnott indicated, with some comments that were received that maybe there should be a recognition of more public involvement within the board. This is an opportunity to do that. But it doesn't affect the voting structure that has been set up within the board structure itself. So it's an opportunity to participate, one of them being a voting member and one of them being a non-voting member.

There are a number of groups that have asked for both membership status and observer status, and that choice needs to be made. The minister hasn't made her final determination yet as to which one of those voices or which one of those groups would be appointed in this context.

Ms Churley: So there would be two appointed?

Mr West: Yes.

Ms Churley: And the minister will make a determination as to which of those will have voting rights if one is granted voting rights. There's no guarantee that either of them will get voting rights.

Mr West: I would assume that of the two people who are put on the board as members, one will very definitely be given a voting right.

Ms Churley: I see. OK, thank you.

The Chair: Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Shall section 11, as amended, carry? It is carried.

First off, any amendments or comments on sections 12 through 22?

Ms Mushinski: You mean 21.

The Chair: No, I mean 22. There will be a new section, 22.1, added.

Ms Mushinski: Oh, right. I see. The Chairman is really good.

The Chair: Make sure your microphone is working when you make comments like that, please, Ms Mushinski. The flattering comments never make it on the record.

Mr Wettlaufer: I think Hansard caught that.

The Chair: Back to the question. Any comments or amendments, sections 12 through 22?

Seeing none, I'll put the question. Shall sections 12 through 22 carry? They are carried; which means the next amendment is yours, Ms Churley.

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

"Municipal organic waste diversion program

"22.1(1) Every upper-tier and single-tier municipality shall develop, implement and operate a waste diversion program for organic waste.

"Same

"(2) One half of the total net capital and operating costs of a municipal waste diversion program for organic

waste shall be paid for by the municipality and the other half shall be paid for by Waste Diversion Ontario.

"Same

"(3) The council of the municipality shall submit the program to the minister for his or her approval and subsections 25(2), (3) and 4) apply to the application for the minister's approval with necessary modifications.

"Definitions

"(4) In this section,

"'single-tier municipality' means a municipality other than an upper-tier municipality that does not form part of an upper-tier municipality for municipal purposes;

"'upper-tier municipality' means a municipality of which two or more municipalities form part for municipal purposes."

Shall I give an explanation for this amendment?

The Chair: Please do.

Ms Mushinski: Yes, please.

Ms Churley: Welcome. We just saw you on TV, Mr Bradley. I'm pleased to have you back with us.

Mr James J. Bradley (St Catharines): I'm glad to be back.

Ms Churley: I think he was taking part in a time allocation motion, if I'm not mistaken.

I noted earlier that this bill and this program are being set up not only to give municipalities money, which we all agree is necessary—it's been a long time coming and in many ways inadequate. I think I have a motion coming up to deal with that later. Nonetheless, municipalities are anxiously waiting for some money to come their way. We all acknowledge that.

Second, what is missing from this bill—and AMO, may I add, pointed it out as well and is one of the issues that they raised—is the organic waste problem and the fact that if we were able to take organic wastes out of landfill, that would go a very long way to resolving the waste management problems we have. I understand that organic waste represents 30% to 40% of municipal solid wastes. When Ms Ann Mulvale, the president of AMO, came to speak to you, she brought this up as a major problem and she mentioned that there is not a mechanism in Bill 90 to support organic waste diversion. I said earlier and I will say again how important it is for this organization to have credibility beyond just providing some funding for municipalities, that it is also about diverting waste. If we don't do that, if we don't take the opportunity in this bill to have something like my amendment in place, then we again don't have any leadership coming from the provincial government where we need to have it to make sure that it's happening.

1640

You will all remember and be aware that during the whole Adams mine—Adams Lake, I call it—debate this was a major issue. One of the things that came out of the Adams mine debate was the fact that we're putting far too much of our waste into landfills. It became increasingly clear. We know that other jurisdictions are doing it: Halifax quite successfully, and where is it in Alberta?

Mr Bradley: Edmonton.

Ms Churley: Edmonton, and there are some pilot projects here in Ontario, for instance Guelph. There was one, I think, that has been stopped now just in the Toronto region, which I visited. My leader, Howard Hampton, visited the site in Guelph. We've been promoting moving forward and having the province take leadership in getting the organic wastes out of landfill. There's technology that is proven. We don't have to reinvent the wheel here. The problem is that we have no leadership coming from the provincial government. We have no time to lose on this. We need to use this opportunity, and here is the perfect opportunity, to help municipalities. As has been pointed out by the president of AMO, this is a hole in the bill. It is not possible to divert enough waste from the waste stream unless such leadership is shown by the provincial government.

I want to remind you of what Ms Mulvale said. She said, "Organic waste represents 30% to 40% of the municipal solid waste stream. It is therefore essential to increase the level of organic waste diversion in Ontario if we are to achieve the overall 50% provincial waste diversion target. According to preliminary estimates from the WDO, the net cost of operating a province-wide municipal organic waste diversion program would be expected to be nearly $50 million."

She then went on to recommend that "the legislation be amended"—and this is what this amendment is all about—"to enable the province to provide such funding. Organics represent a significant share of household waste, and without support, municipalities will not be able to establish and/or expand their organics diversion programs.… It is tremendously important for municipalities to have predictable and timely funding provided for their household waste diversion programs…." She's also talking here about blue box and household hazardous waste and urges the "committee to recommend that these two waste streams be designated immediately, ie, as soon as the legislation comes into effect, and that funding be effective as of the date of the designation."

That was a very strong point that Ms Mulvale, the president of AMO, stressed. Many of you here were on that committee and heard her. Nonetheless, this bill continues to be devoid of any reference whatsoever to diverting waste, which is the key challenge before us. We're way behind other jurisdictions. We've got a major problem with our waste management.

As I said previously, it's getting harder, for good reason, to site landfill. Incineration: as you know, the New Democratic Party banned it as an option. We still support that. Even if the government chooses to try to site incinerators in communities at this point, it's not going to happen, because people are going to fight, just as they are now around landfill.

We've got an urgent matter before us. We've got a bill before us which, in my view, is astounding in that it does not deal with diversion. I am asking the committee to please support this amendment and to go back to the Ministry of the Environment, to your minister, and say

that this is a big hole in the bill. Municipalities aren't happy about it. They asked for this amendment and it isn't there. I would urge all members to support this amendment so that this bill will have, and the government will have, some credibility in terms of pushing forward on a diversion waste management plan, which this bill is devoid of. It's not there.

Mr Arnott: I would be happy to answer some of the issues that Ms Churley has raised and first of all indicate that we appreciate and welcome her support for organics diversion, which is something the government also recognizes is a very important issue, not only for the provincial government but also for municipalities.

Organics are one of the materials that will most likely be designated by regulation under the act and, once designated, the minister will request the WDO to develop, implement and fund a program for this material. There are also a number of options that need to be considered in developing and implementing an organics program, and we believe the WDO is best suited to determine which organic diversion options will be considered and implemented. With regard to funding, the Waste Diversion Organization is best suited to determine the costs to be covered under the program.

Mr Bradley: On a quick point of order, Mr Chair: First of all, I'm going to ask for unanimous consent to be substituted on to the committee if that's possible.

The Chair: Agreed? Agreed.

Mr Bradley: Thank you. I'll remember that.

Ms Churley: You owe them now, Jim.

Mr Bradley: I hate owing them. Thank you.

On this proposed amendment, there's no question that organic waste can be dealt with appropriately. Some members of this committee are aware of some of the European experiences. In North America, although there are some jurisdictions that have begun some good organic waste diversion taking place and treatment of organic waste, and they are to be commended, I think we've seen examples, particularly in Europe and in other parts of the world, where organic waste has been dealt with in such a way that it does not make its way either into incinerators or into landfills.

I'm certainly interested in the comments of the head of the Association of Municipalities of Ontario. Ms Mulvale has certainly been vociferous on this subject. She is concerned.

I know that Mr Arnott made a comment to the committee that organic waste would likely be designated by regulation. I would prefer to see it in the legislation itself. I think as members of the Legislature we should always be striving, wherever we happen to be sitting in the Legislature, to have as much as possible contained within the legislation itself and not left to the regulatory regime. That's because we have that kind of input and the public has good input when it's done by legislation rather than by regulation. Regulation, by its very nature, is carried out largely behind closed doors. Yes, there is some input from time to time on a regulation and I want to concede that, but by and large the regulatory framework that follows a piece of legislation is as a result of consultation that takes place within government, perhaps within ministries and some members on the government side may have some input into it, particularly those in the cabinet, but I do wish to see it contained in this legislation.

To achieve the kind of diversion of organic wastes that I think all members of this committee would like to see, it's likely that we would have to see some investment of funds by the province. I'm not suggesting for a moment that the province assume the lead in this in terms of the funding, as it did when we initially set up this kind of program. The province was very prominent in its funding.

Certainly the private sector which generates the waste, which causes the waste as a result of economic activity taking place, should assume a good deal of the cost. I think that's an assumption we would expect.

In reality, I think municipalities expect that they're going to assume cost. I think what they would like to see is the province assume cost, if not operating, certainly in terms of research and development and promotion as opposed to operating. There's nothing I'd like better than the province to become involved once again in the operating costs of waste diversion. I doubt that's going to be on the books for this government, so what I'm saying is perhaps then you would look at funding pilot projects such as we see taking place in Guelph. Some of the great examples that we always use in Canada now are Halifax and Edmonton, quite obviously, but if we could see some innovation fund specifically in the field of waste management, that might be quite helpful.

1650

You can say that the minister will designate later on. We're not certain in government who a minister will be. It's likely, as a result of the leadership race that's within the governing party now, that we may see some changes after that is over. You may see different ministers in different ministries. While I'm relatively confident the present minister would want to designate organic waste—I think I would be fair in saying that; I'm not putting words in her mouth—we don't know whether that minister is going to be in place at that time. There may be another minister who does not believe that is appropriate.

Keep in mind, and Ms Churley made reference to this, the hierarchy of the 3Rs. I'm glad it's not the 4Rs, because I remember they used to tell me about the 4Rs a long time ago. When I became minister, I started using 3Rs and people would remind me there's a fourth R, that being recovery, which really meant burning garbage, something I've never found particularly productive although it does happen in this province in a couple of places. It used to happen—some members of the committee may be interested in this or may already know this—in open garbage burning. I recall that years and years ago in Sudbury there was a fire going at the dump. They burned the garbage at the dump. We didn't call it a sanitary landfill then; we called it a dump. We've come a considerable way since then, but diversion is the key.

In the hierarchy, the first is reduction. How can we reduce the amount of waste we produce in the first place?

The second is, how can we reuse materials as much as possible? In many cases it would be our grandparents who remember some of the old tricks of reusing things that today we'd probably toss out. Perhaps we're rethinking that now, but they reused a lot and that was because of economic circumstances. The third is recycling, which is a useful exercise, so it's not the first or the second.

We have to deal with organic waste. I think it's a major portion. I would like to see it in the legislation. I think the amendment accomplishes what most members of this committee, or perhaps all members of the committee, would like to see, and I'm very supportive of the amendment and hope that members of the governing party will give it favourable consideration.

The Chair: Further debate?

Ms Churley: I'd like to thank Mr Bradley for his support on this amendment. In many ways it's perhaps the most important amendment before us today given the crisis, I would say, crises that we have in the ability to dispose of our so-called garbage.

One of the things that I noticed Ms Mulvale talked about in her presentation was that we generate a higher per capita waste than most other countries in the world—I don't have that percentage, but I know that's true; it's also true of our energy consumption—and that we have to do something about it. If we don't amend this and get this as part of this bill, I fear that nothing is going to happen for a long time, and that's a real concern.

It has been mentioned here that all governments, except yours, have managed to avoid, unlike the Liberals before this government and then us, problems with trying to site landfills. You can ask Mr Bradley, you can ask Ruth Grier, what a difficult, difficult process it was. You haven't had to deal with that in a serious way, the way both our governments did.

However, I would say this to you: when the NDP went through the whole terrible process of trying to take the responsibility away from municipalities—and Mr Bradley will remember how difficult it was to get anything happening when he was the Minister of the Environment—we, in our wisdom, decided—I wish the sarcasm could be recorded in Hansard here—"Oh, well, somebody's got to do something here; we will take it on as a province." To our horror, it did turn into a nightmare, but I just want to make it clear that we did decide to make it a very open process. Some of the staff who are still here will remember that. We decided to make it—

Mr Bradley: Their hair was darker then.

Ms Churley: Their hair wasn't quite as white as it is now. Ruth went whiter more quickly than I think she would have. I was, before I became minister, the parliamentary assistant to Ms Grier for a short time and worked on these issues and I remember it as well.

But what I wanted to say is—and this is all relevant here; it's really important that people understand this—under our government and the previous government there was an Environmental Assessment Act and every landfill that was proposed, if it was public, as most landfills are, had to go through an environmental process. One of the parts of that environmental process at that time was—and I'm getting to my point—that you had to look at alternatives to the site and alternatives to the undertaking.

Ms Mushinski: Unless the minister gave it an exemption.

Ms Churley: There were cases where the minister did give those exemptions, no doubt about it. That happened. That's always been the case and I assume always will be the case. I can't imagine that any government would take that ministerial responsibility or, I suppose I should say, prerogative away.

But what I wanted to say about the Environmental Assessment Act is, had we not lost the government to the Tories in 1995—some of those sites had been reduced down after much agony and there were still some more that had to be taken off the table—whatever had been left on the table would have had to go through a thorough environmental assessment, and believe me, there would have been no exemptions; we promised that. At that time, alternatives to the site and alternatives to the undertaking would have to be looked at under the existing Environmental Assessment Act then—before the Tory government came in and gutted the EA process.

Now you have an environmental assessment process. You don't have to look at any of these things. What I want to say here is, had that process still been in place and had we gone through and continued to the end, picking which sites we were looking at or a site for the landfill, it would have had to go through that process, at which time there would be no doubt that alternatives to the undertaking and the site would have to be looked at under the act. It is too bad that didn't actually go ahead, because I think there would be no doubt that at that time we would have been forced to look at the alternatives to the undertaking. There was enough activity going on in Europe and other jurisdictions that would have dictated in many ways—groups like the OEN and others and communities would have come out in full force—and we would have had to look at these programs, including dealing with organic waste, in a very serious way and brought those on stream.

That didn't happen. That whole process was stopped and many people, especially those whose land had been picked as a possible site, were very glad to see it happen. But the reality is as well that there was a recession, and we all know that during recessions there's less waste produced. It gave this government some wiggle room, leeway, but it's catching up to us again. It's just too bad that we have not gone through that process so that we would have had to look at these alternatives to the undertaking, because we would have been further ahead.

But here we are today, hardly any further ahead whatsoever; in fact, I think in some ways we've taken backward steps. We now have this opportunity, although we don't have an environmental assessment before us, for the government to show that it's serious about reducing garbage going to our landfills. Nobody disagrees any more that we have to get the organics out. This bill

before us today will not go one iota in that direction, and that's a real shame.

Here we are today, 2001, we have to have this 50% diversion, and we don't have anything in a bill that's coming forward which shows that the province is taking any leadership on this. That's a crying shame. This is an opportunity for members of the committee to go back to your minister and say that you disagree with their position on this, you support AMO's position on it and we'll agree to this amendment today, which I might add is an amendment that not only the OEN but AMO asked for as well. I hope you'll support it.

1700

Mr Bradley: A point of clarification on this, if I can, unless there's another member who wishes to speak. I don't know whether staff answers this or the parliamentary assistant.

Mr Arnott: They help me, if I need it.

Mr Bradley: They help you all the time, I know that.

You mention that with organics you think it's going to come in through regulation. Which of the industries would you anticipate would be funding organics? Would you be talking about the supermarkets, the farmers, the processors, or who would be funding that? I could certainly see that as a result of that funding we may see some increase in the price of food, but who do you anticipate would be funding that?

Mr Arnott: That's a very good question. It is again, just to clarify, the intention of the minister to designate organic wastes at an early opportunity, but I would ask our staff, if someone has an answer to that question, to come forward.

Mr West: You've indicated that this is very important to the ministry in terms of our meeting our reduction goals. Organics is clearly one of the 10 items that have been identified for designation. Organics is a very important one of those 10. If you look at who may be in a position to fund this, I would expect what you will see here is that it will be either brand owners or first importers of products that are identified that could be utilized from an organics perspective, and that assumption we think needs to be looked at by Waste Diversion Ontario board of directors and those who will be helping develop the program.

It does not necessarily mean that we can't look at options as to how to deliver the best results around diversion. There are a number of options out there. There are a number of jurisdictions that are utilizing various programs, and we want to look at those. We want the WDO to have serious consideration of that and develop the best program and identify who, in our terms, the stewards would be to pay those fees. Clearly, it is the intent to have an organics program under this initiative. It is clearly the intent to move in that direction.

Mr Bradley: If I may direct a supplementary type of question, and perhaps this is a policy question so you can say it's a policy question if it is, but would you anticipate that the Ministry of the Environment might consider some innovation funding for specific pilot projects dealing with organics or do you see that coming out of the fund itself, those who are producing the wastes in the first place? Would you see the province playing any role at all in that through any kind of funding mechanism you have within the ministry?

Mr West: I don't think I'd be in a position to indicate that, Mr Bradley.

Mr Bradley: That's fair enough.

Ms Churley: Could I follow up and ask you a question further to your statement about the WDO being involved in developing programs for dealing with organic waste? Would it be a voluntary program?

Mr West: No. Clearly, the intention is that this would be listed as a material designated under this particular act.

Ms Churley: I see.

Mr West: The minister would ask the WDO to develop and implement and fund a program for waste diversion of organics. We very clearly see it as an important part of this bill.

Ms Churley: But there are no dollars directed to this—

Mr West: Under a designated material, when the minister asks the WDO to develop and implement, she also asks them to fund that program.

Ms Churley: The funding would have to come from whatever industry could afford—

Mr West: Whoever is identified as a steward.

Ms Churley: —to manage a program completely on their own, so would the government also contribute?

Mr West: This would be those who are identified as stewards under the bill as paying fees required to implement a waste diversion program for organics, and there are quite a few options available for Waste Diversion Ontario to undertake that kind of development, implementation and funding of that program.

Ms Churley: I think it was the WDO that came up with the $50-million expenditure as the net cost of operating a province-wide municipal organic waste diversion, and that's what I'm getting at here: a province-wide municipal organic waste diversion. That $50 million, if I heard correctly, was a number that the WDO came up with. Is that not correct?

Mr West: That's my understanding too. Just remember, that was an organization that was voluntarily put together by industries that came up with those numbers. Those numbers would have to be further worked on as to (a) what type of program would you want to have and (b) what would be the cost associated with that? But they did some work on that.

Ms Churley: If I may, have you had a chance to look at my amendment?

Mr West: Yes, I have.

Ms Churley: Given what you just said, why would this amendment, if that's something they're going to be doing, be a problem? If that's the direction you say, although it's not so clearly defined as this amendment, what is the problem with this amendment?

Mr West: Outside of the blue box materials, it's the only one that is really prescriptive within the legislation. The whole provision of this bill is to mandate an organization with a number of materials for which we as a province would look for waste diversion programs to be developed. There are 10 other materials that are intended to be recognized through a regulation, and that's what we think is the appropriate route to take: by regulation. That will allow us the ability to fine-tune what that means rather than enshrining it within legislation and maybe having to change it afterwards.

Ms Churley: So that is your concern, then, that right now it can be done by regulation and my amendment actually enshrines it into law. Therefore, you're thinking that there could be problems—

Mr West: We would want to be consistent in our approach to all the materials, save and except the blue box program, for which there is a specific provision in there around the funding side. We would want to be consistent in terms of addressing these through regulations. That's what the direction of this framework, legislatively, is all about: designating materials by regulation and indicating very clearly that the intention is that organics would be one of those materials.

Ms Churley: I see. OK, thank you. I still think the same, to the government members, and understand that the staff are not responsible for the policy directives here. I just think it's a serious problem, a real problem, that this bill does not deal with diverting wastes such as organics. I have trouble believing that we're going forward with this bill and this is not a big piece of it.

The Chair: Thank you very much. Further debate? Seeing none—

Ms Churley: Can I have a recorded vote on this?

The Chair: I'll put the question on Ms Churley's amendment.

Ayes

Bradley, Churley.

Nays

Arnott, Miller, Mushinski, Wettlaufer.

The Chair: That amendment is lost.

Ms Churley: It lost again.

The Chair: Section 23: are there any comments or amendments to section 23? Seeing none, I'll put the question. Shall section 23 carry? Carried.

Section 24: back to you, Ms Churley.

Ms Churley: I move that subsection 24(1) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Contents of waste diversion program

"(1) A waste diversion program developed under this act for a designated waste shall include the following:"

You might think that this is insignificant, just a little word change. If you look at the original section, it says that "designated waste may include the following." Therefore, as I understand it, there was such a thing as a friendly amendment before. I recognize that this would not be considered a friendly amendment because what I'm doing is changing the wording significantly. The little word change means that designated waste "must" include the following as opposed to just "may."

If I may, Mr Chair—

Ms Mushinski: If you shall.

Ms Churley: Yes, it means you "shall" as opposed to "may," and I think that's very important, once again, that we be very clear that this softens it and gives a flexibility that shouldn't be in the bill. So I recommend that all members support this.

1710

Mr Bradley: I think it's an important but very minor amendment that members of the government can easily support. That's why I put it in that category, because if we say it's a major amendment you won't support it, I don't think.

Mr Wettlaufer: It's OK, Jim.

Ms Churley: They won't support it anyway.

Mr Bradley: So let me say it's important. Surely, if you have a waste diversion program under this act, you would want it to include the four points mentioned. Why would you not want it to? Why would you say it "may"? Surely it makes sense, and I hope the government will consider this. I think it's a reasonable amendment, it's not a radical amendment, to say, "1. Activities to reduce, reuse and recycle the designated waste." Obviously that should be a "shall," not a "may."

"2. Research and development activities relating to the management of the designated waste," a very important activity, should be compulsory.

"3. Activities to develop and promote products that result from the waste diversion program": plastics come to mind immediately, all the different uses of recycled plastics, as just one example. Surely that would be compulsory.

"4. Educational and public awareness activities to support the waste diversion program." I think what each one of us has recognized, although I always hate to even mention promotion, because what it starts to make me think about is those government advertising—

Interjections.

Mr Bradley: So something approved by this committee at least. But I think it is reasonable to encourage people to participate in these kinds of activities and to tell them why it is important to do so. One of the reasons that some of the waste diversion activities have been successful so far is that the public clearly sees why it's important, what the alternative is if you don't do it and why it's important.

This is an ideal way for the committee to come together, Mr Chairman, and indicate our concern, as all members of the committee, with a possibility rather than a probability. The probability is contained with the word "shall." I hope Mr Miller has gone out and received the word now that "shall" is very reasonable.

Mr Wettlaufer: It's OK.

Mr Bradley: I would think the parliamentary assistant, moderate, progressive-minded person that he is, would understand the importance of changing "may" to "shall" with this amendment, and he certainly would want to support it. I would be surprised if he didn't.

Mr Wettlaufer: That doesn't mean you can run all over him.

Ms Churley: I'm wondering if I could hear from the parliamentary assistant why the namby-pamby word "may" is there instead of the much more clear word "shall."

Ms Mushinski: Now you're getting personal.

Ms Churley: That wasn't personal. He didn't write it.

Mr Arnott: In response, as we've discussed already, currently there are 10 materials that are intended to be designated by regulation under the act. Those are blue box materials, household special wastes, scrap tires, used oil, electronic components, batteries, fluorescent lighting tubes, organic wastes and pharmaceuticals. I think those are the 10. It is the government's belief that flexibility is required as it is impossible to predict specific program requirements for each of these materials. Therefore, the government is opposed to this wording change.

Ms Churley: But wouldn't you say that in this case those which we know should be included—that you don't need any flexibility but we need clarity there that those should, "shall," be included? Wouldn't you agree, Mr Parliamentary Assistant?

Mr Bradley: To help the parliamentary assistant out a bit—I notice that your minister today said she taught Latin, and "non sequitur" I think is the word I wanted; your response to Ms Churley seemed to me, as an objective observer, to be a non sequitur. You talked about the number of materials that should be designated. She's talking about four points here rather than materials. So I can understand your saying it's going to be designated, and you've named those, but these are four activities. Why wouldn't you want these four activities to be compulsory as opposed to simply optional?

Mr Arnott: Because we believe it might actually inhibit some positive programs that would benefit the environment and the advancement of recycling if we were to do what Ms Churley has suggested, by eliminating some opportunities to pursue recycling programs, if we were to accept her wording change.

Ms Churley: Are you having fun, Mr Chair?

The Chair: I am always engrossed in the debate that takes place in this committee.

Ms Churley: I want to thank my colleague Mr Bradley for bringing that up, because I did respond directly to the list of materials you mentioned, but this is quite specific. Let me say that if you change the wording from "may" to "shall"—and I think we would all agree that those four listed here are ones that should be included. We have no argument there, I think. The wording is such that even with the word "shall," it doesn't preclude other activities from being included in this section later if you want to. What it would be saying now is "A waste diversion program developed under this act for a designated waste shall include the following," and then it lists the four. It doesn't preclude, if you change that, having other activities added on. What I'm trying to say here is that there should be no question that these four activities be part of the waste diversion program.

When we bring in new legislation, I like to see those pieces that we all agree on as being critical clearly outlined as something that will happen, as opposed to may happen. If you look at the four listed here, you will see—I would like other members to take a look at this and, if you can, give me a reason why you think those four particular objectives shouldn't be written in stone, that this is something the organization shall have to do, bottom line. Does anybody want to respond to that?

The Chair: Ms Churley? Oh, I'm sorry, Ms Mushinski.

Ms Mushinski: You're not the only one who has made that mistake.

I think changing it from "may" to "shall" gets back to my original point. I believe it makes it prescriptive rather than permissive. It seems to me that the whole thrust of this bill is to, I suppose, use the carrot rather than the stick approach. We're a fair and reasonable government. I think industry is fair and reasonable. I think that in the last 20 years industry has come a long way to accepting their responsibility for improving the environment. I think if we're now going to start to use the vinegar versus the honey approach, then you will find an industry that will balk at that. So I would not support including "shall." I think it's, as I say, too prescriptive, and I think it would change the whole intent of the bill, which is to encourage the private sector, especially those industries referred to, to really think about the holistic approach to improving the environment, especially through the 3Rs.

The Chair: Further debate?

Ms Churley: I just want to point out again that if you read the section, it doesn't refer to any specific industry-based programs. They are the principles of what this waste diversion program should be under the act. So if you read carefully—and I'll read them again, and tell me if you don't agree with these: "activities to reduce, reuse and recycle the designated waste." We all agree with that, right? I know I'm not the Chair, so I can't make you put up your hands, but I'm thinking that we all agree with that, obviously.

Number 2: "research and development activities relating to the management of the designated waste." How can we not agree with that? How can we move forward without agreeing to that?

Number 3: "activities to develop and promote products that result from the waste diversion programs." That's just common sense.

Mr Wettlaufer: What would the NDP know about that?

Ms Churley: He said, "What would the NDP know about that?" just so we have that on the record.

Ms Mushinski: You were supporting tax cuts a few weeks ago.

Ms Churley: Now we're getting into tax cuts. Finally, we've got some fire here. People are coming alive.

Number 4: "educational and public awareness activities to support the waste diversion program." Surely nobody disagrees with that. I would say in good faith that all of us on the committee would agree that those four are absolutely essential and it's just a simple matter of changing the wording so the government looks like it's really committed to making this happen. When you've got weasel words in there like "may," then it looks like you're perhaps not all that committed to making these four things a very important part of the mandate for this organization.

Having said my piece on that, perhaps I've changed somebody's mind.

1720

Mr Arnott: I'd just like to state again that the government believes that there has to be flexibility in this. For example, if there was a waste diversion program that was proposed and it only satisfied three out of four of these criteria outlined in section 24, if we accepted your amendment, Ms Churley, that program would not be accepted. Yet it might mean that there would be tangible, measurable progress toward improving waste diversion in the province of Ontario, even though it didn't accomplish all four of those. So for that reason, again, I would argue that there needs to be flexibility, and for that reason, the government has indicated that it is opposed to your amendment.

Mr Wettlaufer: It's noteworthy, I think, that Ms Churley referred earlier to the fact that when there's a recession, there is a significant reduction in waste. It took me six years to realize that that was the purpose of the government of the day, the NDP government's motivation. I realize they successfully ensured that Ontario went into a period of recession, and of course they did have a reduction in waste.

I think it is very important to keep in mind that when you want to have prescriptive definitions or prescriptive legislation, you realize that if you do something like that, it takes away from the balance necessary in legislation. Yes, we have to protect the environment, but we also have to ensure that there is significant investment, expansion and jobs. I think we have to be very careful in using prescriptive language so we don't discourage that investment and those jobs.

Ms Churley: I was all ready to let it go, but of course now I've been provoked into responding to that. You were so close to a vote on this one. But having been provoked, I must say that I would advise Tory members at this point in time to perhaps bite their tongues when they want to talk about the NDP being responsible for the terrible recession that took place, which was starting before we were elected in 1990. As Mr Bradley knows, it was starting to go in the dumps and started to recover just in time—

Mr Wettlaufer: Oh, so the Liberals caused it.

Ms Churley: No, in fact—

Mr Bradley: South of the border.

Ms Churley: South of the border. I would just caution you to be careful with that because, as you know, preceding the terrible events in the US on the 11th, we were starting to go into a recession, as outlined in a leaked document from your government that said you saw there was a recession coming. Of course, now after September 11, that has been aggravated.

Why is that happening under this government when, in fact, a certain member of the Tory government said tax cuts helped the economy of the US? He even took credit for the US economy. But we see very clearly that no government in Ontario creates—we all have our different ways of trying to keep people afloat and keep jobs for people during recessions.

But I caution you at this time to be very careful about that, because you can't go on much longer. You all heard the news today about the $5-billion deficit, and you still want to give your corporate tax cuts. All you can do, therefore, is cut even more programs. So I'd be really careful now, because you're falling into a trap. You're going to have to answer for what it is you did wrong to make us go into a recession in Ontario.

Mr Wettlaufer: It's really hard, Ms Churley, when you're blaming the Liberals.

Ms Churley: Having made that caution, coming back to the change of word before us, I just want to say again that this particular clause is not and shouldn't be about flexibility. I don't think anybody is arguing that we want to have flexibility in certain areas so that new and innovative programs can come on board. In fact, an earlier amendment of mine that would allow that innovation was rejected by government members. When I talk about clause 4(a), that's one where you have now included in yours "effectiveness and efficiency." I'm very concerned about "efficiency" being added to that, that the criteria and guidelines for how that efficiency is going to be measured would in fact disallow flexibility around communities funding creative and innovative ways to deal with waste. If because of this the WDO decides that it's not efficient in their terms, it could discourage municipalities from moving forward. So I'm just really disappointed that such a small but important word change here that would beef the bill up, give it more clout, is not being accepted.

Mr Bradley: Yes, Mr Wettlaufer provoked me into making a brief further comment. I actually prefer it to be prescriptive, because that implies that there shall be the same rules for everyone. One of the problems when you put the word "may" in instead of "shall" is that some may be treated one way and some may be treated another. I know that there are those who say, "Well, the virtue of that is in fact that there is flexibility." I think the lack of virtue in that is that different people get treated in a different way. If they all have to follow the same rules, it seems sensible to me that they'll be prepared to do so, knowing that everybody else has to follow the same rules. I can't see with the activities that you have suggested, the four stipulations that are here, that that would discourage anybody. I commend the government for the

wording that's contained in there right now. I don't know why it would discourage anyone from proceeding with an activity.

To Mr Wettlaufer, I can say that my observation has been that the argument you've put forward—and perhaps I've misinterpreted it, so I'll be kind—is one that was made for years, and I'm going to tell you it doesn't really affect the industries in that way. As long as you will say that they will not do it, that they won't undertake certain economic activity as a result of an environmental stipulation, then it will happen that way. The only way you get them to move, in other words, is to put it in rules, to put it in law. Then they will move.

It's interesting, because it was someone from this field of waste diversion, whose name I won't mention, who was talking about his frustration—and this was earlier, before this bill—at how long it was taking to proceed with this and how he felt that the government was being overly cautious with industry, that industry was prepared to move forward in this specific case and the government was simply being very cautious about it; I don't know if it was, and I don't want to provoke the Chair of the committee. I don't know if it was the Red Tape Commission or what it was, but by and large I found that what the industries will say, what the businesses will say, is, "As long as you treat all of us the same way," in other words the rules are there, the stipulations are there, "at least we're all on the famous level playing field."

I'll tell you, as soon as you go down the road of saying an environmental law or an environmental regulation will prevent economic activity, then you're going to have the argument constantly pushed in your face that this new regulation you're bringing forward is going to cause problems for industry. I can recall, as a last instance, a particular one in the Niagara region where there was a part of a plant that closed down. The president of the company could have come out and said, "Oh, well, because of new environmental regulations, we closed that down." He didn't say that, and there were some new environmental regulations. He said it had nothing to do, really, with environmental regulations; it was a matter of the product they were producing not selling any more. They could not do it economically regardless of any environmental implications.

So I guess the point I make is that when you make it prescriptive, it's the same rules for everybody. I don't think you're going to prevent people from expanding their economic activity by not supporting this amendment.

1730

The Chair: Any further debate? Seeing none, I'll put the question.

Ms Churley: Recorded, please.

The Chair: Ms Churley has asked for a recorded vote on her amendment.

Ayes

Bradley, Churley.

Nays

Arnott, Miller, Mushinski, Wettlaufer.

The Chair: That amendment is lost.

Ms Churley, back to you.

Ms Churley: I move that paragraph 1 of subsection 24(1) of the bill be struck out and the following substituted:

"1. Activities to reduce, reuse and recycle the designated waste, in that order of priority."

So what has changed here is that I've simply kept "activities to reduce, reuse and recycle the designated waste," but I've added "in that order of priority." I spoke earlier to the importance of "that order," of the wording, and I mentioned that I was pleased to see the government's first amendment, the purpose, although I was disappointed that you didn't accept my amendment to change it to, "The purpose of this act is to require the reduction, reuse and recycling of waste and to require the development, implementation and operation of waste diversion programs."

What it does say is—it's the same as what we just dealt with in terms of the wording. It says, "The purpose of this act is to promote the reduction" and "to provide for the development." I did make an amendment to tighten the wording on that, and it was rejected. But I did commend the government for at least having the 3Rs in their proper order: reduction, reuse and recycling. I think perhaps the government members can even support this. Wouldn't that be something? I might get support from all members.

It's so important, as we move forward with this bill and start dealing with our priorities, that people understand that this is the order in which we want the activities to be dealt with, and so we have here "reduce, reuse and recycle." I just want it written in so it's very clear that the activities have to be dealt with and should be dealt with within that framework.

The Chair: Further debate?

Ms Mushinski: I'd just like to ask a question, if I may.

The Chair: The floor is yours, Ms Mushinski.

Ms Mushinski: I guess the question—perhaps I'm as confused as you were about one of the others—is, why? Does reusing and recycling not automatically reduce?

Ms Churley: No. I'm not quite sure what you're talking about, being confused earlier. I wasn't confused; I simply wanted to know the answer. It just didn't make any sense to me. I assume that this one doesn't make any sense to you, and I'm happy to try to answer your question.

Once upon a time, in a faraway land, I got involved in the whole garbage issue over incineration in my riding. In fact, it's what led me here. I got to know a fair amount about—I believe Mr Perks, who's in the room today, was involved early on in the development of the blue box as well. At that time, what happened was that there was so much focus, in fact almost complete focus, on the blue

box and recycling waste. For far too long, that was the emphasis. But of course, if you think about the order of this wording, obviously to reduce means that less waste is being produced in the first place. If you compare that with recycling, the last in the hierarchy, you've got the waste produced—let's take a bottle, for instance, a liquor bottle. If you put it into the blue box, it has to be carted back, and in fact some of them end up in landfills still, the coloured ones. Energy consumption is used over and over and over again to recycle that container, as opposed to, say, the beer industry, which takes that bottle, collects it back and refills it over and over again. Yes, there's energy used in refilling that bottle, because it has to be washed and refilled, but the middle one, reusing, is somewhat better than recycling because you're not using up resources over and over again.

It makes common sense, if you think about it, if you reduce certain waste in the first place. Think about overpackaging, for instance, if you buy CDs or other things with tons of packaging on it which in most cases either goes in the garbage or is recycled. If you can find ways—and there are many ways—to reduce unneeded packaging, then right away you've got less waste to deal with.

That's what that's all about. There are 3Rs. With reduction, of course, it goes without saying that you have less garbage to deal with. If you reuse it, you're using up fewer resources to reuse a container, especially unrenewable resources. Then the recycling comes in last, because you've got that container, but it takes a lot of energy to turn that piece of waste, whatever it may be, into the same product over again or another product.

Ms Mushinski: So you just don't see that there may be an example of where "reuse" actually would come before "reduce," in terms of this particular—

Ms Churley: The idea here is that—

Ms Mushinski: I can understand the arguments you've given with respect to recycling; it's just that if you want it in this order, there may be times when a combination of the three may require a different order. I can't think of what it is right now, but—

Ms Churley: I hear what you're saying. My response is that for every material produced, the first thing that should be thought of and looked at is a way to reduce the production of that. You're right: in some cases, perhaps it makes more sense at the end of the day that the best or only way to deal with it is to recycle it. But what this is saying—it's reiterating that the order of priority should be, number one, to try to reduce. In some cases, you're right, it perhaps is not feasible. If that doesn't work, the next thing you look at is, "OK. If we can't reduce the production and consumption of this material, then how can we reuse it?" Last, if the solution can't be found in terms of the second option, reusing it, then you move to recycling, if that seems to be the only option that will work.

That's what I'm saying, that we have to start looking at it and that the end use should not always be, "Let's just throw it in the blue box and recycle it," but let's look at the first priority being to reduce. If that doesn't work, then you move to reuse, and finally to recycling, if that turns out to be the only option. That's important, and that's why I did congratulate the government for getting these three in the right order. I think it's important to keep reiterating that that should be the priority. I hope that was clear. It's a bit convoluted.

Mr Bradley: I think we should perhaps be thankful for small mercies in that we have not had the government members trying to resurrect recovery. So I want to say something positive, in the first place, that I don't see the word "recovery," that fourth R, reappearing. I had this awful nightmare once that we would see that happen, and it hasn't, so I'm thankful for that small mercy.

1740

In regard to the amendment we have, I think it's a reasonable amendment in that it doesn't preclude the use of any of the 3Rs. It may well be that although reduction is what we would want to see happen first, reuse second and recycling third, it may be that a choice may be made to either reuse or recycle. The advantage of reduction, of course—perhaps a good example of reduction would be an additional layer of packaging for cosmetic purposes only. We want to ensure, for instance, that medicines have the appropriate packaging, and certain foods; we want to make sure for safety purposes that they are packaged appropriately. But it may be that for strictly cosmetic purposes or to make it attractive to the public to purchase, there's an additional layer of material put on in terms of packaging. There is where reduction would be best: that additional layer, whatever it happens to be made out of. If we could simply eliminate that, we are reducing, and that's the best. If we could reuse it, that would be second-best, and if we could recycle it, it's third-best. Sometimes recycling and reuse are fairly close. I think that's the point Ms Churley is attempting to make in the amendment.

Ms Churley: You mean I wasn't clear? Are you trying to clarify for me?

Mr Bradley: I'm trying to be helpful in terms of securing the support of some of the government members who may have misinterpreted what you are saying. That's clearly why it's important to have it in that order.

Again, you have words like "may" in there. It is important to you, I realize, that you can use one of the three. I think what the amendment does is put first in mind reduction, second in mind reuse, third in mind recycle. All three or one of the three or two of the three may be used, but it puts it first in mind. That's why I think it's a reasonable amendment and why I certainly would be supportive of it.

Mr Arnott: To reply to the suggestion and the amendment on behalf of the government, I would indicate that the focus of the proposed act is clearly identified in the title of the bill and in the proposed purpose statement, which has been passed by this committee, and that is to promote reduction, reuse and recycling of waste. In addition, this issue will be dealt with at the program level when the Waste Diversion Organization develops a program for a designated material. Again I would argue that

flexibility is required to choose the appropriate mix of solutions for any waste diversion program developed by the Waste Diversion Organization.

I would say to Ms Churley that, personally speaking, I think there is a desirable hierarchy in the 3Rs, which you have clearly identified your support for.

Ms Churley: Which I brilliantly pointed out. You could say that.

Mr Arnott: Yet I would also bring to her attention the fact that of the 10 wastes that we're anticipating will be designated for waste diversion programs—one, for example, fluorescent lighting tubes. It may be that it's very difficult to reduce their use at the current time because they're already in use and it would be best to consider recycling as the first option. I don't know exactly the technologies that are available, but there may be some of the waste that we hope to designate soon because they are problems and problematic, and the idea of reducing their use at the current time is such that we have to look at other options, and recycling may very well be the best option for a specific waste.

Ms Churley: I guess my explanation of why the hierarchy is essential in terms of making it clear what the priority should be wasn't as brilliant as I thought it was, because I'm not disagreeing with the need to be able to bring new products on stream, and there are some that would not fit under the reduction category, but it is essential that that be the priority, the first thing to look at, and then you move down the chain.

What happens a lot now and what we need to change, although it's slowly happening: we need a change in attitude, and don't skip to recycling right away, but look at the options for reducing, and if not reducing, then reusing. That's what we're trying to say here. I'm not trying to say that everything can be reduced or refilled. It's just making sure the government is clear in this bill that they see the hierarchy of the 3Rs.

The Chair: Any further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

The next amendment is yours, Ms Churley.

Ms Churley: I thought that was a simple one. OK, where are we?

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

"Target waste diversion

"(1.1) A waste diversion program developed under this act for a designated waste shall provide for the reduction, reuse or recycling of at least 60 per cent of the designated waste."

The reason I have this amendment before us is that it gives an actual target. If you look at the bill and you look at this section, there isn't a target. The way I read it, the target could be 5%. So it's not nearly as vigorous a demand as we need, and I would hope people would see that there is a problem in not having a target there.

I see Mr Arnott is reading away, and he might give me an explanation as to why there is no specific target there.

Mr Arnott: In response to that question, I would say again to Ms Churley that there are 10 materials that are intended to be designated by regulation under the act, and I have read those out at least twice now, I think; at least once.

It is the contention of the government that flexibility is required, as it is impossible to predict the specific program targets for each of these materials, and they may vary. The act clearly provides for the development of objectives or targets as part of any waste diversion program. A proposed program must also address how the proposed targets will be measured. Specific targets, however, have not been set out under the proposed act, as it is expected that these targets will vary, as I have said, from program to program.

There are some materials where program targets will be well known—for example, tires—and others where the target will be more difficult to set at the start of the program. In requiring a program to be developed for a designated waste, the minister may set the target or require that the WDO or industry funding organization set the target as part of the program proposal.

Again, I think it's important that we recognize that for each of these designated materials and maybe others that will be forthcoming, they may not all have the same target at the outset. Certainly we would want to ensure the target is one that moves us forward in a positive direction, but also that it be realistic in terms of attainment. For that reason, the government is opposed to this amendment that the NDP have brought forward.

Mr Bradley: The virtue of a specific target—in this case 60%—is that it compels people to work toward that target and perhaps even exceed that target. I was under the impression that Ontario was supposed to reach a diversion rate of 50% by the year 2000. I think I'm correct in that, and I think we're at about one third right now in terms of diversion, if my figures are correct. The city of Toronto is even under that in terms of diversion.

So it seems to me that, yes, 60% is ambitious to some, but things have changed over the years. The technology is different; the knowledge is different. There has been a lot of innovation; again, some of it here in Ontario, some of it in Canada, some of it in Europe and other places. It seems to me that we have an opportunity here to set a specific and, I think, attainable percentage of 60%. If you had said 25 years ago that you were going to attain 60%, it may have been difficult. First of all, there wasn't a mindset in that direction because we were content as a society to simply bury or burn waste. That mindset has changed both in the public at large and in industry and business and municipalities, so that's very helpful.

I go back to the fact that with some of the innovations that have taken place, some of the research that has been done, we have discovered ways of reducing considerably, and recycling and reusing the waste.

I hear the division bells ringing at the present time.

I think it's a reasonable amendment, again—

Ms Churley: Will you support it?

Mr Bradley: —not a radical amendment, and I will be supporting this amendment.

The Chair: Thank you. Any further debate?

Ms Churley: We have to go for a vote, but I did want to point out—this pertains to this amendment and my previous amendment—as pointed out by Mr Gord Perks of the Toronto Environmental Alliance, that the problem with Bill 90 is that its incentives do exactly the opposite of what we're looking for in the 3Rs hierarchy. He says, and it's true, "The only option that costs an industry nothing is to … have their materials go into landfill or incineration. This is the only no-cost option available. The second option, which is to go into a cost-shared program with municipalities for recycling, costs something on the order of 50% of the cost to the industry."

So one of the problems we have here both in why I moved my amendment before on the importance of the hierarchy of the 3Rs and on the cost sharing is that there is a fundamental flaw in the bill in that the incentives in it are the opposite of what you should have if you want to achieve the hierarchy of these 3Rs. So the amendment that was just defeated and this one are both very important. You've got to have a target, and not having a target is problematic.

We may continue this debate, I guess, next Wednesday.

The Chair: Is there any further debate at this point?

Seeing none, I'll put the question. All those in favour of this amendment?

Ms Churley: Recorded vote.

Ayes

Bradley, Churley.

Nays

Arnott, Miller, Mushinski, Wettlaufer.

The Chair: The amendment is lost.

The committee stands adjourned until Wednesday at 3:30.

The committee adjourned at 1753.

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