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**Official Report  
of Debates  
(Hansard)**

**Monday 3 June 2002**

**Journal  
des débats  
(Hansard)**

**Lundi 3 juin 2002**

**Standing committee on  
general government**

**Nutrient Management Act, 2002**

**Comité permanent des  
affaires gouvernementales**

**Loi de 2002 sur la gestion  
des éléments nutritifs**

Chair: Steve Gilchrist  
Clerk: Anne Stokes

Président : Steve Gilchrist  
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON  
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES**

Monday 3 June 2002

Lundi 3 juin 2002

*The committee met at 1558 in committee room 1.*

**ORGANIZATION**

**The Chair (Mr Steve Gilchrist):** I call the standing committee on general government to order for the purpose of clause-by-clause consideration of Bill 81. First, we have some organizational matters, and we'll turn to Mr Miller.

**Mr Norm Miller (Parry Sound-Muskoka):** I move that the membership of the subcommittee on committee business be revised as follows: that Ms Churley be appointed in place of Mr Prue and that Mr Dunlop be appointed in place of Mr Chudleigh.

**The Chair:** Any debate? Seeing none, all those in favour of the motion? Opposed? It's carried.

**NUTRIENT MANAGEMENT ACT, 2002**

**LOI DE 2002 SUR LA GESTION  
DES ÉLÉMENTS NUTRITIFS**

Consideration of Bill 81, An Act to provide standards with respect to the management of materials containing nutrients used on lands, to provide for the making of regulations with respect to farm animals and lands to which nutrients are applied, and to make related amendments to other Acts / *Projet de loi 81, Loi prévoyant des normes à l'égard de la gestion des matières contenant des éléments nutritifs utilisées sur les biens-fonds, prévoyant la prise de règlements à l'égard des animaux d'élevage et des biens-fonds sur lesquels des éléments nutritifs sont épanchés et apportant des modifications connexes à d'autres lois.*

**The Chair (Mr Steve Gilchrist):** With that, we'll turn our attention to the bill. Since there is a new section, 0.1, Ms Churley, we'll start with you.

**Ms Marilyn Churley (Toronto-Danforth):** I move that section 0.1 of the bill, as amended by the standing committee on justice and social policy before second reading, be struck out and the following substituted:

"Purpose

"0.1 The purposes of this act are:

"1. To regulate the potential impact of agriculture on sources of drinking water.

"2. To provide for the management of materials containing nutrients in ways that will enhance protection of the natural environment and human health and will pro-

vide a sustainable future for agricultural operations and rural development."

**The Chair:** Ms Churley, before you comment—and I look forward to your comments on the section—the clerk and I, in reflecting on the parameters within which amendments can fall, both are of a mind that paragraph 1 is outside the purview of this act because you broaden the scope beyond the intent of the act, which is the application of nutrients.

I would consider your second clause to be in order, but the first clause, because you say "potential impact of agriculture" as opposed to "potential impact of the application of nutrients," the specific topic of this bill, is too broad. I want to allow you the opportunity to speak to the second portion of your motion, but I must rule that paragraph 1 is out of order.

**Ms Churley:** OK, I will speak to the second part and explain why I have changed the purpose of the act. I believe I did that when we went through this previously in committee as well, but now that part two is out, Judge O'Connor is clearly concerned that the Nutrient Management Act doesn't deal with other aspects of agriculture that could threaten our drinking water, such as the handling of pesticides and fuels. Judge O'Connor actually suggests changing the purpose of the act to regulate any potential impacts of agriculture on drinking water sources.

I understand that's been ruled out of order, but I do want to say for the record that I changed that clause to reflect Judge O'Connor's recommendations. The Conservative government and Premier Ernie Eves said the government would be implementing every single one of those recommendations. If that's ruled out of order and not allowed, then that's one down. It will not be fulfilled by this government. That is why it was there.

We're introducing two amendments: one to add Judge O'Connor's suggestion, the purpose of the clause, and the other one to add "pesticides and fuels" to the list of materials to be considered in or included in nutrient management plans. The reason why those are added is again to strengthen the purpose of the act so that indeed it doesn't just refer to the nutrients, but refers as well to "natural environment and human health." That is exactly why I've expanded that to include the environment and human health, again as a result of Judge O'Connor's report and recommendations.

I would submit that it's really unfortunate therefore that we can't have unanimous consent to agree to allow

part 1 of my amendment to stand so that we can indeed fulfill Judge O'Connor's recommendation. That is why the purpose of the act has been changed in both paragraphs 1 and 2 where I'm asking for it to be changed directly to the extent that we can, given such a short time to reflect the recommendations of Judge O'Connor. I find it unfortunate that we've had such little time. I'm sure we would all agree, including the minister, that we have been given a limited amount of time to try to make amendments reflecting those recommendations, but again I don't know if there is an ability to ask for unanimous consent—I believe there is—to allow paragraph 1 of 0.1 as I propose to stand. Can I ask for unanimous consent to do that?

**The Chair:** You can certainly ask for that.

**Ms Churley:** I would ask for unanimous consent to allow paragraph 1 of 0.1 to stand and at least take a vote on it so that we can, as a committee, reflect a direct recommendation from Judge O'Connor.

**The Chair:** Is there unanimous consent to overturn my ruling that said paragraph 1 is out of order? I heard a no.

**Ms Churley:** Is it too late to ask for a vote on that?

**The Chair:** It's not a votable issue. You've made a request. It's not like in the House. There are not five of you standing in your place.

**Ms Churley:** That's one Judge O'Connor recommendation down, gone, not being fulfilled. OK. Thank you.

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

**Ms Churley:** Recorded vote, please.

**The Chair:** Thank you, Ms Churley. Again, it is the motion you see before you marked number 1 in your packet, except for sentence number 1.

#### Ayes

Churley, McMeekin, Peters.

#### Nays

Barrett, Dunlop, McDonald, Miller.

**The Chair:** The amendment fails.

Number 2 in your packet, and we would now be in section 1. That's a Liberal motion.

**Mr Steve Peters (Elgin-Middlesex-London):** I move that the definition of "agricultural operation" in section 1 of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding "or the operation of a golf course" after "silvicultural operation."

During the discussions last week with a number of the presenters, what we heard as we travelled around the province was that golf courses were also operations that applied significant amounts of nutrients to their golf courses. Feeling the importance that we need to ensure

that all those users of nutrients are treated equally, hence this amendment is in front of us.

**The Chair:** Further debate? I beg your pardon; just one second.

The clerk just tells me that we should actually have voted on section 0.1. So, again, the amendment was defeated, but we're now voting on the actual section 0.1 in the act.

All those in favour of section 0.1? We're voting on the section in the act.

**Mr Toby Barrett (Haldimand-Norfolk-Brant):** This is NDP motion number 1?

**The Chair:** No. That's why I want to make sure, because traditionally we don't have a 0.1 in the printed version. It's normally something that just comes before the committee. In the act as it stands—

**Ms Churley:** You're allowed to vote for—

**The Chair:** But in fairness to all members, because this is the first time I can recall in a long, long time that a printed act has a 0.1: there is a section in the act already that is numbered 0.1. So you would be voting for a section that's in the act, not Ms Churley's amendment.

All those in favour? Opposed? Section 0.1 carries.

Now we're back to section 1. Further debate on Mr Peters's motion?

**Ms Churley:** I support the proposed amendment. I also put in such an amendment. It's not just the opposition requesting that this be added but one of the farm groups also expressed—and I don't have my records in front of me. Do you remember who it was, Steve?

**Mr Peters:** The dairy farmers.

**Ms Churley:** The dairy farmers, Mr Peters says, requested as well that other operations rather than just agricultural operations be included in this. It's a matter of fairness, but it's also a matter of protection of the environment. As Mr Peters says, golf courses do use an awful lot of so-called nutrients and they're often near water sources.

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** Just briefly, I intend to support the amendment, obviously, and if there are reasons for it not to be supported, I would sure like to hear them.

**Mr Barrett:** As far as reasons for not supporting this amendment, I think they would be similar to what was felt to be the inappropriateness of this amendment the last time this came up in the standing committee on justice and social policy. It is felt to be not appropriate that all regulations that are designed for agricultural operations be applied to golf courses, or for that matter baseball diamonds or large lawns. Further to that, the definition of an agricultural operation currently includes "agricultural, aquacultural, horticultural or silvicultural operation." It lists examples of farming activities such as "growing, producing or raising farm animals ... the operation of agricultural machinery and equipment ... the processing by a farmer of the products produced primarily from the farmer's agricultural operation."

The inclusion of a golf course in this definition is not appropriate. We feel it would not add clarity to the act. However, having said that, the present wording of the act would allow for regulations to be developed to apply to golf courses. Again, the current definition of “nutrient”—we are dealing with nutrients here, not pesticides or other substances; I know that came up in previous debate—allows for regulations to prescribe other uses besides the growing of agricultural crops. Conceivably, that could apply to golf courses, municipal parks or baseball diamonds under regulation.

1610

**The Chair:** Further debate?

**Mr Peters:** If it’s something that could potentially be covered in the regulations, I think it would be better to have it in the actual legislation so that we know definitely golf courses are covered. We have heard comments made that golf courses, in the government’s opinion, don’t fit into an agricultural operation. Could the honourable member perhaps explain to me how a sod farm, which is grass growing on land, much like a golf course is grass growing on land, and a golf course are different?

**Mr Barrett:** I’ve also indicated other examples, but where do we end the list? This amendment would list only one secondary area, golf courses, and if this one is included, then one would reasonably expect a full list from anyone who wishes to have an amendment like this with respect to what the other secondary uses would be.

The feeling is, it’s better dealt with under regulation. We feel this proposed amendment could add confusion to the development of regulations that would be written to apply to agricultural operations and would, by default, take in golf courses as well. The current wording of this act does allow the flexibility. However, it clearly retains the focus on the primary area this legislation deals with, which is agricultural land.

**Mr Peters:** I request a recorded vote, please.

**The Chair:** Request for a recorded vote.

**Mr Al McDonald (Nipissing):** I was a little confused with the addition of the operation of a golf course. Being new here, I can think of about six golf courses that are around where I live, and only one of them is near water, yet both lakes—

**Mr Peters:** Is that Osprey Links?

**Mr McDonald:** Both lakes are heavily developed. In other words, there are lots of properties that have big lawns. I haven’t looked it up in the dictionary, so I don’t know what the technical definition of a golf course is. I guess what Mr Peters’s amendment to it is, why are you then ignoring large yards? Why aren’t you asking for the average homeowner who lives on a lake and who’s putting on fertilizer to be included in this?

**Ms Churley:** In fact, as I understand it, the answer to that is that’s already regulated under the Pesticides Act.

**Mr McDonald:** Fertilizer?

**Ms Churley:** My amendment to the purpose of the clause is that pesticide use in particular has been taken out because the government wouldn’t support a further definition for the purpose clause of the bill, but I would

submit that we know golf courses are very large and use a tremendous amount of so-called nutrients and pesticides. Again, I want to bring us back to the thesis and the framework which I think this bill should uphold, and that is to protect—although that amendment failed as well. We have to bear in mind throughout this whole thing Judge O’Connor’s second report on Walkerton and do everything within our power here to make amendments, to fulfill those recommendations and to protect the environment and the health of Ontarians.

**Mr Barrett:** I just want to point out that fertilizer will be regulated by the Nutrient Management Act. Fertilizer, to my knowledge, is not classified as a pesticide in the sense that a fungicide, an insecticide or a herbicide is clearly under the Pesticides Act. Commercial fertilizer, nitrogen, phosphorous and potash, is really a chemical form of animal manure—

**Mr Peters:** Nutrients.

**Mr Barrett:** —or nutrients.

**Ms Churley:** It’s a nutrient.

**Mr Barrett:** Yes, it’s a nutrient, not a pesticide.

**Mr Norm Miller (Parry Sound-Muskoka):** Mr McDonald certainly raises a good point, that in his situation lawns really are not covered in terms of individuals going to Canadian Tire or their Home Hardware store and purchasing their own fertilizer and putting it on their own lawns. Obviously individual homeowners are not experts at applying the correct amount of fertilizer. I think probably most golf courses are quite professional and a lot more expert in terms of the application of fertilizers. I think Mr McDonald has certainly pointed out an area that maybe needs to be dealt with in another act.

**Mr Peters:** We know how much the government likes golf courses, and I’d love to see it dealt with. I would have loved to have seen it dealt with in this act. I guess the difference between a residential property and a golf course is that somebody is not making a profit. A farmer is, hopefully, making a profit off agricultural land, as is a golf course making a profit from that land, and a residential homeowner isn’t.

**Mr Barrett:** As a government member, I do admit to going golfing twice, but that was in grade 11. I’m not that familiar with golf courses and need not be stereotyped.

One further clarification—and we are trying to eliminate as much confusion as possible, but I will mention that there is a federal fertilizer act, and I suspect that probably relates to labelling and those kinds of standards. So we may want to blame this on the feds.

**Mr McMeekin:** For the edification of the member, I’m a frequent golfer and I have a preferential inclination to go to those courses which have acknowledged that golf courses are a really huge contributor to environmental mismanagement. I don’t know if the member knows this, but there is a green golf association, which is growing quite enthusiastically across the—

**Interjection:** No pun intended.

**Mr McMeekin:** Green as in green green, not Green green, yes. For what it’s worth, as one who golfs frequently. I haven’t been up to Osprey yet. I have to check that one out.

**Mr Barrett:** I will say that I fully support a serious look at regulations to be developed to take a hard look at golf courses, and we can do this through this Nutrient Management Act.

**Mr Garfield Dunlop (Simcoe North):** I just want to say for Mr Peters that I actually golfed twice on the weekend. I didn't want anybody to think that Toby—

**The Chair:** I'm glad we've all had an opportunity to get our recreational interests on the record. Any further debate? Seeing none, I'll put the question. Mr Peters has asked for a recorded vote for Liberal motion number 2.

### Ayes

Churley, McMeekin, Peters.

### Nays

Barrett, Dunlop, McDonald, Miller.

**The Chair:** That amendment fails.

The third motion is also yours, Mr Peters.

**Mr Peters:** I move that the definition of “minister” in section 1 of the bill, as amended by the standing committee on justice and social policy before second reading, be struck out and the following substituted:

“‘Minister’ means the Minister of Environment and Energy, unless the context requires otherwise.”

This is taken directly from the Walkerton report recommendation number 11. Mr O'Connor: “The Ministry of the Environment should take the lead role in regulating the potential impacts of farm activities on drinking water sources. The Ministry of Agriculture, Food and Rural Affairs should provide technical support to the Ministry of the Environment and should continue to advise farmers about the protection of drinking water sources.”

I think it's imperative that we be very clear in this act right in the definitions as to who is the lead ministry responsible, hence we put forth the Ministry of the Environment and Energy.

**The Chair:** Further debate?

**Mr Barrett:** Are we not going in rotation or do we just jump in?

**The Chair:** It goes on the function of who puts their hand up.

**Mr Barrett:** Again with respect to Liberal motion number 3, we feel it's not necessary to specify in this Nutrient Management Act which minister has the lead. This can be done by an order in council at a later time. We feel that the flexibility in this regard is very important, recognizing that both the Ministry of the Environment and Energy and the Ministry of Agriculture and Food have been partners in the development of this legislation, to my knowledge, from the beginning of the year 2000. We feel it's prudent that a joint lead continue as the regulations and approval strategies are developed and implementation begins.

### 1620

**Ms Churley:** I speak in support of this amendment. Judge O'Connor's recommendation on 11, from the second report, states very clearly, and I quote, “The Ministry of the Environment should take the lead role in regulating the potential impacts of farm activities on drinking water sources.” This is an amendment that had been put before the committee pre-Walkerton report part two, and it failed at that time. I believe now, though, with Judge O'Connor's statement—I want to remind the members that Judge O'Connor is wary of the potential conflict of interest, having nutrient management under the jurisdiction of the ag ministry.

I also want to remind the members of the committee that the MOE has the regulatory lead for all other aspects of drinking water management. Judge O'Connor's concern was that allowing the continuing fragmentation of responsibilities for water protection could lead to a lack of clarity—even more of a lack of clarity than we have now—about roles and responsibilities and could reduce the effectiveness of water protection enforcement.

Again I want to remind all members of the committee that this bill almost passed in the House, or at least the government, and the Liberals at that time, were pressing to have it passed that evening. I understood the concerns, because we all want to get this act on the books and get started. But on the other hand, I was aware that this report was coming down. There were a lot of submissions before the inquiry in regard to this area, nutrient management. I was well aware that Judge O'Connor would be making recommendations vis-à-vis this act. Indeed, he has made very clear recommendations.

I just want to say to the committee that we now have another kick at the can with those recommendations in front of us. Your Premier has said that the government will fulfill all of those recommendations. Here is an opportunity now to show in good faith that you're about to do that.

I will close by saying that one of the things Judge O'Connor is trying to do is to clarify the roles of ministries and bring more consistent and transparent oversight to who regulates our drinking water. So it's inconsistent, after that report, for government committee members to vote against this amendment, which would fall more in line with the direct recommendations from Judge O'Connor.

**Mr Barrett:** I will comment, in light of Justice O'Connor's recommendations, that we do wish to make it very clear that we are committed to tough provincial enforcement of this proposed Nutrient Management Act. This is the first time in Ontario's history that the proposed Nutrient Management Act will give us clear authority to set and enforce standards for environmental protection for the management of land-applied materials as it relates to agricultural operations. In line with other environmental legislation and perhaps proposed new environmental legislation, provincial officers specially trained in not only environmental protection but also in agricultural practices will be there to enforce this

legislation. They will have the authority to inspect and issue compliance and prevention orders.

**The Chair:** Further debate?

**Mr McDonald:** Just a question: it states here in the amendment “the Minister of Environment and Energy.” What happens if those two portfolios get separated?

**The Chair:** The clerk is inquiring right now. It’s my understanding that they are separate even now. We have a common minister. I wouldn’t rule the verbiage that’s in there out of order right now, but it’s my understanding that there still is a separate Ministry of the Environment and a Ministry of Energy. They may have a common minister today, but elsewhere in the amendments we find reference to “the Ministry of Environment and Energy.” I’m just seeking clarification on that, but you’ve raised a valid point.

Obviously, none of us can assume what Justice O’Connor meant in his report, but I think it would be a safe assumption that it’s the environment side, not the energy side, that he felt relevant.

**Mr Peters:** You’ll note that both this motion and the following motion are exactly the same. When our information, our amendments—and I’m sure the NDP’s—were taken to legislative counsel, they researched this and this was the wording that legislative counsel provided.

**The Chair:** I’m not critiquing you, Mr Peters. Again, because there is today a minister of both, it certainly is in order. I’m just seeking clarification of a subsequent amendment where they use the term “ministry,” the singular. But we don’t have to worry about that one until we get to that one.

Mr Peters has asked for a recorded vote.

#### Ayes

Churley, McMeekin, Peters.

#### Nays

Barrett, Dunlop, McDonald, Miller.

**The Chair:** That amendment is lost.

Amendment number 4 is in fact a duplication of number 3, therefore it is out of order.

**Ms Churley:** People might have changed support.

**The Chair:** There’s always that opportunity, Ms Churley.

**Ms Churley:** We can try.

**The Chair:** Shall section 1 carry? Section 1 is carried.

Any amendments or comments to section 2? Seeing none, shall section 2 carry? Section 2 is carried.

Section 3 takes us to amendment number 5 in your packet, a Liberal motion. Mr Peters.

**Mr Peters:** I move that subsection 3(1) of the bill, as amended by the standing committee on justice and social policy before second reading, be struck out and the following substituted:

“Provincial officers

“(1) The Minister may, in writing designate as provincial officers persons or classes of persons from the following categories:

“1. Employees of the Ministry of Environment and Energy.

“2. Employees of the Ministry of Agriculture and Food who have specialized expertise making it desirable for them to have the powers of provincial officers.

“3. Employees of conservation authorities.”

You’ll notice that this amendment deletes clause (c) of the proposed legislation. We’ve expressed a great deal of concern about clause (c) and I was pleased to hear the member just say—maybe this means we’re going to be supporting it, because Mr Barrett just said, “We are committed to tough provincial enforcement.”

What we’re concerned about is the provision for alternative delivery providers, ie, privatization of enforcement, the provincial officers being privatized. The intent of this amendment that is in front of us here is to make it clear that these are government employees and that the intent of this legislation is that it will be enforced by government employees or conservation authorities, which are true creatures of the province, and to not in any way have this authority delegated to alternative service providers.

**The Chair:** Further debate?

**Mr Barrett:** I’ll reiterate that we are committed and continue to be committed to tough enforcement. But this motion, as I see it, is designed to limit those employed as provincial officers to only employees of the provincial government or conservation authorities. Again I raise the issue of the need for flexibility and that this amendment would restrict flexibility in the implementation of the bill and would constrain the ability of the government to complete necessary tasks under the act.

The existing wording to subsection 3(1)(c) without this amendment already allows for the appointment of persons who are not ministry employees, such as conservation authority staff and others.

**Mr Peters:** But read on.

**Ms Churley:** I just want to state for the record that I strongly support this amendment. My understanding now, from attending most of the previous hearings on this bill and an afternoon recently, is that we had such a recommendation come from some, if not all, of the main organizations. If asked, they want this to stay in public hands.

**The Chair:** Seeing no further debate—

**Mr Peters:** Recorded vote, please.

**The Chair:** Mr Peters has asked for a recorded vote on Liberal motion number 5.

#### Ayes

Churley, McMeekin, Peters.

#### Nays

Barrett, Dunlop, McDonald, Miller.

**The Chair:** That amendment is lost.

Shall section 3 carry? Section 3 is carried.

Any amendments or comments to section 4? Shall section 4 carry? Section 4 is carried.

That takes us to section 5. That would be amendment number 6. Again, for reasons similar to the first amendment we dealt with, because the motion expands the scope of the bill by requesting protection from all possible sorts of contamination, in conversation with the clerk we've come to the conclusion that this amendment is out of order.

That will take us, Ms Churley, to your amendment, number 7 in the packet.

1630

**Mr Peters:** It's right in the Walkerton report, Mr Chair.

**The Chair:** Mr Peters, I can be sympathetic about the content, but I am constrained by the rules governing the operation of committees and how bills are created, that we at the committee level cannot change the scope of a bill that's before us at this stage. It's not a question of whether or not there's supporting documentation somewhere else. We are constrained just by the standing orders and the precedent as to what any committee can do dealing with the topic covered by bills.

**Ms Churley:** I move that section 5 of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following subsection:

"Categories of operations

"(2.1) A regulation made under subsection (2) requiring the preparation of nutrient management plans shall provide that the following plans must be filed with and approved by the Minister of the Environment and Energy:

"1. Plans for intensive agricultural operations.

"2. Plans for agricultural operations that, because of their location, provide a larger than usual risk of endangering sources of drinking water."

**The Chair:** Do you wish to speak to your motion?

**Ms Churley:** Yes. We are moving this amendment again based on recommendations from Judge O'Connor. I want to say again that I think it's unfortunate that some of these amendments—the previous one, for instance, which was ruled out of order. It's for procedural reasons and that is because we really didn't have time, since that report has been submitted to the public by Judge O'Connor, to take these recommendations into account and try to reach some kind of unanimous consent. It's all happened too much in a hurry and it's really unfortunate that we're missing an opportunity to strengthen the act, particularly in the case of the previous amendment put forward by the Liberals and my changing of the purpose of the act. They are being ruled out of order because they don't fit in under the rules. However, there is an opportunity to give unanimous consent to allow those amendments to come forward.

The reason why I have placed amendment 7 is because it states that the MOE is responsible for all aspects of

approval, monitoring and enforcement of nutrient management plans. I'm reading the wrong—I'm sorry, Mr Chair. Just give me a second here. It's the same argument as made before, that it should be the Ministry of the Environment overseeing this very important area of protecting our drinking water.

**The Chair:** Further debate?

**Mr Peters:** I support the intent of the amendment that's in front of us. I have difficulty with the second paragraph, "because of their location." In particular, I have a problem with the word "location" because I just think it is too broad. If you look through O'Connor's report, he consistently talks about sensitive areas. I think we should be trying to follow these sensitive or high-risk areas as pointed out in the Walkerton report and not leave it broad-based with the word "location."

**Ms Churley:** Just for clarification—and I hear what you're saying, but again I'm leaning on Judge O'Connor's recommendations here and he did recommend, as I understand it, a two-tier system for regulating nutrient management plans. He talks about a standard plan and a more stringent plan for farms that, in his view, pose a higher risk to drinking water because of—and again in his words—"farm size, intensity or location."

I'm going to read a quote from Judge O'Connor: "All large or intensive farms, and all farms in areas designated as sensitive or high-risk by the applicable source protection plan, should be required to develop binding individual water protection plans consistent with the source protection plan." He goes on to recommend that those plans be filed with the Ministry of the Environment.

That's why I've introduced such an amendment that requires all these NMPs for large and intensive farms and for all farms deemed to be in high-risk areas to be approved by and filed with the MOE. It's again a direct recommendation from Judge O'Connor. I recognize the issue before us is that these plans have to be worked out. There are those who argue that it doesn't matter what the size is or the location as long as the rules coming out of the Nutrient Management Act are followed, but I believe, because of what Judge O'Connor looked at and other submissions made to him, that there is evidence of higher risks in some areas and from some of the larger intensive farming locations than others. Again, I'm just informing the committee that this recommendation is based directly on a recommendation from Judge O'Connor.

**Mr Barrett:** Ms Churley is stating it should be the Minister of the Environment. Again, we feel it's not necessary to decide this at this time. This can be done later. The flexibility is there. It can be done through order in council, ever bearing in mind that expertise lies certainly in the Ministry of Agriculture and Food and also the Ministry of the Environment and Energy. They've been working on this for a number of years, and this joint lead continues. Expertise lies within staff of the Ministry of the Environment. I say that as a former PA to that ministry. It lies in the staff of the Ministry of Agriculture and there is expertise in many other people



who may not necessarily be employed by either one of those ministries.

Mr Peters made mention of sensitive areas. We are aware of sensitive areas that oftentimes may be as a result of soil type or proximity to municipal water wells, wellheads or a location near an aquifer or a watercourse. That, in my mind, is clearly identified in this legislation in clause 5(2)(r). I'd like to just read this very brief section. I feel this is, in one sense, the jewel in the crown of this legislation, and I quote:

“(r) requiring that studies be conducted in relation to the use of materials containing nutrients on lands, including topographical studies”—my understanding is that would certainly relate to the movement of surface water—“and studies to determine soil types”—obviously in my riding there's a very clear distinction in characteristics between heavy clay in Haldimand and Norfolk sand on the Norfolk sand plain—“and studies to determine the depth, volume, direction of flow and risk of contamination of water located on, in and under those lands.” In my view, clause (r) alone covers any sensitive area that I'm aware of.

**Mr Peters:** As I said before, I agree with the intent. I have a problem with the word “location” because over and over Mr Justice O'Connor talks about areas designated as sensitive or high risk. I would have preferred to see this source protection plan identified and written right into this amendment and not leave it broad-based with just the word “location.” He talks about source protection plans, he talks about the sensitive and high-risk areas. I'd like to see this amendment passed, but if we could somehow amend the amendment to include source protection plans and sensitive and high-risk areas I think it would be easier for me and my colleagues to support.

1640

**Mr McMeekin:** Just for clarification, I don't think there's anybody in this room who for one minute would hesitate to applaud the efforts of Justice O'Connor and, generally, the recommendations that were made. I think our new Premier said early on that he wanted to ensure that action was taken quickly.

I guess my question is just a process one. Given the very appropriate rhetoric—and appropriate rhetoric is rhetoric that is obviously going to find its way into the legislation or regulation—has the government had any conversation about—and, if so, can they tell us about it—the vetting of this legislation in relation to Justice O'Connor's recommendations? I don't have a lot of problems with the regulatory process as long as we have the right look in our eyes, right? I think that's the key. So has the government had that discussion about the need to produce a regulatory regiment consistent with and cognizant of the recommendations of Justice O'Connor?

**Mr Barrett:** There's no question the government has reviewed the report, both phase 1 and phase 2. There have been a number of statements from the government on the direction that we're taking and taking very seriously those several recommendations that came out of both phase 1 and phase 2.

**Mr McMeekin:** The member opposite makes my point. I think, given the seriousness of both the concern and the recommendations which have come back to address that, it seems that the knock on the bill is, are we moving too quickly? Are we moving too slowly? Is it cognizant of all the other things that are going on? How do we, as responsible legislators, put in place a responsible piece of legislation which is going to fit the cloth, suit the needs?

It would seem to me that an undertaking on the part of the government to be intentional about vetting the O'Connor report and ensuring, as the regulations are developed, that they be reflective of the spirit and the intent of the report would go a long way toward satisfying some ambivalence that some of us may have.

**Mr Barrett:** Certainly as of the publication of the O'Connor report, he did comment directly on this particular piece of legislation. Quoting Justice O'Connor, “With respect to nutrient-containing material, the Nutrient Management Act, if passed in its present form, would certainly provide the province with the authority to create the tools it would need to develop the farm water protection planning system that I am recommending.”

**Mr McMeekin:** I have no problem with Judge O'Connor having the right look in his eye and in his approach and, frankly, that isn't meant to imply that I have any belief that members opposite have the wrong look in their eyes. I'm just wanting to get some assurance, acknowledgement, that his making that statement is heard and will be reflected in the regulations around the legislation. That's all I'm looking for.

**Mr Barrett:** Certainly. And through that, and with respect to the regulations, the government has indicated that there will be a full consultation on the regulations. I know this has been requested by both the Liberals and the NDP in previous hearings. A questionnaire has been sent out by the Minister of Agriculture to well over a thousand key stakeholders and, as I understand it, meetings will be held within a month or so. I would assume both the parliamentary assistant to agriculture and perhaps the parliamentary assistant to the environment would be involved, as has been the case in the first round of consultations I was involved in at the beginning of the year 2000.

**Mr McDonald:** We all understand that there is good intent. I just want to be on the record as stating that when I read the bill—it's very exact; the language is very concise and you know exactly what it is or what's required of you. I guess what I'm finding in some of these amendments is some confusion or grey area, like “intensive agricultural operations.” I don't know what the difference between “intensive” or “strong” agricultural operations would mean, if you would be able to get out of the act because “intensive” really isn't defined, and I'm not a lawyer.

The other point would be “provide larger than usual risk.” I don't know how that gets applied in an act or a

bill and how you define “larger than usual risk.” What is that definition?

When we’re looking at these amendments that are going into these bills, it makes it very difficult.

**Mr Barrett:** Further to that, I fully recognize that this piece of legislation and the regulations are not the be-all and the end-all. We are taking, and society in Ontario requires government to take, a very all-encompassing approach and look at water, especially in light of the reasons for the O’Connor inquiry. Subsequent to the disaster in Walkerton, the government launched what was referred to as Operation Clean Water, a very comprehensive approach with several objectives—this was announced in August 2000: with tough and clear standards and requirements to improve and protect the quality of drinking water, effective inspection and enforcement to put a stop to activities that threaten water quality, tough penalties for non-compliance, and the fourth major objective is strategic investments in efficient, innovative delivery practices to ease potential burdens associated with complying with the necessary requirements.

We are on a road here. This is one or two steps along the way. There has been mention of Premier Eves’s expressed interest in Ms Churley’s work in this area.

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

**Ms Churley:** Recorded vote, please.

#### Ayes

Churley.

#### Nays

Barrett, Dunlop, McDonald, McMeekin, Miller, Peters.

**The Chair:** That amendment is lost.

Shall section 5 carry? Carried.

Any comments or amendments to section 6? Seeing none, shall section 6 carry? Carried.

On the new section 6.1, the first amendment is from the Liberal Party.

**Mr Peters:** I move that the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following section:

“Regulations must be made

“6.1 The Lieutenant Governor in Council shall make regulations,

“(a) providing for all of the matters mentioned in section 5 within one year of the day on which that section comes into force;

“(b) providing for all of the matters mentioned in section 6 within one year of the day on which that section comes into force.”

A couple of things: I have great difficulties throughout this whole piece of legislation with the use of “may.” I

think if we want this to be a tough piece of legislation and a good piece of legislation that’s going to be in the best interests of the agricultural community and those living in the rural parts of the province in protecting our drinking water, we need it to be strong. The word “may” is not strong; the word “shall” is strong. If we want to hold true to the intent of this report, I think we should be including the word “shall.”

I think too that it’s important to have in this legislation some time frames, because this is all being left too open-ended. I know the NDP prior to Christmas did some work on this particular motion, but we’ve lost a lot of time with this whole piece of legislation. What I want to do is not see us lose more time. Let’s put some definite time frames in as to when these regulations are going to be dealt with.

1650

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

**Mr Peters:** Recorded vote, please.

**The Chair:** Mr Peters has asked for a recorded vote on Liberal amendment number 8.

#### Ayes

Churley, McMeekin, Peters.

#### Nays

Dunlop, McDonald, Miller.

**The Chair:** That amendment is lost.

The next amendment is number 9. Again, along with the clerk, I must regretfully suggest that because the amendment proposes to add a number of products that have nothing to do with nutrients, namely pesticides and fuels, this amendment is out of order.

**Ms Churley:** If I could ask for unanimous consent to deal with this amendment because it deals with pesticides and fuels, materials recommended by Judge O’Connor to be included in this piece of legislation. I’d like to ask for unanimous consent to have it accepted and debated.

**The Chair:** Is there unanimous consent to allow this amendment to stand? I heard a no, so we will not.

Further debate? Seeing none, shall sections 7 through 40 carry? Sections 7 through 40 are carried.

A new section, 40.1, is a Liberal motion. Mr Peters.

**Mr Peters:** I move that the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following section:

“Economic incentives

“40.1 In enforcing this act, the minister shall at all times consider the desirability of using economic incentives to encourage compliance.”

I think this is a pivotal recommendation that has come out of Justice O’Connor’s report. Recommendation 16: “The provincial government, through the Ministry of Agriculture, Food and Rural Affairs, in collaboration

with the Ministry of the Environment, should establish a system of cost-share incentives for water protection projects on farms.”

We know this has the potential to have a severe impact on the agricultural community. I think it’s incumbent on the government to come to the table and make it clear, enshrine it in the legislation and not just talk about it and say they’re going to do something. Let’s enshrine it in the legislation and honour the commitment Mr O’Connor made in recommendation 16. Let’s have it enshrined in the legislation. If the government would have the courage to send the message to the agricultural community right now that they are prepared to come to the table with money to support the capital improvements that we know are going to be required—let’s enshrine it right in the legislation and not just leave it open for future speculation. Again, it’s another one of Justice O’Connor’s recommendations.

**The Chair:** Further debate?

**Mr McMeekin:** On a good day, isn’t that what this government says it’s all about, linking incentives to compliance? Just talking political philosophy, isn’t that what you guys espouse every single day?

**Ms Churley:** I think this is a key recommendation we should all support. There are some controversial areas, no doubt, around this bill, and we’ll be speaking to one a little later; the other one is around who’s in charge. We know those are controversial. This is one that isn’t controversial, except perhaps with the government because it talks about resources. All of the people from all walks and on both sides of some of the issues did recommend very strongly that there be resources made available. Time and time again the farm groups, from big to small, talked about the need for some resources to make sure this bill and the ensuing regulations are actually put in place. We all know—and one of the reasons why I argue—that some of the regulations that are to come with no time frame attached aren’t worth the paper they’re written on if the resources aren’t there to make them happen. I’m going to give you an example.

The government did not bring in a safe drinking water act in response to Walkerton, but did bring in tougher regulations, and already, because there is no dedicated safe drinking water fund, sewer and water upgrade fund—for the first time in many years under this government the dedicated fund to water is gone. Now municipalities have to apply either through SuperBuild or OSTAR. The municipalities have to compete with each other. Also it includes many other projects, from new rec centres to roads, and on and on. So there is no dedicated fund for those.

What has happened is that since the new regulations were brought in for sewer and water upgrades and clean water regulations, the resources aren’t there for municipalities. And what has the government done? Instead of making these resources available in some of those municipalities, they’ve extended the deadline. Because they are just regulations, they put in a time frame, but then certain municipalities couldn’t adhere to those dead-

lines and they extended them. That’s what you can do with regulations.

I’m making two points here: there should be a time frame on the regulations—that amendment just failed—and the bill itself should be tougher so that it is written into law, and that’s not being done. Failing that, at the very least, we should be assured within the legislative framework that there is funding so that the same thing doesn’t happen. When regulations are brought in, we don’t know how weak or strong they’re going to be, because this is an enabling bill, but we do know that the farmers are going to require some assistance. That is an absolute given. Otherwise what’s going to happen is that a lot of the regulations will be ignored or timelines will be extended or whatever.

This would give a great deal of comfort to those who want to protect the environment, and that includes of course the farmers and those who in rural areas and across our province want to make sure that our drinking water is safe. So I would strongly urge the government to support this amendment.

**Mr Barrett:** The government may look at financial incentives after the bill is approved. It’s felt that there need not be a clause in the legislation saying that. This is not a budget bill. In my understanding, it’s unusual to have a clause in a bill saying that in this case money would be available to farmers. The government is committed to studying the economic impact of any potential regulation under this bill and, very clearly, we are looking at an increase in rules and regulations and red tape.

We know full well from the hearings we have attended over that time, the presentations, that compelling arguments were made—I think of the Haldimand cattlemen’s association, for example—at the hearings that were held in Caledonia by the standing committee on justice and social policy. No, the Haldimand Federation of Agriculture made an argument that came from the Haldimand cattlemen’s association requesting money. That resolution had previously been adopted by the Ontario Cattlemen’s Association. Again, many of these smaller cow-calf operations have 100-year-old barns, like on my farm, and there were compelling arguments made for assistance. However, it was felt that a clause need not be put in legislation indicating that money would be forthcoming.

I think we all realize that the government is investing in agriculture. I think of the healthy futures program. That’s a \$30-million program; money invested in rural water quality projects alone, everything from wellhead protection and plugging abandoned wells. This is underway now. I know it’s underway in Norfolk county, for example. Money is available for restricting livestock access to streams and creeks, for adopting nutrient management plans. I just give a few examples.

I think the point is it was not felt to be necessary to write this into the actual legislation.

1700

**The Chair:** I’m sure the member would want me to note that the Red Tape Commission considers regulations governing health, safety and the environment not to be red tape. That’s good government.

**Ms Churley:** Is the Chair boasting?

**Mr Peters:** This is probably one of the most important pieces of legislation that is going to have an impact on the agricultural community and on rural Ontario. It's a piece of legislation where we have yet to see the government support any of the recommendations that Mr O'Connor has put forward. We've brought forth a number of amendments and the NDP has as well.

Why not send a clear message to the agricultural community in Ontario that we're not going to pass a piece of legislation without making that financial commitment to them? Let's enshrine it right in the legislation. Send that message—it's a great opportunity for every one of us—to the agricultural community and to those living in rural Ontario that we're going to be there to support them. Recommendation 16 of Justice O'Connor talks about it, and this government is not prepared to include recommendation 16, one of the most pivotal recommendations. I would strongly encourage the government to support this and send that message to the agricultural community that you as individuals are going to go to bat and fight for them to ensure that there are economic incentives available.

**The Chair:** Ms Churley?

**Ms Churley:** Thank you, Mr Chair. I know you're neutral, but I must admit that you did provoke me into responding to a comment about the red tape. Was Steve Gilchrist being provocative?

I did want to make a comment on two things in response, to clarify for the committee what the government sees as red tape. I want to remind the committee that when the Red Tape Commission was brought into being, the Ministry of the Environment was the ministry that was picked on the most. That ministry had more regulations pulled out than any other ministry across the province.

I want to further remind the committee that during the Walkerton inquiry it came to our attention that there was direct interference by a former government member and some ministers vis-à-vis some environmental matters through the Red Tape Commission, and we all remember that.

I hope the Chair meant by his comments that they've changed their tune on what they view as red tape and now consider environmental health not to be a needless piece of red tape but serious legislation. It must be killing the Chair not to be able to enter this debate now.

**The Chair:** Constrained by the rules governing the operation of committees.

**Ms Churley:** The second thing: I want to speak directly to the response from Mr Barrett on this amendment. He mentioned a program in existence. He said there is some funding for farmers to keep nutrients from going into nearby waterways and creeks. I'm wondering what program that is. I know the NDP had something called CURB, a multi-million dollar program, to give direct grants to farmers, particularly small ones, to fence in or do the other necessary work to keep cattle from getting close to waterways. I know that you cancelled

that program. I wasn't aware of another program to replace that.

**The Chair:** Mr Barrett?

**Mr Barrett:** I'll go before Mr McDonald, if that's OK, just to answer that. It's called healthy futures, and \$30 million of this program—this is just part of the program—has been directed toward rural water quality primarily on farms and for rural residents. In fact, 34 of the 95 projects approved so far under healthy futures—the full title is healthy futures for Ontario agriculture—relate to improving rural water quality.

What I want to stress is that it's not a total government grant. It's a cost-sharing approach to funding. I'm not familiar with the way the NDP did it, but this is a cost-sharing approach where there has to be an investment on the part of the farmer or the farm family within organizations. Total investment therefore now sits at about \$58 million. I mentioned some of the projects, many of them directed toward best management practices on farmland: activities such as, obviously, assistance adopting nutrient management plans, protecting wellheads, plugging abandoned wells and restricting livestock to creeks and ponds.

I will mention, too, that beyond healthy futures and beyond strictly some of these projects, the Ministry of Agriculture has invested more than \$2.35 million in research projects related to improving water quality in Ontario: environmental management, best management practices again, manure management, nitrogen use efficiency, waste application and water-taking priorities, and the issue of the quantity of water for water-taking, which is governed by a permit-to-take-water system, is important because as the volume of water is reduced, maybe in the summertime or through irrigation, any nutrients or any other pollution, for example, is more concentrated.

**Mr McMeekin:** I recall somebody defining a farmer as one who has more things to fix and less to fix them with than anybody. I think there are many cases where that's true. I'm pleased to hear the member opposite from Haldimand-Norfolk indicate his understanding and presumably the government's understanding of the economic impact. I hear my colleague Mr Peters talking about sending a clear message. In the context of the member opposite, having heard the compelling arguments for financial incentives, partnerships, what have you, I think it would make some sense to see this reflected in the legislation, notwithstanding recommendation 16.

I want to talk politically for a second. With everything that's going on and all the acknowledgement that the status quo really hasn't cut the cheese in the last little while, in the absence of some meaningful, significant buying into partnership ideally in the act, farmers are really being lifted up as the scapegoats for Walkerton. At the federation of agriculture that I get out to, Hamilton-Wentworth—we're out to every one of the meetings, which often go on into the wee hours of the morning—the kind of thing I'm hearing from my farm folk is that they're sick and tired of being blamed for things they don't have a lot of control over. If we're going to be

blamed, if there's going to be a set of rules put in place that they're going to have to kowtow to, in response the government, as the architect of those rules, really has to come to the table with some practical assistance. Otherwise farmers are nothing more than scapegoats, and my farmers ought not to be made scapegoats.

**Mr McDonald:** With all due respect, I've heard Mr Peters twice make reference to the government or, looking our way, state that we didn't support the O'Connor recommendations. I want to be very clear that I do support Mr O'Connor's recommendations. Secondly, we're voting on amendments to the bill that are being put forward. When I'm making that conscious decision in my voting, it has nothing to do with not accepting Mr O'Connor's recommendations; it's not accepting the wording of the motion. I want to be very clear in my message that of the comments that are being thrown in this direction, be very careful. We are voting on this amendment. It has nothing to do—

*Interjection.*

**Mr McDonald:** In your opinion, Mr Peters, it does. Maybe in my opinion I don't like your wording.

*Interjection.*

**Mr McDonald:** That's not what you put in here, Mr Peters.

**The Chair:** Order, gentlemen. Ms Churley.

**Ms Churley:** I would just like to point out that the government could have put forward its own amendments in its own words if they truly do accept these recommendations as promised. You had that opportunity, as did we, in a very short period of time. We did work—I know both parties—

**Mr Peters:** We had extra time.

**Ms Churley:** That's true. We had a little extra time in negotiations, but we worked as hard as we could, as quickly as we could, to get these amendments in. I would have been very happy to have seen some amendments from the government to reflect those recommendations. The problem is, these are the only amendments we have to work with. You guys have the full force of the bureaucracy to work with you—the minister's office, the parliamentary assistant's office—and there's nothing produced from the government side to reflect these recommendations.

1710

To slam the wording of these amendments—I know you were speaking specifically that time to the Liberals, but I find it offensive as well, given that the government did not put forward one amendment and will not accept one from the opposition.

I had something else to say, but I've now forgotten what it is.

**The Chair:** Seeing that—

**Mr Peters:** Recorded vote, please.

**Ayes**

Churley, McMeekin, Peters.

**Nays**

Barrett, Dunlop, McDonald, Miller.

**The Chair:** The amendment fails.

Any amendments or comments to sections 41 to 54? Seeing none, shall sections 41 to 54 carry? Sections 41 to 54 are carried.

That will then take us to section 55 where you'll find an NDP motion marked number 11 in your packet.

**Ms Churley:** I move that section 55 of the bill, as amended by the standing committee on justice and social policy before second reading, be struck out and the following substituted:

“Responsibilities of minister

“55(1) The Minister of Environment and Energy is responsible for:

“(a) the establishment, maintenance and operation of a registry described in clause 5(2)(n);

“(b) the review of any nutrient management plans or nutrient management strategies; and

“(c) supervising the issuing, amending, suspending or revoking of certificates, licences and approvals.

“No delegation

“(2) The minister responsible for the administration of any provision of this act may not delegate his or her powers under this Act to any person who is not an employee of the ministry over which the minister presides.”

Bill 81, as it now stands, currently allows the Minister of Agriculture to privatize all aspects of approval, monitoring and enforcement of nutrient management plans, and that's in section 55. We saw what happened with privatized monitoring of water quality testing in Walkerton. Judge O'Connor is not clear one way or the other on the whole issue of privatization. I think he tries to skirt, to some extent, that issue, but he does point out the disaster privatization of water caused in the United Kingdom. That's why the NDP thinks it's important to make it very clear that that section be removed and state that the MOE is responsible for all aspects—that it should not be privatized—of approval, monitoring and enforcement of nutrient management plans with no powers to delegate these responsibilities to anyone who's not an employee of the ministry.

**Mr Peters:** I support the intent of the amendment and where the honourable member's going because in a previous motion that the government turned down we too are very concerned about alternative service providers. We want to ensure this is good legislation. We want to ensure that everybody has confidence in this and that the public has confidence in public servants. Confidence starts to wane when authority is delegated to others.

My difficulty with this is under the question of delegation. In the previous amendment we put forward, we agreed that the Ministry of Environment and Energy should be the lead ministry, but there is a role for the Ministry of Ag and Food and a role for conservation authorities. Where I can't support this legislation is that this talks specifically about the Ministry of Environment

and Energy, and I think it's important for OMAF and the conservation authorities to have that ability to have responsibility for the administration and the delivery of this act.

**Mr Barrett:** I think that the concern we have with this NDP motion is that, as indicated, it would replace that section of the act that allows for alternative service delivery and limit it only to the Ministry of Environment and Energy to be able to do specified functions. We feel that restricts flexibility.

One thing I want to make very clear, however, is that enforcement will always be a provincial responsibility. Enforcement will always lie within the purview of the province. In fact, section 55 of the act specifically prohibits alternative delivery of inspections, orders, remedial work and enforcement provisions. However, there are some provisions which, through this legislation, will be accomplished through an alternative service delivery mechanism; training and certification, for example. Training and certification of people who are involved in applying nutrients will be conducted through an alternative service delivery mechanism.

Another alternative service delivery activity is the establishment of a registry, and you made mention of the registry, to track land application of nutrients or nutrient-rich materials. Initially, the review and the approval of NMPs, the nutrient management plans, will be conducted by the Ministry of Environment and Energy for the large operations, with the Ministry of Agriculture and Food reviewing nutrient management plans for small and medium-sized livestock operations. However, down the road, once this process is up and running, these functions will also be delivered through an alternative service delivery mechanism.

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

**Ms Churley:** Recorded vote.

#### Ayes

Churley.

#### Nays

Barrett, Dunlop, McDonald, McMeekin, Peters.

**The Chair:** That amendment is lost.

Shall section 55 carry? Carried.

Any comments or amendments to sections 56 and 57?

Hearing none, shall sections 56 and 57 carry? Carried.

Section 58, you have Liberal motion number 12 in your packet. Mr Peters.

**Mr Peters:** I move that section 58 of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following clause:

“(b.1) providing that this act and the regulations, or any provision of this act or the regulations, apply to the operation of golf courses;”

I think we've had a great deal of discussion over golf courses. Certainly there's a difference of opinion between the opposition and the government, because we feel that golf courses, as spreaders of nutrients, should fall under this act.

**The Chair:** Further debate? Seeing none—

**Mr Peters:** Recorded vote, please.

#### Ayes

Churley, McMeekin, Peters.

#### Nays

Barrett, Dunlop, Miller, McDonald.

**The Chair:** That amendment is lost. Shall section 58 carry? Carried.

Section 59: are there any amendments or comments? Seeing none, shall section 59 carry? It is carried.

Section 60 will take us to amendment 13, an NDP motion. Ms Churley.

**Ms Churley:** I move that section 60 of the bill, as amended by the standing committee on justice and social policy before second reading, be amended by adding the following subsection:

“Where bylaw standards superior

“(3) Despite subsections (1) and (2), a regulation does not supersede or render inoperative a bylaw or a provision of the bylaw that provides higher standards for the protection of the public or the environment than the regulation does, or prevent a municipality from making and enforcing a bylaw that imposes higher standards.”

I would like to speak to this recommendation. I'm already contemplating what people across the floor will say about this one, so I will speak to it directly.

#### 1720

Currently section 60 says that the regulations created under this legislation supersede any stronger existing bylaws. I acknowledge that Justice O'Connor has stated he feels that once the regulations are in place and a farm has in place a ministry-approved—and I note “ministry”—individual water protection plan, the municipality should not have the authority to require that farm to meet a higher standard of practice.

That's quite true. That's what he says. He expresses a concern that farmers will feel that they are being attacked by legislation from all sides. I want to acknowledge that, especially since Walkerton, farmers are feeling they are, in some cases, the scapegoat for some of what happened there. I think Justice O'Connor makes it very clear that they are not the scapegoats and points a finger, I think, mostly at both the provincial government and the local employees. He goes out of his way to deal with that concern.

However, what I want to say, and I think this is important to recognize, is that in the report he says that when it comes to source protection plans, they should be developed as much as possible at the local watershed

level by those who are most directly affected, and that's municipalities and other affected groups. That is not part of the nutrient management plan and it should be, because as the government said, they would be working on these source protection plans, obviously, because that's a key recommendation. Along with a Safe Drinking Water Act, that's one of the key recommendations Justice O'Connor makes. That is not included in the nutrient management plans. We have to face the fact that each local watershed does face its own unique ecological and geological issues. Therefore, one-size-fits-all does not work.

The other thing I want to point out, and I did when I made this similar amendment before, is that there could be court cases around this. We heard from AMO, the Association of Municipalities of Ontario, and they expressed grave concern about having this ability within their own planning act. The ability to have any say or decision-making in their own municipalities is a major problem.

I recognize it is a controversial one. I recognize that many groups made the argument that, once the standards are in place, municipalities should not be able to change them. But there is a Supreme Court precedent now in favour of municipalities' ability to pass stronger bylaws. That's the Hudson, Quebec, case where the judge ruled in favour of a bylaw that superseded federal and provincial laws to protect the health and well-being of its citizens. That was around a pesticide law. The municipality was challenged by lawn care companies—you may remember this—not the province. It was lawn care companies that challenged it. But there is certainly a precedent now by the Supreme Court that very clearly says municipalities should have these rights.

So amendment to section 60 stops this legislation from superseding stronger municipal bylaws and allows municipalities to develop bylaws with higher standards. I think this is a very important one. We don't know yet what the regulations are going to be. We don't know how weak or strong those regulations are going to be. The watershed plans have not happened. I mentioned this when Minister Johns was here the other day. She is well aware of the problems in her own area. We've all been hearing from people in Huron county. People have been working incredibly hard to have a say in what goes on in their own communities, and Huron county is a prime example.

The residents of the municipality that was then known as Ashfield successfully fought to get an interim control bylaw to regulate the spreading of manure in June 2000. That bylaw was challenged, but the court upheld it. The surrounding municipalities within Huron county were facing similar issues, particularly around what are known as intensive farming operations, not only existing ones but proposals for new ones. So that county took on a comprehensive study and they struck a committee that developed a county model bylaw that they encouraged all of the municipalities within Huron county to implement. Then, an amalgamated Ashfield-Colborne implemented a strengthened version of that model bylaw.

The concern from people who spent a lot of time working with their municipalities and their communities to come up with these bylaws to have a say in and protect their own jurisdictions, their own health and the environment, is that Bill 81—and we don't know how strong or weak the regulations are going to be. We're passing this bill now without the benefit of having those regulations in front of us, without the benefit of having watershed plans in front of us, but we're giving a blanket statement that no matter how weak or strong those regulations will be, the municipalities will not be able to use bylaws to have any say or control over what happens in their own jurisdictions.

I come back again to the fact that most of the work is yet to be done on the regulations. We don't know how strong they're going to be. I would turn around the government's arguments against the other amendments put forward by both opposition parties today and say that because we don't have the regulations yet, this is premature until we know about the watershed plans and until we know about the regulations and how strong they're going to be. To take this ability away from municipalities, particularly in light of the opposition to this by not only some residents but some of the smaller farm groups, as well as the Association of Municipalities of Ontario—I just think it's a mistake to do it in a bill that's mostly going to be made up of regulations.

I, for one, would not have a problem in accepting the bill as it is now written if I knew how strong those regulations would be and what kind of flexibility would be given to communities in their own jurisdictions to be able to have input into those regulations, how weak or strong they're going to be. Because at the end of the day this is about protecting our health and our water sources, as well as giving farmers the tools they need. I acknowledge that farmers, as well as anybody else, perhaps more so, want to protect the environment and our health. They live in these areas and drink the water from their jurisdictions. But we can't hide from the fact that although this is very controversial, there are two sides to the issue and there are precedent court cases that have ruled in favour of municipalities, plus a recent OMB case.

**Mr Peters:** On the conversion.

**Ms Churley:** Yes, on the conversion. So I think we're foolhardy. I must acknowledge as well, though, that I know it's very controversial. I understand the concern about it, and I also know that in this one Judge O'Connor did recommend something different. But he did recommend it, in my reading of it, on the basis of very strong watershed plans put in place, including an amendment of mine which was voted down relating to watershed plans and nutrient management plans being devised and put in front of the ministry so there could be clarification of how strong those plans are going to be. If this wasn't to be dealt with later in regulation and I had some idea where we're going to end up here, how strong the plans are going to be and whether there's going to be some flexibility for municipalities that have highly sensitive areas, tourist areas, watershed issues that can be taken

into account—but we have no assurances of that in this bill.

Therefore, because the assurances Judge O'Connor has asked for in his other recommendations—already today amendments from both the NDP and the Liberals which would have gone a long way to providing me with that comfort that the bill would be strengthened, given the fact that those regulations were not passed. I may have been in a position to withdraw this particular one had some of those other amendments been passed, but since they weren't, I think this amendment is critical at this time.

1730

**Mr Barrett:** Very clearly, the intent of section 60 is for the regulations to supersede any municipal bylaws that are currently in place when the bill is passed or any new ones to be developed later. The section would also deal with any municipal bylaws, whether it's under the Municipal Act, the Planning Act or any other authority that allows for the passing of bylaws. This motion very clearly would allow municipalities to be more restrictive in their bylaws than provincial regulations. One concern that came out in the hearings, by and large from the agricultural community, was the hodgepodge or the patchwork of municipal bylaws governing the application of nutrients that has grown like Topsy over the years. To delete this clause would allow for the current system to continue.

I certainly recognize the need for flexibility. I think I said in the hearings last week that this all about water. Water does not follow municipal boundaries. Here again, legislation and standards set up provincially—we should not automatically assume that the rule is the same across the province. One way to accomplish that—and this came out in the very first round of hearings that I was involved in with Doug Galt in the year 2000. The idea that came forward and seemed to be accepted by people when we questioned delegations was the concept of local advisory committees: farmers, environmentalists, people who know the lay of the land, who work the land, who perhaps hunt, fish, hike, course, trap or whatever and know where the streams flow. They may know a little bit about underlying aquifers, although that requires hard science to understand where an aquifer flows, let alone in many ways the impact of watersheds and surface water.

The legislation will create or allow for the creation of local advisory committees to promote awareness of the new rules and to mediate local nutrient management non-compliance-related issues. Clearly, these are advisory committees and part of their function is mediation, perhaps with the development of this forum, as we replace much of the influence of municipal bylaws.

**Mr McMeekin:** I have nothing but respect for Ms Churley, and I say that sincerely. I think you do just some incredible work. That having been said, this is a really tricky issue.

**Ms Churley:** Which I acknowledge.

**Mr McMeekin:** We've got a couple of former mayors here and a reeve, I think, from rural communities who understand the two-sidedness of this argument.

As I hear talk about local advisory committees, I'd feel a lot more comfortable with this if it hadn't been so damned hard to get the new city of Hamilton to acknowledge the need to put an agricultural advisory committee in place. We used to have those naturally before we were amalgamated. They were called local councils in Ancaster and Flamboro, and we had good rural representation there.

As the mayor of the only municipality in all of Ontario that actually lowered taxes six years in a row without cutting services, our reward was to be amalgamated in a monopoly form of government that isn't always as sensitive to rural issues as we'd like to see. In fact, one can make a very good argument that rural values, history and traditions are significantly underrepresented in today's reality. I hear that at every farm meeting I go to, and that's quite aside from the political stuff. I hear the rural voices being lost and certainly not heard as often.

The Hudson case is somewhat ambiguous too. As I understand it, as one who's quite anxious about pesticides and involved in doing some of the research on that issue, the thing that distinguishes the Hudson case—and I'm not sure; maybe everybody here knows this—is that the decision that the municipality had the right to do something stronger was made in the context of there not being provincial legislation in place.

If I can draw the parallel to Ontario, albeit an Ontario that needs to revisit its Pesticides Act, there is at least a Pesticides Act in place, whereas in Quebec that wasn't the case. The provincial government wasn't able to make as strong a case there because they were held up as being somewhat unqualified to do that, not having taken any action themselves.

The other concern I have—and I'll be very frank, Mr Chairman. If this was the town of Flamboro's regulations or the town of Ancaster's regulations that were coming into play here, I wouldn't have anywhere near as much difficulty, but we've got a mindset sometimes in large areas, as I said earlier, that doesn't see the wisdom of having even a local agricultural advisory committee put in place; of being quite fearful about putting in place a situation where the patchwork quilt gets reinforced, where we invite additional court challenges, which I think have been alluded to, that are often unsavoury and very expensive and, frankly, aren't in my opinion inclined to provide the kind of belief system that the bylaws would really be put in place to protect farmers.

The real worry in my agricultural community is that any time the government gets involved in telling them what they're going to do, the only thing they know for sure is they're going to get screwed or they fear they're going to get screwed. It's an issue of trust. They trust large, urban-based municipal governments almost as little as they trust the provincial government. There's no patchwork quilt in the distrust of government. There seems to be a universal distrust of government and, in this case, with good reason.

Notwithstanding that, I tried to listen very carefully to the arguments. I think the spirit is there, but I don't want



to see this put in place, because I really fear for the farm folk who are out there trying to earn an honest-to-goodness living. They've got all kinds of regulations, and the last thing in the world they need is a different set in Brantford than in Hamilton. To whatever extent it's helpful, with the generic application of a set of regulations, we may have to revisit it if the regulations are, as I worry, perhaps inadequate, but at this point in time I think it's too dangerous to go there.

**Ms Churley:** I am listening very closely to the arguments on both sides of this—your arguments and arguments the government made around this as well—and I have recognized all along how controversial it is, but I came down on the side of putting forward this amendment because we don't know what's going to be in the regulations, and that's what alarms me.

I want to give not quite an analogy, I suppose, but an example of how things can go wrong when you take away the ability of a municipality to set rules. What we need here is a green planning act or a watershed planning act, which we used to have. The NDP, as you know, brought in what we called a green planning act, and one of the first things this government did was to get rid of that act. In fact, the act they brought back was even more regressive than the one that was in place before.

1740

One of the things that happened is—and these are just a few little words but they were significant. Under the green planning act, as I referred to it, it said that municipalities' plans for development had to be consistent with the government policy statement. The Tory government changed that to just "have regard for" the Ontario regulations and policy statements on development. As a result, we saw what happened with the Oak Ridges moraine, for instance, with millions of dollars spent before the OMB, court cases, years of citizen activism, and eventually the government did come forward. It took a tremendous amount of pressure and money, and the OMB, which is very one-sided, wasn't really listening to the people. Finally, the government brought in an act after all this pressure.

But it's happening in other locations around the province now where development of another kind—not large intensive farms but, as we all know, Oakville is the most recent example. Mike Colle brought forward a private member's bill on that the other day. Councils don't have to "be consistent with" any more, they just have to "have regard for." They can pick it up, look at it and say, "Yes, we have regard for that," and then put it aside.

I just wanted to give an example of why I'm so concerned about that. Again, we don't know what those regulations are going to say and what kind of ability the municipality has in a situation where there's clear evidence that there's a watershed problem, an environmental problem or whatever. We don't know. It's an empty slate at this point, and it frightens me that we don't have that before us to know what we're talking about.

Having said that, I certainly hear the other side of the argument and I'm quite sympathetic to it, but I'm also very concerned and will be supporting my own amend-

ment under those circumstances, not knowing what is going to be in the regulations.

**Mr Barrett:** I just want to point out that I think we all understand that municipalities will continue to have responsibility for land use planning and building code legislation. They will have clarification from the province at that point and they will have province-wide legislation that ensures province-wide standards for environmental protection and clean, safe water through this legislation.

**Mr Peters:** We won't be supporting this amendment that's in front of us. I guess we'll hear that there is a recommendation that's going to be supported by the government out of the Walkerton report at least, with what we're going to have in front of us today, because the legislation mirrors recommendation 14. I've got to say, if there were things you were supportive of here, why didn't you bring forth some amendments; either amend what we had in front of us or bring forth your own amendments to the legislation? We didn't see that from this government. The only thing the government is going to be able to stand up and say—and I don't know how they're going to spin it and twist it—is, "Yes, we supported one recommendation—14."

I agree with 14 in this. I'm still waiting for the day when the Minister of Agriculture responds to how they're going to deal with the municipality of West Perth. West Perth has gone to the OMB and to the provincial court, and it has said that a municipal bylaw stands up. It's going to be very interesting to see how this government is going to respond to West Perth—because you've yet to respond; you've been silent on it—and how the West Perth and Hudson decisions are going to fit into this.

There's no doubt in my mind that we need to have this province-wide standard and not a hodgepodge of municipal bylaws. But it is extremely disappointing that the government chose not to put forth any amendments to try and make this a better bill and make this bill really do what it's intended to do, and that is, protect the farmers, the groundwater, the source water and the drinking water in this province.

**The Chair:** Ms Churley has moved motion number 13.

**Ms Churley:** Recorded vote.

**Ayes**

Churley.

**Nays**

Barrett, Dunlop, McDonald, McMeekin, Miller, Peters.

**The Chair:** That amendment is lost.

Shall section 60 carry? Carried.

Any comments or amendments to sections 61 to 67? Hearing none, shall sections 61 to 67 carry? They are carried.

Shall the title of the bill carry? Carried.

Shall Bill 81 carry? Carried.

Shall I report the bill to the House? Agreed. Thank you very much and I will do that.

**Mr Dunlop:** May I make a comment, Mr Chair, on the overall bill?

**The Chair:** If it's a brief one.

**Mr Dunlop:** I want to take this opportunity, at least on behalf of my government colleagues, to thank the member from Haldimand-Norfolk, Mr Barrett, for his hard work on this bill. It goes back the last few years. In fact, in the year 2000, Mr Barrett and Mr Galt toured the province and did some major work on intensive agriculture operations in the province in front of many crowds. Those recommendations and his reporting to caucus, along with the fact that he sat on the Premier's task force on rural Ontario, helped contribute a lot to the \$600 million that was put into the OSTAR program. In fact, the OSTAR program dealt with the Option One programs that many of the municipalities in our province are working with.

As well, as PA to the Minister of Agriculture in the year 2000, he worked along with the PA to the Minister of the Environment and helped develop the healthy futures program. I know in my municipality and in the county of Simcoe and in the regions around that area—

**Mr Peters:** Simcoe will hate this bill.

**Mr Dunlop:** You can mind your business for a second.

**Mr Peters:** What does the Simcoe FA think of this bill? They don't like it, do they?

**Mr Dunlop:** They've asked for the bill to be passed, if you don't mind, in its present form.

**Mr Peters:** Did you read the letter?

**The Chair:** Order.

**Mr Dunlop:** The fact that the healthy futures and OSTAR programs are in place is very important to our municipalities. The conservation authorities are taking part as the lead roles in the development of those programs. I know tomorrow we have a major announcement from the Lake Simcoe Region Conservation Authority on the healthy futures program. I think it's important that we

acknowledge Mr Barrett's contribution to the implementation of Bill 81, because he did steer it through the last couple of years on that. Thank you very much.

**Mr Barrett:** Could I have a rebuttal?

**The Chair:** I would thank Mr Barrett for coming and substituting today as well.

**Mr Peters:** I would like to pay a compliment to Mr Barrett as well. Toby, it's been a long time. We've been two and a half years at this. Mr Barrett has followed this bill from day one and he's here right to the end. As I said the last time, he was a trooper who made sure he was everywhere.

I just wanted to be on the record that the Simcoe Federation of Agriculture has some very serious concerns about this legislation that's in front of us. I asked the question at the last meeting if we had every piece of information in front of us. Obviously we didn't, because this letter went to Minister Helen Johns on May 28 and this is what the Simcoe County Federation of Agriculture said: "We strongly urge you to reconsider your support of Bill 81 in its present form. The problems with Bill 81 are detailed on the attached pages and rectifying these problem areas prior to the passage of Bill 81 is paramount."

What we tried to do today was rectify some of the issues that were not properly addressed in this bill, including some of the issues that we tried to raise today that were raised in a discussion paper by the Simcoe County Federation of Agriculture. I think it's important it be noted that there is a lot of concern in the agricultural community across this province about the direction and the intent of this legislation.

*Interjection.*

**The Chair:** I'm sorry, Mr Barrett. We've had enough time for commercials. I'm going to adjourn our proceedings today and note for the members, I think in deference, because we had agreed to one hour and 15 minutes of time for Bill 90, that we might as well pick a fixed starting time. I'll exercise my Chair's discretion and say we'll start at 4 o'clock sharp on Wednesday for consideration of clause-by-clause on Bill 90, for one hour and 15 minutes.

*The committee adjourned at 1749.*



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