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Lundi 11 septembre 2006

Standing committee on social policy

Comité permanent de la politique sociale

Clean Water Act, 2006

Loi de 2006 sur l'eau saine

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 11 September 2006

Lundi 11 septembre 2006

The committee met at 1002 in committee room 1.

CLEAN WATER ACT, 2006

LOI DE 2006 SUR L'EAU SAINE

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

The Chair (Mr. Shafiq Qaadri): Good morning, everyone. As you know, the standing committee on social policy is here for consideration of Bill 43, An Act to protect existing and future sources of drinking water and to make complementary and other amendments to other Acts. The committee welcomes all members. I'd like as well, on our collective behalf, to welcome our legislative counsel, Mr. Doug Beecroft, who will be on hand to answer any legal questions. As well, according to standard protocol, as you know, all members of the committee have received amendments, and those have been distributed by the clerk. I will now open the floor. Mr. Wilkinson.

Mr. John Wilkinson (Perth–Middlesex): Mr. Chair, I believe we have unanimous agreement, given the fact that the minister is here, to move to section 87 for an amendment that would be moved by the government.

The Chair: Do I read that as the committee's will regarding unanimous consent? I do. Madam Minister.

Hon. Laurel C. Broten (Minister of the Environment): Good morning, everyone. I'm pleased to join you this morning and move an amendment with respect to section 87.1.

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

"Ontario drinking water stewardship program

"87.1(1) A program to be known in English as the Ontario drinking water stewardship program and in French as Programme ontarien d'intendance de l'eau potable is hereby established.

"Purpose

"(2) The purpose of the program is to provide financial assistance in accordance with the regulations to,

"(a) persons whose activities or properties are affected by this act;

"(b) persons and bodies who administer incentive programs and education and outreach programs that are related to source protection plans; and

"(c) other persons and bodies, in circumstances specified in the regulations that are related to the protection of existing or future sources of drinking water."

The Chair: Thank you, Madam Minister. The floor is now open for any questions, comments or debate. Mr. Tabuns.

Mr. Peter Tabuns (Toronto–Danforth): Minister, where will these funds come from? Will they come out of the Ministry of the Environment budget or out of general revenue?

The Chair: The parliamentary assistant will address the question.

Mr. Wilkinson: It is a commitment of the government that this will be a fund to be administered by the Ministry of the Environment.

Mr. Tabuns: So it will come out of the Ministry of the Environment budget?

Mr. Wilkinson: Yes.

Mr. Tabuns: Okay. Just to get clarity on (c), is this meant to provide ongoing operating funds for municipalities or other bodies in terms of monitoring, enforcement etc.?

Mr. Wilkinson: No.

Mr. Tabuns: Can you explain, then, what these funds are intended to do? I mean, (a) and (b) seem straightforward. What is (c) meant to do?

Mr. Wilkinson: Under this bill, as all members will remember, we had substantial deputations from so many groups—I would think almost all of the groups—and the thing that everybody agreed to was (1) that we needed the Clean Water Act, and (2) I think we had almost unanimous consent of all presenters that there needed to be a mechanism enshrined by legislation that would allow the province to play its appropriate role in assisting affected landowners, particularly farmers, so that when risk management officials—which we'll be referring and making amendments to—go to a property owner, they have what was commonly referred to as the carrot. To make that happen, we need to make sure that the government has a commitment to provide money. What this bill does, from a framework point of view, is create this stewardship fund, and the intention of the fund is to address the concerns of landowners.

What the regulations will do is, what is the best way to get that money into the hands of those people who have been affected? When we look at the CURB program—Clean Up Rural Beaches—the healthy futures program, the environmental farm plan, it isn't necessarily that we have landed on what are the best groups to get that money to people. We've left it open so that we are not constrained just through our source planning committees or just through conservation authorities. For example, not everyone is covered by a conservation authority. So there's enough leeway there that we can come up with the best program possible after we determine the problem, which is still a work in progress as we do our science.

Mr. Tabuns: So I understand correctly that this will not provide support for operations of municipalities or other bodies to actually monitor and enforce. I'm clear on that?

Mr. Wilkinson: Yes.

Mr. Tabuns: Okay. What sort of scope of funds are we talking about? How much money?

Mr. Wilkinson: As we have always said, there is no way of determining what is going to be the cost. For example, we had a great deal of testimony that said that if we went with the carrot approach, if we had a stewardship fund, if we had money on the table to encourage landowners to do the right thing, which they consistently told us they wanted to do, and looking at examples such as the CURB program and environmental farm plans, this was the most effective and most cost-effective way of getting the action that we need, which is ensuring that our common sources of drinking water are protected from significant threats.

I can tell you that we have made a commitment to make a down payment into this fund, but of course it presumes the fact that we pass this bill. This bill has to get through clause-by-clause, it has to be agreed to by the House. If Bill 43 does pass, with this amendment, the government has made a commitment to make an initial down payment of some $7 million, earmarked initially for two items, but not the only two things that this fund would ever deal with: Initially, some $5 million to assist municipalities to acquire wellhead and water intake protection zones and, as well, it's my understanding, about $2 million for education. We were told consistently that we needed to implement this plan by providing more and more education funding upfront so that the people affected by this bill would participate in the terms of reference, the assessment report and the source planning committee process. So those are two initial priorities that this fund will have.

I would say to my friend that I would anticipate that about three years from now, when the science is done, that is when all of us will have an idea of the cost of implementing clean water.

I'm particularly proud that the minister came here today to ensure that enshrined in law, as requested by so many groups, there will be the drinking water stewardship fund to provide the province a way of making a meaningful contribution to implement the bill.

Mr. Tabuns: Last question: In the last election your leader promised to implement water-taking fees. You have an opportunity here to implement water-taking fees so as to fund this sort of activity. Why has your party decided not to carry through on that promise?

1010

Mr. Wilkinson: First of all, how the money flows to this fund from the government is still up in the air. I'm heartened to know that water-taking fees, that money, could be flowed by the Minister of Finance through to this fund.

Mr. Tabuns: No further questions.

The Chair: Thank you, Mr. Tabuns. We'll move to Mr. O'Toole.

Mr. John O'Toole (Durham): Thank you very much—just an opportunity. I'm sure Ms. Scott will have a chance to bring a few questions.

The Chair: Absolutely.

Mr. O'Toole: I think it's important to first recognize this is highly unusual that the minister would have to appear before this committee to redress the ill-conceived implementation plan for this particular legislation. The amendment is too little, too late.

Interjections.

Mr. O'Toole: Chair, if you could deal with the unruliness on the other side.

The Chair: The Chair respectfully requests the unruliness to desist.

Mr. O'Toole: It's just amazing that they have such little respect for process here. That's really what I've heard all through these hearings, basically that it isn't the importance of the goal, to achieve that goal; it's the process itself. And here we are, very late in the day, trying to ram this bill through without very much consultation, or at least some limited consultations forced by the John Tory opposition party and Ms. Scott.

The question has been asked by the NDP and I'm going to leave that line of questioning to Ms. Scott. But I just wanted to be on the record. We support the intent of the bill. The process has been flawed and here today another exception is being made, with the minister having to come back from the cottage and move this amendment. Now we're going to ask—we're really not sure where the money is coming from. Is it new money?

If you want to really get back to the process and how poorly administered this has been, probably under the previous minister more so than Ms. Broten, the conservation authorities were already working on this without any legislative mandate. They were already out there doing all this getting-ready stuff, and it's the smugness, that you're actually going to go ahead—and this is going to pass. This is going to be forced on the people of Ontario in a haphazard manner. We've admitted here this morning we'll endorse this amendment.

Even the parliamentary assistant, with all his good oratory skills, isn't able to explain where the money is coming from and what it will be spent on. He's got some general numbers. I would like him to table the estimates that were put to the cabinet committee of what the real

costs and implications are. That information was asked for by the chair of AMO, to have this fully priced and costed out for the implementation. It's not here. You come here with this half measure to get us to endorse a bill that has been hastily drafted, ill-conceived and poorly consulted on—I guess I'm just so outraged that Ms. Scott is going to have to take over to ask any real questions.

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

Ms. Laurie Scott (Haliburton–Victoria–Brock): It's kind of hard to follow that, actually—my colleague Mr. O'Toole, outraged. But my colleague made some good points. I'll clarify some of them, maybe, for you. Since the bill was introduced, as opposition parties, we've been saying this is a download to the municipalities, the landowners, unfunded liability. We took it out in committee, and you've heard that messaging loud and clear, consistently. The minister here today is an example of—at least you've listened. Now, where you got $7 million, I'm not sure, but there's no question that the approach was wrong, it was draconian, it was heavy-handed. You've acknowledged you need more of a carrot. People want to work towards clean water. Where you came up with the $7 million, I don't know. Maybe I'll ask you if that number just got kind of picked from the hat. It's a good first step, as the Ontario Federation of Agriculture has said. Is it anywhere close? Where did the $7 million come from—the $5 million for implementation and the $2 million for education?

Mr. Wilkinson: I think that question was for me. I want to say to my friend, thanks for the question.

I understand that my good friend the member from Durham is on the horns of an exquisitely difficult dilemma about section 87.1.

Mr. Jeff Leal (Peterborough): He just came from the cottage.

Mr. Wilkinson: Yes. I know that my minister did not. She was working today, and we are very appreciative that she was able to find time in her very busy schedule to come to this committee and deal with a money motion.

We have said consistently, and this has not changed, that there is no one who can tell us what will be the cost of implementation, but we have a choice: Do we work with the landowners; do we believe in the concept of stewardship; do we say that we own the land but we also have a responsibility to the land; do we have an obligation as property owners to make sure that the common source of drinking water is protected? And what is the appropriate role of government?

It is, of course, difficult at any time for a government to say with assurance, prior to the scientific work that is being done, what that cost will be. We said very clearly to people, we have committed some $120 million to ensure that the science that will inform all of this work is done in advance. That work is ongoing.

What we heard very clearly—and I say to my friend that you're right—is that people wanted their anxiety to be relieved, that the concept of stewardship and the provincial role be enshrined in this bill, and that's the amendment the minister has made.

As I said to Mr. Tabuns, and I can repeat, the $7 million is a down payment. It is not the amount required, but it is a down payment. Even though we haven't got to that, we feel that there should be money set aside for the acquisition of sensitive land around intake protection zones, and there's been money that will be allocated in the 2007-08 year for that. We would not, as a government, presume the passage of this bill. It's up to the Legislature to get this bill through clause-by-clause. It's up to the Legislature to get this bill through third reading. We are not presuming that, but we are making a very strong commitment that there will be initially a down payment.

We were inspired by our friends in Manitoba. We had many delegations, particularly from OFEC, about what they did in Manitoba. In their trust fund that they created, they put in some $300,000. We are allocating some $7 million initially.

Here's the thing I think we all have to remember. The reason for this bill is there is anxiety that if there were, for example, a new government some day and this were not enshrined in legislation, it would be quite easy for another government to ignore stewardship. By putting this fund in the law, it means that all parties will be bound by it, or a future government would have to come into the Legislature and say, "We don't believe in stewardship." So I think that anxiety—and I look at the comments from so many stakeholders—is way down, because we've enshrined it.

I want to personally, on behalf of the government members, thank the minister for coming in this morning and moving this very important amendment, which I think will colour all of our subsequent discussions over the next two days as we deal with clause-by-clause.

The Chair: Thank you, Mr. Wilkinson. Taking that all parties have recovered, if there are no further comments—Ms. Scott?

Ms. Scott: If I could just follow up a little bit more. The money is going to be funded from the MOE, and we heard throughout the consultations that this should be a provincial responsibility. We have the source protection committees that are set up. When someone applies, if we want to use the approach we're going to go further into the permit official/risk management official change, are we going to be able to say that there's going to be a co-operative approach? We've dealt with farmers; we're not going to go on to their land. Anything above due diligence—the nutrient management plans, the environmental farm plans, which, combined, pay for at least 90% of the cost to the farmer and the landowner, this is enshrined in legislation. How much is the source protection committee going to be involved with the MOE? Do they have to submit the drafts of what people are asking for, for money, then approved by the MOE, or is it going to be directly to the MOE?

Mr. Wilkinson: First of all, just in regard to this, because we are dealing with 87.1—and I think some of the other questions will be addressed as we go through clause-by-clause and the amendments proposed by the

minister. But in this situation, I think the minister has wisely decided to call an advisory panel made up of the stakeholders that had issues about the stewardship fund because we don't presume that we know today exactly how that money should work. So what she has done is invited the stakeholders to come forward and to give her their best advice as to what is the best way one would prioritize and allocate the money under stewardship.

Again, to the question from my friend, it shows that the attitude of the government, the commitment of the government, to implementation is one of working with people and not against people. I think the stewardship fund is important to do that. I think the minister's approach about seeking advice from those who will be affected is the right way to do it. And though our source protection committees will be creating their plans, it does not diminish the responsibility of the government and the Ministry of the Environment, through this part of the act, to play a meaningful role in the lives of people who might be affected by the implementation of this act.

1020

As I think we were told many times, there is not a question of whether we should do this; the question is how we do it. I think the series of amendments we are proposing as a government go to ensuring what people told us repeatedly is going to happen, that people will buy into the implementation of this bill based on the principles of stewardship.

Ms. Scott: Okay. We look forward to further co-operation and the stewardship fund being put in the legislation, and we'll be supporting this amendment.

Mr. Leal: At the appropriate time, I'll ask for a recorded vote on this amendment.

Mr. O'Toole: I just wanted to sign off on this portion of the discussion by acknowledging that the government has indeed listened to the opposition—that's us—on two counts. First of all, there would never have been hearings if it wasn't for us, and can you imagine what would have happened? Leave that to the imagination of the public later on next year. The second thing is that this fund is directly as a result of the hard work of Ms. Scott and others and the stakeholders—the agricultural community, AMO. I want to put on the record—because I'll be mailing it out to them from Hansard, whenever it's printed—the good work that Ms. Scott has done, and the stakeholders from agriculture and rural communities and AMO and the federation etc. We've made the first step. Thank you very much.

The Chair: If there are no further questions—Mr. Tabuns.

Mr. Tabuns: I don't have questions. May I comment?

The Chair: Please.

Mr. Tabuns: It was very clear in the discussions and presentations that were made to this committee right across the spectrum, from environmental groups to farm groups to industrial groups, that there was interest in having funding here for incentives and for education. It's a useful amendment. It should have been in the original bill. It's a good thing that there's an amendment here today.

We'll have a chance to go over this again, but I do want to say to the parliamentary assistant and other members of the government that you have not put provisions into this bill to financially support municipalities, conservation authorities or other bodies that will actually have to implement, monitor and regulate under this bill. I believe that will be a profound problem, because it was very clear, again, from listening to the groups that made presentations, that their ability to actually deliver the goods as we see here is not there. They will not be able to deliver the goods. So it's useful to provide incentives and education funding, but if you don't have funding for the other portion of this, we will have situations that I've seen before on city councils—and I know some of you have had the opportunity, the privilege, of such service. If there's not enough money, you'll get one enforcement officer where you need 10. You will get part-time enforcement where you need full-time. You won't get the goods delivered. It's a fundamental problem with this bill.

The Chair: If there are no further questions, comments, debate, citations, we'll move now to the vote.

Mr. Leal: Recorded vote.

The Chair: It will be a recorded vote, as stipulated by Mr. Leal. I also advise the committee that—yes, Mr. O'Toole?

Mr. O'Toole: Just clarification, if I may. What are we voting on? The amendment?

Interjection.

Mr. O'Toole: I would put to you it's out of order to take that vote right now, and I'm asking the clerk. The reason is, there are so many sections prior to that section which may have implications with respect to how this would be clarified in the discussion. I think it should be voted on in sequence like any other part of the bill.

The Chair: Mr. O'Toole, I would advise you as well as all fellow committee members that I believe the committee has already received unanimous consent to proceed in this manner. I also take it from legislative counsel that this particular motion is not out of order.

Mr. O'Toole: We've been outfoxed again.

The Chair: Having said that, I will advise the committee that the motion itself is in fact a new section, for which reason the wording of the vote which proceeds now: Shall section 87.1, which is government motion 186, lately presented by Madam Minister Broten, carry?

Recorded vote.

Ayes

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

The Chair: None opposed. I declare section 87.1, government motion 186, to have carried.

Mr. O'Toole: Just a comment through the Chair: I appreciate your indulgence, as someone who has been away from the legislative process for a couple of weeks. Here's the deal: That section changed substantively and

purposefully this entire bill and its approach. What I mean is, normally those amendments are out of order. I'm not trying to be smart. It's such a substantive change. But anyway, it's up to legal counsel or wiser people than I who have looked at it. It substantively changes the approach of this bill totally. So it's probably in my view a moot point at this time. Thank you for the indulgence.

The Chair: Thank you, Mr. O'Toole. We'll now proceed to the presentation of our original motions in the original order. We begin with PC section 1, labelled as PC motion 1, and I invite members of the PC caucus to present that.

Ms. Scott: Everyone has the amendment, the motion, in front of them? Okay. We felt the current purpose statement in section 1—

Mr. O'Toole: You have to read it.

The Chair: Ms. Scott, I've just been advised that you need to read it to enter it into the record.

Ms. Scott: Okay.

I move that section 1 of the bill be struck out and the following substituted:

"Purpose

"1(1) The purpose of this act is to provide for the protection and stewardship of Ontario's water resources and aquatic ecosystems, considering the social and economic impacts of environmental protection measures and recognizing,

"(a) that Ontario's social and economic well-being are dependant upon the sustained existence of a sufficient supply of high quality water;

"(b) the importance of comprehensive planning for watersheds, with respect to water, land and ecosystems, on a basis that acknowledges and considers their interdependence;

"(c) that water resources and aquatic ecosystems require protection to ensure the high quality of drinking water sources;

"(d) the importance of applying scientific information in decision-making processes about water, including the establishment of standards, objectives and guidelines;

"(e) the need to protect riparian areas and wetlands; and

"(f) the benefits of providing financial incentives for activities that protect or enhance water, aquatic ecosystems or drinking water sources.

"Same

"(2) This act is one part to a multi-barrier approach to the protection of existing and future sources of drinking water.

"Additional costs

"(3) If the province requires that any business or farm or agricultural operation or any landowner go beyond their normal operating procedures because of anything done under this act, the province shall compensate them for any additional costs they incur.

"Impacts to be considered

"(4) In carrying out the purposes of this act, the minister shall consider the social, cultural and economic impacts of any environmental protection measures that he or she is considering taking."

Just as an explanatory, we felt that in section 1 the current purpose statement is too broad as it is currently stated and it may be interpreted to mean all water everywhere instead of focusing on the protection of municipal drinking water supplies. So the amendment will make the purpose of the bill more specific, while at the same time ensure that it's recognized that this bill is but one part of a multi-barrier approach. Any costs imposed on businesses, properties, owners, farms etc. over and above what they would normally do is borne completely by the province. The social, cultural and economic impacts of the application of this bill are taken into account at all times.

The Chair: The floor is open for questions or comments.

Mr. Wilkinson: In regard to this motion, I just want to read what section 1 says right now: "The purpose of this act is to protect existing and future sources of drinking water." It is the contention of the government that that very simple but very clear and powerful statement is the best expression of the work of Justice O'Connor, so we will not be voting for the opposition amendment.

The Chair: Any further questions or comments?

Mr. O'Toole: I think it's important, because the purpose clause was the point of much disagreement. It's my understanding that the earlier drafts of the intention of the legislation was to examine in a progressive manner the various aspects of drinking water, first being the municipal, which would include the treatment plants and the systems and infrastructure to provide these to homes; secondly, I guess, the well area inspections and the regime of discipline there and the role of public health and the conservation authorities.

1030

Quite frankly, this amendment attempts to focus, as Ms. Scott said in her explanation, on protecting municipal drinking water systems first, and it's this jumping off into the broad area here without a real plan—$7 million I guess basically is what they said this morning. I'm asking again here; I'd like all cabinet information that was put into making this decision to advance this money tabled here this morning. I'm asking for that because no one knows. It's been the question all along. What we're trying to do here is focus it down. I'm going to be harping on this all morning. Those are my comments, not really a question. I would ask for your support and ask for a recorded vote.

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

Mr. Wilkinson: We have our esteemed legislative counsel here. The number of times the member from Durham has said that this committee has the ability to compel cabinet to reveal documents which obviously are bound by cabinet secrecy—

Mr. O'Toole: It's all secret.

Mr. Wilkinson: —and that somehow, in our parliamentary system where there is cabinet secrecy as part of

our form of government, this committee has the power—so I'd just like some clarity from Mr. Beecroft whether or not this committee can compel cabinet to actually provide these documents.

The Chair: Mr. Beecroft.

Mr. Doug Beecroft: First of all, this is an unusual location for that sort of thing to happen. There is a Freedom of Information and Protection of Privacy Act. It provides for access to certain documents. It sets up a process. Anybody—the opposition, the public—can make requests for government documents. There's a mechanism there for handling those requests, for dealing with appeals if people are unhappy with decisions that are made. There are exceptions in that act for certain classes of documents, including confidential advice to cabinet, things like that. But the way in which those issues are resolved is not normally the work of a committee like this. It's dealt with through the freedom of information system.

Mr. Wilkinson: That's very informative. Thank you, Mr. Beecroft.

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

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare the motion defeated.

We'll proceed now to the vote for that particular section.

Shall section 1 carry? None opposed? I declare section 1 to have carried.

We'll now move to the presentation of PC motion 2. To the PC caucus.

Interjections.

The Chair: Just to clarify, the PC motion is section 1.1.

Mr. O'Toole: A clarification administratively here. How can we vote on a section when there are further amendments on the section?

Interjection.

Mr. O'Toole: No, but I thought we already voted on section 1.

The Clerk of the Committee (Mr. Trevor Day): Right, and we did.

Ms. Kathleen O. Wynne (Don Valley West): It's a new section.

Mr. O'Toole: I understand. We're adding section 1, sub 1. This is 1.1.

The Chair: So an entirely new section after section 1.

Mr. O'Toole: Okay. Very good.

The Chair: Once again, to the PC caucus, presentation of PC motion 2. Ms. Scott.

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

"Ontario Water Resources Act

"1.1(1) This act applies to existing and future sources of drinking water only to the extent that the Ontario Water Resources Act does not apply to the same water.

"Conflicts

"(2) In the event of an inconsistency or conflict between this act and the Ontario Water Resources Act, the Ontario Water Resources Act prevails."

This amendment is in response to the repeated calls to the committee to have a clear differentiation between water withdrawn and water consumed by the Ontario Water Resources Act. So it's a clarification on that.

The Chair: Mr. Wilkinson?

Mr. Wilkinson: I've looked at this. I can tell you that perhaps that's what your researchers have told you, but this would effectively gut everything that we have done on this file for some three years. To say that the Ontario Water Resources Act should have primacy over the Clean Water Act is beyond the pale. All of the work that we have done is to ensure that people's sources of drinking water are protected and that that is of paramount importance to the people of Ontario.

I say with respect that to somehow gut this bill and punt it over to the OWRA would defeat the intention of all of the work and all of the people who have come here, all of the stakeholders who have been advising your government, the previous government, and our government for all of these years. I don't think it adds any clarity whatsoever. I think it actually guts the bill, and I'm surprised.

I must admit, I looked at that first amendment and then I looked at this amendment and then I thought, oh, okay, now we know what's up. The question is, can this bill be diluted in any sense?

This is about strengthening the bill and doing more to provide the legislative tools to make sure that people's drinking water is safe. That's what this bill is about. I can assure you in the most strenuous terms that the government is not going to be voting for this because it would negate all of the work that was done. I can't believe the reaction that would come from all the stakeholders who have been consulting on this bill for so long.

The Chair: Thank you. Any further questions, comments?

Ms. Scott: I just want to comment that this was brought up at the committee meetings and the stakeholder meetings. So when Mr. Wilkinson makes these strong comments that this would gut the act, that's certainly not the way we see it, and I leave it at that.

Mr. Wilkinson: And I agree. The problem here is history. When we look at the number of spills that happened during the previous government that were not prosecuted by the Ontario Water Resources Act, if that is going to be the gold standard of how we're going to protect drinking water, if that was there—

Interjection.

Mr. Wilkinson: —if that was doing its work, Justice O'Connor spent so much time, heard so many people, listened to so much tragedy, to say that that is not the right vehicle. The Ontario Water Resources Act is not the appropriate vehicle to protect people's drinking water. This is this idea that somehow we can protect water by doing what we were doing. It has to change. To give the OWRA primacy—this bill is very clear: Whichever act, existing or planned, does the best job of protecting drinking water shall prevail. And then to say, "No, no, we're going to take one act, which is definitely not the gold standard, and that's the one that's going to have jurisdiction," I just think throws all of the work that we've done out the window.

Ms. Scott: I think that Justice O'Connor made the comment that the Ontario Water Resources Act and the Environmental Protection Act, with some strengthening, was what you could do for source water protection and you didn't need to bring in a separate piece of legislation and create another level of bureaucracy with regard to that.

Mr. Wilkinson: What he also said was that the only way to make this happen is to have a multi-barrier approach and to have stakeholders. There is no way that we could create the terms of reference, the assessment report, source planning protection committees and source planning protection plans by tinkering around with the EPA and the OWRA. We looked at it from a legislative point of view and said, "How do we make sure the intention of Justice O'Connor actually comes to pass?"

I can tell you that we looked at that recommendation, but we also read his lengthy dissertation about how one would do this, that you would have the minister set up a framework, you would go to the people who are sharing the same source of drinking water, you would pull them together, you would have them, with the help of the government who would provide all of the scientific data, identify where there are significant threats to drinking water and then have a way of implementing that. I'm very proud of the fact that we have put in the stewardship fund because that was, I think, a piece that was necessary, and obviously people wanted to have it enshrined in this act. But to give the OWRA primacy, that somehow that's going to protect municipal sources of drinking, I just don't see how that would do anything. If we were to pass this, we might as well all go home.

The Chair: Thank you, Mr. Wilkinson. Ms. Scott.

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Ms. Scott: The acts that did exist with the Ontario Water Resources Act, the Environmental Protection Act—you could have done the assessment without this act. You could have funded however you wanted to—it's conservation authorities right now. The bottom line is that this is a download to municipalities, and there were already protections in there.

Sure, we need source water protection assessments and that could have been done under existing legislation. You didn't have to do a new bill. Anyway, I leave it at that for debate.

Mr. Wilkinson: We found out that we had things like reg 170. Reg 170 is a perfect example of a one-size-fits-all, top-down model. After all we've done to try to make sure that we actually have adequate funding for nutrient management and to fix up reg 170, the idea that we as government would pick up the torch from you and come up with an MOE top-down-driven process, instead of a bottom-up process from the groundwater up—that's what this bill is all about, how to get people to willingly implement and keep their common sources of water. I can't see any way other than the bill we've put forward.

Ms. Scott: It was hardly a willingly co-operative approach when you heard from all the people at the committees about the draconian, heavy-handed, reverse onus—you're accusing me of being guilty till I can prove you're wrong? That wasn't a co-operative approach. You've heard all the anger throughout all the committees. You saw all the protest. This bill was not going to be co-operative at the start, and it was going to be funded by the landowners and municipalities, not by the province where the responsibility should stay.

Mr. Wilkinson: Now, I say to my friend, you and I weren't here, most of us weren't here, but I know your colleague beside was here. The approach our government has always taken is that there has not been a single major piece of legislation introduced by our government that has not been amended. We don't start with the process that our bill at first reading is the be-all and end-all. The debate, the consultations and this process are all about democracy. I think if we were to look back at the previous eight-year period we would find a totally different approach that was taken by the government of the day, which didn't go out and have committee hearings across Ontario—right?—which used to come in here and just ram the bills.

I've talked to my colleagues who were here today. This is an open process. So if we are guilty of actually listening to people and changing the bill, then call me—I'm proud that we're doing this. That's the whole process. That's why we're here. We never said at first reading or at second reading that the bill was perfect.

Ms. Scott: First of all, it was the opposition that forced the travelling committee. We're glad the government agreed, so you could go across the province. We asked for the travelling committees.

Mr. Wilkinson: So did we.

Ms. Scott: Anyway, I say that if you had consulted with the public more before you brought in the legislation, there would have been a lot less anger out there in rural Ontario.

Mr. Wilkinson: I just think there are a lot of people who, for partisan reasons, were stirring it up and spreading misinformation about the bill. And I'm so glad that so many groups like the Association of Municipalities of Ontario, Conservation Ontario, the Ontario Federation of Agriculture and the Ontario Farm Environmental Coalition all think that our amendments are exactly where we should have landed on this bill.

Ms. Scott: We're only at 1.1 so far in the amendments, so we'll see what the rest bring.

The Chair: Quite right, and, Ms. Scott, there are 223 amendments remaining.

Ms. Scott: That's not good.

The Chair: If it is the will of the committee, we'll now proceed to the vote on PC motion number 2.

Mr. Wilkinson: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare PC motion 2 to have been defeated.

We will now proceed to PC motion 3, which is for the introduction of section 1.3 as a new section.

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

"Scientific standard

"1.3 Any decision or action taken under this act shall be based on scientific testing, using empirical methods and resulting in quantifiable results."

This amendment is a response, again, to the numerous concerns we heard during public hearings that the government was not basing its decisions on clear science available, and this amendment would enshrine the tenet of decision-making based on science in the bill.

The Chair: Any further questions, comments?

Mr. Wilkinson: Since we don't want to be here till midnight, I would say that I disagree with the member. I think our entire process has been transparent and based on science.

The Chair: Thank you.

Mr. O'Toole: We're dealing technically with the sections of definitions, etc. When you look at the bill itself and the language, the vagueness of the bill, "may cause"—in law that's not a clear, unambiguous expression, "may cause a risk to the environment," or "the water" or whatever.

Those are just not defensible in terms of what this amendment is attempting to do: to put some strength and legitimacy behind the individual who has been charged with potentially contaminating or causing a risk to the source of water, and the inspector says that, the person on the site says that. What we're saying is, the test here would be the science itself. That's really a fair-minded way of dealing with this and setting up a process to resolve these disputes. Some technician with a degree or something like that is sort of stating that my wellhead or whatever may be causing a risk and charges me, and now I'm guilty to defend that. What we've got here is a mechanism to make sure there's some legitimate, valid, objective way of resolving disputes. We're saying that there's a scientific standard. The scientists at Guelph and other universities can come up with these standards, but I'm just asking for a little bit of a response here from the parliamentary assistant. Am I to assume that some clerk arriving on my property is the law and the standard? Is that kind of what's going on here?

Mr. Wilkinson: I say to my good friend, who has spent more time scaremongering on this bill than almost any other person in the Legislature, that you're absolutely wrong. We have said consistently and are paying for the science that will inform this bill, and I can tell you the whole concept of having these people from away, the whole idea of having a source protection committee made up of people who are actually drinking the water—I have great faith in the source protection committee that, informed by the science work that's being done, fully paid for by the McGuinty government, I might add, we will arrive at a point where anyone who's affected by this bill will not have a problem with the concept about whether or not there is a threat. The question is, how do we best mitigate that? How do we take something that's significant and reduce it, and how do we monitor it? All of that is based on science. The bill itself is inherently precautionary. It's part of what Justice O'Connor was saying: It is but one part of a multi-barrier approach to keep our water safe.

The Chair: Thank you. Taking it as no further questions and comments, we'll proceed now to the vote.

Interjection: Recorded.

The Chair: Recorded vote. The question is, shall section 1.3, the first PC motion 3, carry?

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare PC motion 3 to have been defeated.

We'll now proceed to consideration of PC motion 4.

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

"Interpretation, onus of proof

"1.4 If the minister, a source protection committee, a source protection authority, a municipality or any person or body acting under this act asserts a fact or relies on an assumption, the onus of proving the fact or assumption lies on the person or body who asserts the fact or relies on the assumption and not on a landowner or any other person affected by the assertion or assumption."

This amendment obviously aims to eliminate all instances I mentioned earlier where reverse onus is placed on those affected by the bill. In Ontario, in this day and age, I think it's completely unacceptable to implement a bill based on the idea that those accused are guilty until proven innocent. You heard that a lot in the public committee hearings: that it was questionable whether they'd even be aware if their property was assessed and

what that assessment said, and that there wasn't going to be an appropriate appeal mechanism for them.

Mr. Wilkinson: Charitably, I can say this is well-intentioned, but if I'm not charitable I would say, "You haven't read the entire bill," because if you read through the entire bill and this whole process, you will see why this amendment is unnecessary and actually would dilute the bill, which is not what we're about. We're not about diluting the bill, and we're not going to sit here after all of this work and dilute the bill. So I just want to say to the member, just in case we haven't been able to read right through the entire bill, that I believe that this, if we passed it, would run contrary to the intention of the process of Bill 43. It's a process which is meant to be protective and consultative; it's not supposed to be argumentative.

It's also an unnecessary provision because where proceedings are authorized under the bill, such appeals to the Environmental Review Tribunal from decisions related to risk management plans under part IV, the tribunal procedure already provides for this. So under the law already, if there's an order and someone doesn't like that, they appeal it. Generally, where a public authority is imposing a requirement on a person and a person challenges that requirement in an appeal, it's the public authority there that has the onus of defending the requirement on appeal. So we already have a mechanism to make sure that there isn't reverse onus. There's already a mechanism. The person, if they decide that they disagree and appeal it, take it to the Environmental Review Tribunal, and it's not up to that person. They've asked for an appeal. It's up to the public authority—in this case, the source planning protection committee. They have to go to the ERT and prove why they think what they're doing is reasonable. So to now put it in the bill and say, "No, we're going to have another process," in my sense would turn all the environmental law we have in this province on its head.

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Mr. O'Toole: There's a very important distinction between the previous section, which the Liberals voted against, which was to put some science into it, and then this one, which is on the onus-of-proof provision in the early purposeful parts of the bill. But quite contradictory to what the member has said, section 88 is worth a second look here, because it exempts from any appeal—I'll just read section 88, basically the no-remedy section: "No costs, compensation or damages are owing or payable to any person and no remedy, including...." So this is the access to justice that you have provided which you're referring to.

It goes on to say in subsection (5), "Any proceeding referred to in subsection (3) commenced before the day ... dismissed, without costs...."

Subsection (6): "Nothing done or not done in accordance with this act or the regulations, other than an expropriation...."

So the whole thing here is that there is no access to dispute resolution in a clear, fair-minded way. What we're asking for here is that the person entering the property, making the claim and putting the charge on some poor agricultural person or some person in rural Ontario, in Timmins or wherever, who is going to be left with a bill and no mechanism, no structural dispute resolution process here, no access to the courts, access to consultants in agronomy and the various sciences, and a $25,000 bill later, because some person was offended by the barking dog and said, "That truck there is parked too close to the well and may cause… ."—what we're looking for here, with all due respect, is a process.

In re-examination of what you said in response to Ms. Scott's amendment, you're actually not being quite forthright with the people. Read section 88. Have you read it? Mr. Chair, I question whether or not he understands this bill. I'm quite surprised, frankly. He's reading the notes carefully. I see some of the clerical people here from the ministry coming up and giving him notes that get him back on track. Some of his theatrical training there is getting in the way of doing the job.

Mr. Wilkinson: If we want to jump to section 88, that's wonderful, Mr. Chair, because I have been reading. I've read section 88, but I've also read Hansard. The previous government brought in the Oak Ridges Moraine Protection Act, and in the Oak Ridges Moraine Protection Act there is a section very, very similar to section 88. And you know who voted for that? I just happen to have Hansard. What was the day? Oh, December 3, 2001. And who do we have voting for the bill? Why, it's the member from Durham. So perhaps back then he didn't have a concern and perhaps now he does have a concern.

I say to the member, I can tell you that there is consistency here, but there's a change, and that change is the fact that this government has enshrined a stewardship fund so there is balance. What people have said repeatedly is that there needs to be a balance. I'm so happy that our minister was able to attend first thing at this committee hearing and make sure that that balance is enshrined in this act, and I'm glad we were able to vote for it. And I'm particularly glad that the opposition voted for it as well on a recorded vote. I think that's wonderful. I think that would be somewhat different, because particularly members like Mr. Barrett, Mr. Murdoch and Mr. O'Toole are going to have to square their voting record for the Oak Ridges Moraine Protection Act, because, if I recall, there were people who had concerns then and they were ignored.

I think we're very clear on this bill, and this place has a very long memory, indeed.

Mr. O'Toole: Again, hopefully these recorded discussions are fruitful and will move to correct or inform people of the process here. Yes, in fact the Oak Ridges moraine—I'm pleased that the government members, who are actually not government members, they're just members, because to be a government member, you have to be in cabinet, okay? Mr. Wilkinson was partially in cabinet at one time.

Mr. Wilkinson: I just answer questions.

Mr. O'Toole: I guess the point is that, yes, I'm flattered to say that you did copy the Oak Ridges

Moraine Protection Act. What was missing—we set up the Oak Ridges moraine trust fund, so there were monies there to resolve issues and disputes. There's a process. There's a review process as well. This has none of that acquiescence to the general public, who don't follow this. What we're looking for here is not to weaken but to strengthen the access to the public.

Yes, I appreciate that you've listened to us and our stakeholders—agriculture and AMO and others—and set aside a modest amount of money. You're reluctant to say where you're going to get that except you'll just raise the taxes; I understand that. What I'm saying, though, is that this portion here is the two sections that we've talked about. One is the scientific clause, which would set about a regime of rules to say whether or not this is an enforceable breach of the act. The other one is to make sure that the ministry is fully engaged with the municipalities. It says here that to rely on any assumption, the onus is by individuals made in the prosecution on this bill.

Yes, I did vote for the Oak Ridges moraine. Mr. Tabuns would know. The NDP actually started those consultations in the early 1990s, and Mr. Rae, who's now going for the leadership. He'll probably get it. I would say that they did not have the courage to go forward. We went forward with the bill and, yes, under good advice there were amendments made and it is now the law. There is a dispute resolution process and there's a fund to resolve and acquire lands: the Oak Ridges moraine trust fund.

Your greenbelt legislation, though, is another piece that's going to cause you some grief. There's still no process there. I see the same strategy here in this source water thing. There's no money, there's no dispute resolution process, there's a lot of control by the ministry and all the responsibility has been downloaded. So if you're standing behind this as a good piece of work, then you're standing on a pretty fragile structure; let's put it that way.

The Chair: Any further questions or comments or repartee of any description? Seeing none, we'll now move to the consideration of PC motion 4. Shall section 1.4 carry?

Interjection: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: I declare section 1.4 to have been lost. That's PC motion 4.

We'll now move to consideration of PC motion 4.1, for which purpose recent hot-off-the-press amendments have been distributed by the clerk. I now invite Ms. Scott to present it.

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

"Existing aboriginal or treaty rights

"1.5 For greater certainty, nothing in this act shall be construed so as to abrogate or derogate from existing aboriginal or treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982."

This amendment is intended to ensure that the historic rights of Ontario's aboriginal peoples are not impacted either directly or indirectly by the provisions of the bill.

The Chair: Thank you. The floor is open.

Mr. Wilkinson: We won't be voting for this because it's redundant under constitutional law.

Mr. Tabuns: It is true that imitation is the sincerest form of flattery, and I'm glad that the official opposition has looked at the amendment we put forward and has brought forward their amendment, which reflects our wording.

I'm very happy to support this. I hear the comments of the parliamentary assistant. I understand that when the parks bill was under discussion, the government in fact voted in favour of a non-derogation clause. I had the opportunity this weekend to talk to native activists, and for them, inclusion of a non-derogation clause in this bill is an important factor. I think the government would make a mistake to vote against this amendment. I believe we have the responsibility to make sure that aboriginal rights are protected, and I think we should proceed with a vote on this motion. I will just note at this time, Mr. Chair, that when the vote comes up I would like it to be recorded.

The Chair: Thank you, Mr. Tabuns. Taking that as the will of the committee—Mr. O'Toole?

Mr. O'Toole: I think it's important and maybe a bit sensitive. When I look at the solutions or the remedies that are necessary in Caledonia, it's to respect the rights of First Nations persons at the very broadest level. It's in that sentiment that I would ask the members to consider this friendly and meaningful amendment and ask, as Mr. Tabuns has said, for a recorded vote. It should be reflective of the purpose here. Constitutional or otherwise, if it's redundant then it serves not to weaken but to strengthen, just to restate your support for those individuals' rights.

Mr. Wilkinson: I take the comments made by the members of the opposition and, as a result, since this has just been walked on, there are two things that we could do and I leave it up to you, Mr. Chair. I'd be more than happy to revisit this section somewhat later in the day, after I've had a chance to speak to our people from the ministry—

Mr. O'Toole: The staff is going to tell them how to vote.

Mr. Wilkinson: No. You want to keep this door open and I'm saying that I'm prepared to spend some time to make sure that we get this right, and the door is open. Or, if we don't have unanimous consent, then I would move for a five-minute recess. So we have a choice here. Do

you want to keep going or do you want to stop? We could stand it down and get back to it.

Mr. O'Toole: I just want to respond. I think that many of us were quite surprised this morning by this major amendment moved by the minister herself, who came back from the cottage to move the amendment, and we were able, with very little consultation or input from us, to agree with that because it's the right thing to do. This, I put to you, is the right thing to do.

You're waiting for the minions here to give you your marching orders, how to vote on this. Just like Mr. Tabuns—he just got it. He supports it; he gets it.

Interjection: You don't need information from anyone. You're all-knowing.

Mr. Wilkinson: At the expense of collegiality, Mr. Chair, I ask for a five-minute recess.

The Chair: Is it the will of the committee to have a five-minute recess? Yes. A five-minute recess.

The committee recessed from 1102 to 1108.

The Chair: I invite committee members to resume consideration of PC motion 4.1. If there are any further questions and comments, the floor is open. Any further comments on PC motion 4.1? Mr. Tabuns.

Mr. Tabuns: I guess I'm just surprised that we had to have this recess, given that my amendment has been in the package for a little while now. I'm hoping that, having consulted with staff, there will be a decision on the part of the government to support aboriginal rights.

The Chair: Thank you, Mr. Tabuns. If there are no further comments, we will proceed to—Mr. O'Toole?

Mr. O'Toole: There's going to be a recorded vote on this. We realize that it is pretty much a repeat motion of Mr. Tabuns's NDP motion later on in the package, so there was advance notice. This wasn't "walked on" as he said there.

Mr. Wilkinson: Mr. Chair, you're going to help me out here because I'm just taking a look at the package that I have—oh, my friend Ms. Wynne is giving it to me.

Could I ask Mr. Tabuns, can you refer to your motion. We're dealing with this first, and I don't seem to see it here, so we're going to try to be—

Mr. Tabuns: Section 2.1, and it's number 20 in your package.

Mr. Wilkinson: Number 20. I'd say to the clerk, then, why did we have it that this should be dealt with as the 20th matter and now it's the 4.1 matter? Maybe the clerk can help me out, because this is—

The Clerk of the Committee: The PC motion was actually numbered section 1.5.

Mr. Wilkinson: Right.

The Clerk of the Committee: Therefore, it would fall after the 1.4 in the amendments that we have. The NDP motion was numbered according to which section of the bill was being affected.

Mr. Wilkinson: Oh, I see. So that's why they're trying to put it in here. Okay.

Well, Mr. Chair, since I'm particularly a good government member, I would ask for all-party support just to stand down this section. I have no problem coming back to it. I have the exquisite job of having a minister who is a constitutional lawyer, so I'm just going to seek a bit more advice. Then we'll also be able to deal with your motion as well, Mr. Tabuns. To make sure that we're consistent, I would feel much more comfortable—well, it's up to the committee—to stand this down momentarily. We could move on to the next section and we'll come back to it. It will also be consistent.

The Chair: Is it the will of the committee to stand down PC motion 4.1?

Mr. O'Toole: Chair, respectfully, we took a recess for consideration. Now, if he's waiting for the staff to tell him what to do, I understand that, that he hasn't got a mind of his own and he's—

Interjection.

Mr. O'Toole: Respectfully, I—

The Chair: Mr. O'Toole, just to be clear, I've asked for unanimous consent on the standing down of PC motion 4.1. Do we have unanimous consent?

Mr. O'Toole: No. I'm not standing it down. I don't believe that we should stand it down.

The Chair: We do not have unanimous consent and, if there are no further comments, we're going to proceed to the—

Mr. Wilkinson: I do have some comments, Mr. Chair.

Mr. O'Toole: A recorded vote.

The Chair: Mr. Wilkinson.

Mr. Wilkinson: It's not so much about getting advice, but I think it's important for legislators to be informed. I must admit, the turning point was here when Mr. Tabuns talked about his NDP motion number 20. Really, the wording is identical.

My understanding of it is that it is true that this, from a constitutional point of view, is redundant because nothing that we can do in this place can actually change the Constitution Act. But, as a result, I understand a precedent was set in this place in regard to the parks bill. The question is, can we add further strength and clarity? So I think that has to do with the issue here: Is it acceptable to the government that we use this to add clarity to prevent—even though I think our opening position is correct that it is redundant. But when it comes to an issue of First Nations, it's very important that we're sensitive to those issues. We know what happens when there is a lack of sensitivity, and that is not the intention of our government, not to be sensitive to those issues.

I would ask my friend the member from Toronto–Danforth, were you part of the discussions about the non-derogation clause being added to the parks bill?

Mr. Tabuns: I was not, but I do talk to members of my caucus from time to time. I understand that your party had a motion forward essentially having the same wording and, just because of sequence, the Conservative motion was taken first and was adopted. So your party has already accepted the idea of having a non-derogation clause in the bill.

Mr. Wilkinson: But what I'd ask, then, for my friend, the NDP did bring in NDP motion number 20, which deals with section 2, so I know that you gave a great deal

of consideration. The official opposition has come in and said that this also needs to be added to section 1.5. So, obviously, when you were looking at it, you decided that we didn't need to have it in section 1.5, but it needed to be in section—sorry—

Interjection.

Mr. Wilkinson: In other words, it wasn't an NDP motion for section 1.5, but it should be for section 2.1. Was there some reason why you didn't think it should be in 1.5? If we're going to be clear, if we're going to send a signal out, we want to make sure it's a consistent signal from this committee.

Mr. Tabuns: My recollection is that when we took it to be drafted by legislative drafters, that's where they suggested it be allocated. We can ask legislative counsel, but I don't see any difficulty in having it in "purpose" and in "definition."

Mr. Wilkinson: Okay.

The Chair: Ms. Wynne.

Ms. Wynne: Mr. Chair, I've sat on a number of committees of this Legislature—or I've sat on this committee where we've dealt with a number of pieces of legislation where there's been a discussion about non-derogation clauses. Actually, to the legislative counsel, if we could have some explanation of the reason why it's very unusual in a provincial piece of legislation to have a non-derogation clause and the impact on the federal jurisdiction, that would be very helpful because this issue has come up many times and it is unusual.

Mr. Beecroft: There are two questions that I'm going to try and deal with; first of all, the question of the numbering of the section. There's no particular magic to the numbering of the section. One party might put it between sections 1 and 2; another party will put it between 2 and 3. There's no difference in meaning because of that.

Generally speaking, when we write statutes, the first section is the purpose section, the second section is the interpretation section, and then you get into things like non-derogation provisions, application provisions. So probably, if starting from scratch writing a brand new statute, this sort of provision would go after section 2, not after section 1. But there is no difference in meaning and the committee is entitled to do whatever it wants to do as far as where they put the section, if they're going to adopt the section.

Secondly, on the question of when these sections are used, the Constitution specifically recognizes aboriginal treaty rights. There is nothing that the provincial Legislature can do to take those rights away. That's ingrained in the supreme law of Canada: the Constitution. So, generally speaking, there's no need for provisions like this. Most Ontario statutes do not have provisions like this. They are occasionally put into individual statutes, usually because there's perceived to be a particular kind of example. For example, I'm just speculating, but in the provincial parks bill we know that aboriginal people have the right to hunt; it's one of their traditional rights that's protected by the Constitution. When you have legislation that specifically deals with the question of hunting in provincial parks, then you want to make it clear to everybody that even though there's a general prohibition on hunting in provincial parks, we recognize that this doesn't detract from aboriginal rights that are recognized in the Constitution. So is there anything in this bill that someone would think raises a clear conflict with aboriginal rights? I don't know. That's up to you to decide.

The Chair: Mr. Wilkinson, and then Mr. Tabuns and Mr. O'Toole.

Mr. Wilkinson: I would ask the official opposition, which of the constitutionally protected aboriginal rights do you feel need to be—what is the purpose of this? As Mr. Beecroft was saying, what is that constitutional right already enjoyed by our First Nations fellow citizens where you feel there needs to be greater clarity so that this bill actually needs to have a motion which legally is redundant?

The Chair: Mr. Tabuns, your floor.

Mr. Tabuns: I'd like to speak to that in a second, but I do want to ask, is there any difficulty in having this clause in two places in this bill?

Mr. Beecroft: Yes.

Interjection.

Mr. Tabuns: Can you explain—thank you, those in the crowd.

Mr. Beecroft: The two proposed motions are very similar.

Mr. Tabuns: Yes, quite true.

Mr. Beecroft: It would be very hard to discern any difference in meaning, but they do use slightly different language.

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Mr. Tabuns: For clarity in one. Yes, go on.

Mr. Beecroft: If you're trying to say something, it's better to say it once rather than to say it in two different ways in two different places, because that just confuses things.

Mr. Tabuns: That's fine, Mr. Counsel.

Mr. Wilkinson: It's the nature of this place.

Mr. Tabuns: The nature of this place is that I hear a lot of stuff a million times. I've got to tell you that right now. Okay, I don't have further questions for legislative counsel.

To the parliamentary assistant: I assume that when your team and when you personally went through all these amendments, you had already gone through my amendment, so what position did you take at that time? Why, now that we've cited the parks act, do you see this as different?

Mr. Wilkinson: Because through all of the testimony we've received—written submissions from First Nations, any of the discussions we've had to date—we have not had a group that has identified which already constitutionally enshrined right they have as a member of a First Nation is in any way in jeopardy because of the Clean Water Act. Now, if we could get some clarity from the opposition—and I would have asked the same question

of my friend from Toronto–Danforth when we dealt with NDP motion number 20.

Mr. Tabuns: Okay.

Mr. Wilkinson: The other problem we have, because we were aware of the amendment to the parks act, is that the wording is not identical. As Mr. Beecroft was saying, it's very important from the government perspective that if we're having pieces of legislation, those bills are exceedingly consistent. Despite the fact that politicians rarely are, our legislation is supposed to be.

Mr. O'Toole: The question has been raised under what particular section we're concerned—and I'm not contradicting legislative counsel; I'm saying I think this is the appropriate place to put it. You ask what sections? Well, if you look right at the beginning under the general provisions in part 1, in the definition section, it says, "'Activity' includes a land use." It's the first one that we're defining. I'd say, "activity," i.e. planning, i.e. subdivision, i.e. Caledonia. What roles, responsibilities, rights and duties in this area and otherwise are required?

If you go along further, there are a number of sections—"local board." Are there appropriate occasions in a source water protection area where aboriginal representation on those boards should be present? It's a local board. "Justice"—there's a whole discussion on aboriginal justice and dispute resolution.

What we're saying here, fundamentally, is very important in terms of justice and process. It isn't just section 2, which is really a subsection. In addition, I believe it belongs right in the definition section itself, if you really want to deal with this issue as a government. Or do you want to skate around it, as we've been hearing, and avoid or ignore what's going on in Caledonia? You're just spending money; you're not solving the problem. "Permit inspector," "permit official," "'planning board' … under section 9 and 10 of the Planning Act," "prescribed instruments," and there should be another section added there, the whole section to deal with aboriginal rights, the Indian Act. So there are a whole bunch under the definition section. Mr. Chair, I would ask you to put the question and let's get on with it. We can dance around this issue or we can vote, and have a recorded vote, and just see where we stand. Let's get moving forward with this bill, the way it's written, however hastily that's been done.

Mr. Wilkinson: I thank the member from Durham for trying to bring some clarity to the issue. Now, I didn't hear the answer as to which constitutionally protected aboriginal right is in jeopardy, other than in the broadest sense, so I take his point about why he thinks it should be in the purpose statement. I think our position would be that if we were to do this, it would be very important that it be consistent with other pieces of provincial legislation which tread on the issue of constitutional law. I mean, the same supreme law that we have in this land applies today, as it did yesterday and as it will tomorrow. But we take the point.

It does raise the issue that if we put it in this section, we would, by definition, I think, have to collectively agree not to move with NDP motion 20, because as Mr. Beecroft said, we shouldn't be putting this down twice; we should be putting this down once. If we want to put it into the purpose statement, our requirement is that we can't vote for this as drafted, because it isn't consistent with the other piece of legislation, but we could walk on, as just happened with 4.1, a government version that would be identical so that we would not have any problems of last-minute drafting of bills here on the floor. But I think Ms. Wynne has a comment to make.

Ms. Wynne: Yes, thank you. I'd like to make a comment.

Mr. Chair, I understand that in these committee processes there's a back-and-forth partisan debate that happens, but I think we're dealing with a very delicate issue here. If legal counsel has told us that there's a redundancy in putting into provincial legislation this kind of clause, my concern would be that if we start doing this on the fly in committee, we will have to do this in every piece of provincial legislation.

In a scenario where there's another government in office, it may very well be that they won't be so happy with having mucked around in that constitutional jurisdiction. So I have a real concern about starting to put this clause in every piece of legislation when there isn't a specific treaty right or concern around existing rights of aboriginal peoples. As I said, I've been on committee where this issue has come up a number of times, and my understanding is that there's redundancy, that it's not needed, and that unless there's a very specific treaty right that we're talking about—even then it would be redundant in provincial legislation. But I really have a serious question and I would like to hear from staff if there's a concern that if we start putting these clauses in one piece of legislation where it's absolutely not needed, we are setting ourselves up for a future government—not just this government, but any future government—to have to put this clause in every piece of provincial legislation.

I really need to hear an answer on that before I can vote on this, because this is not a flippant, partisan issue. This is something that has to do with the relationship between the provincial government and the federal government in the Constitution, and I really think we should take it seriously. So I'd like to hear from staff on that.

The Chair: Thank you, Ms. Wynne. I'll invite staff to come forward, and we have Mr. O'Toole in the meantime.

Mr. O'Toole: In a general sense—and I take exception to the tone and comments by the member of the government side. The reason I say that is that you are implying that it's somehow disingenuous, accusing both the opposition Conservative and the NDP.

If you want to know specifically, I would ask you, if there is an inspector coming on property, as is laid out in this legislation, would they be allowed to enter into a treaty property? If you can't answer that question, then what about the rights of other people, other citizens of this country, and someone coming on their property without due notice or cause of action?

Interjection: There has to be notice.

Mr. O'Toole: You've raised the issue of rights here, and I'm putting to you that that has been fundmentally the issue from the beginning with this legislation. It exempts the government, under the will for the common good, from being accountable to any process here about having a search warrant or a court order to come on property. In fact, the reverse-onus provision, which we tried to introduce in the previous amendment, is another case where it's incumbent on us to make sure—you're right—to protect the established rights of people. Property rights have been a huge issue in most of what you've done.

Now we've got the First Nation issues coming up here, and it's going to be before the courts again. Caledonia is a perfect example of how you've tried to hush this thing up. You've actually been skating around it, gingerly paying off whoever you have to pay off. We're trying to deal with substantial rights not just of First Nations but of individuals who are residents and citizens of this province and this country.

So I'm sort of disappointed by the tone, but since you've raised the ante here, we're saying that the rights of all people, for someone coming on my property and me having to justify that my well, my aquifer or whatever—where are the rights for people in this thing? Where are the rights? You answer that question, and then we'll vote.

1130

Ms. Wynne: Mr. Chair, are we going to get staff to come forward to answer my question?

The Chair: Yes. A government member has requested government staff to come forward, and they are invited forthwith. The floor is now Mr. Tabuns', though.

Mr. Tabuns: I want to note first, for the benefit of the government side, that the Provincial Parks and Conservation Reserves Act, 2006, recently adopted by this government, includes wording in section 4 that is exactly the wording that I have in my amendment. So I just took the wording that you folks have adopted. It says:

"Existing aboriginal or treaty rights

"4. Nothing in this act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982."

So we just took the parks act wording that you've already voted in favour of and applied it to this act.

Two things I want to note: One is that—

Mr. Wilkinson: That's inaccurate, because you have to actually read the bill that was passed, and it didn't stop with that. It actually cited in the Constitution Act specifically which chapter and subsection this applied to, if you take a look at that bill. That's what's raising the issue.

Mr. Tabuns: I'm happy to pass this over to you.

Mr. Wilkinson: I've got a copy of it here, too.

Mr. Tabuns: So show me where it talks to the other parts of the Constitution.

Mr. Wilkinson: But it goes on to say, "recognized and affirmed in section 35 of the Constitution Act, 1982," chapter 12, section 4. So it's specific, is it not?

Ms. Wynne: This is not.

Mr. Wilkinson: This is not. You just say, "Constitution Act, 1982," but you don't go and cite the specific—my understanding is that it deals specifically with that treaty right, that there is a fear that there would be, under the parks act, some conflict, and it adds a certain clarity, though it is redundant.

Mr. Tabuns: As far as I can see, number 4 does not go on to detail the elements of the Constitution Act. Number 5 in this act talks about a number of definitions, but that is not the Constitution Act.

Mr. Wilkinson: Again, what I would put on the record is, we took a look at this. We have amendments that have to deal with First Nations that are part of our government package that we've already proposed. It's the position of the government that that is the best place for us to address the issues of the First Nations, not in section 1, not in section 2, but in the government motion, because we fear that we are treading on ground which would make the water muddier, not clearer. That's why we have said consistently, as we did with the parks act, where there was some rationale, specifically what are those rights.

I know my friend from Durham is coming up with, "Well, it could be every right." The Constitution Act is the supreme law of the land. There's nothing we can do in the province. We can add clarity, but we can't rewrite the Constitution Act or bind this government and somehow abrogate the common law.

Mr. Tabuns: I understand that we aren't changing the Constitution Act, but when First Nations have asked for a non-derogation clause to be included, their concern is that they want a reinforcement of their rights to be recognized in the act so they do not get caught up in expensive, time-consuming and problematic litigation. They want those who are directed by this act—the provincial government, its bureaucracy, its civil servants—to understand from the beginning that First Nations' rights are not extinguished. Having this section in the act gives them that clarity and direction.

Mr. Wilkinson: But when you took a look at this, you said it shouldn't be in section 1, though you did say it should be in section 2. I'm trying to recall, of all the testimony we had from First Nations, both oral and written, which group came to this committee and said to the government, "This clause needs to be in the bill." That's what I'm missing. You've got to connect the dots here for me as to which group. So for us—

Mr. Tabuns: Chiefs of Ontario and the AIAI, the Association of Iroquois and Allied Indians. They wanted the non-derogation clause.

Mr. Wilkinson: And we believe that we've addressed their issues in our amendments, but we now have staff here and they want toaddress to the necessity for us to be clear in regard when we're drafting legislation.

The Chair: All right. I'll open the floor now to ministry staff. If you might identify yourself for the purpose of Hansard recording, and please proceed.

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

I would just echo the comments legislative counsel made. It is not legally necessary to put these types of provisions in legislation. Every piece of legislation has to be read consistent with the Constitution, and definitely, if you started including this type of provision in legislation, the tendency would be to start including it when it's not legally necessary. It's usually important just to include provisions which are necessary for the legislation to operate in this regard.

The Constitution is definitely something that always prevails over any act, and every piece of legislation has to be interpreted consistent with the Constitution. It's similar to saying that you would have to read the legislation in light of provincial powers that are delegated under section 92 of the Constitution Act, which is where the province gets its powers. That's certainly not anything that's ever put into legislation, because it's always understood that any piece of legislation that the province passes must be grounded in section 92 of the Constitution Act, 1867.

The Chair: Thank you. The floor is open for questions or comments.

Mr. Wilkinson: We're prepared to vote.

Mr. O'Toole: Just one further clarification. It's my understanding from the discussion—I appreciate it; it's been time well spent in terms of educating us technically. It's my understanding, though, that they have provided the non-derogation clause in the parks act, so the precedent has been set, whether correctly or incorrectly, as counsel has given us the advice that it would be the wrong thing to do because then it would be everywhere. It appears you've already made that error.

In fact, it appears to me you've made a lot of errors in this bill. I urge you quite sincerely, take the time under the direction of your—the bureaucrats here are actually telling you what to do. Go back to the minister and say—and she's a very intelligent and capable person whom this has been foisted on. I would say that this bill should go back to the House leaders; it's that poorly drafted.

The rights are the issues here, and they have been all along, not just for First Nations. It's for all of the same individuals who are treated by the justice system, whatever that constitutional framework is. We all, as citizens, enjoy common rights, and that's a very fundamental problem. The disputes resolution, the tribunal process and the reverse-onus processes you're sliding forward in many of the bills you've got—it's the provision where I say you're in violation of an act and you, as the person who owns the property or the paper, is then responsible to prove you're not. That's reverse onus.

I think the purpose here, as we've said all along—and Ms. Scott has said it repeatedly, if you want to dig out Hansard—is this: We agree, as Mr. Tabuns would as well, that the goal here, shared by all parties, is having safe, clean drinking water. What is wrong here is the process itself. We're bogged down in the very early sections of this bill on the process, whether it's recognizing aboriginal rights or just individual rights. We had the minister—it was highly exceptional—come this morning and say they are going to deal with some of the expropriation or land acquisition issues, as well as taking some time in the transition to get the education process in place and set up some of the infrastructure. We're in favour of many of those things. In fact, we're supporting them and voted for them.

When you get into these highly technical issues, some of us quite clearly aren't qualified; I can't speak for others. Maybe we should be doing more than taking a five-minute recess on this issue. We should be putting this thing back on the burner, table it, go back and have us all properly briefed on how to get this right. I can tell you, on behalf of Mr. Tory and the PC caucus, we want to have safe, clean drinking water while not expropriating the rights of people.

The Chair: Thank you, Mr. O'Toole. I take it from your words that you're asking for unanimous consent to adjourn the committee and return the bill to the House. Do I have unanimous consent? I do not. Mr. Tabuns?

1140

Mr. Tabuns: I want to note a few things, Mr. Chair, and I want to address some of the comments made by the parliamentary assistant.

Under the parks act, First Nations were concerned about park management plans and other priorities. They're concerned about source water protection plans and how they will impact their aboriginal and treaty rights. They don't feel they have been consulted properly, and that's something that you, Parliamentary Assistant, heard in the course of the hearings that were held here. They make that argument. You said earlier that we haven't heard from them. Well, the Chiefs of Ontario and another body that came before us testified that they wanted a non-derogation clause. Your government has previously proposed a non-derogation in the parks bill. You adopted a bill that has a non-derogation clause that's absolutely the same as the one we put forward. I don't understand why you are pulling back at this point. I've heard the arguments that you've made. I've worked them through. I still don't understand why you're pulling back at this point.

These changes, these acts that come forward that potentially bring us into conflict with First Nations, require that we treat them with respect, as other governments with rights and concerns. They see an act that is written in very broad framework strokes. We know from the amendments you've put forward and the text of the act that large chunks of what's actually going to happen will come out of the regulations. They want to make sure that when those regulations are written, the room for argument as to whether or not their rights are going to be respected is minimized to the greatest extent possible. I think it's incumbent upon you, just as you did with the parks act, to include a non-derogation clause.

I will go back to one question that was asked by you: Why did we put it in 2 rather than 1? Frankly, I'm not a lawyer. I go to the people who draft these things. They suggest a location that legally makes sense; I take their advice. Maybe they were wrong. Maybe it should have been in 1. Again, I'm not a lawyer; I took the best advice I could get at the time.

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

Mr. Wilkinson: I appreciate the comments from the member for Toronto–Danforth. The question I asked in regard to the submissions that we had, both written and oral, from First Nations had to do with the issue that I think was relevant in regard to the parks bill, which is, other than a general statement that this act will be constitutional, which is a given in this province—all acts must be constitutional. So my question was, because I remember reading the briefs, what was the fundamental issue where there was a concern that this was necessary?

It's the position of the government that the amendments we have already filed and that everyone sees regarding First Nations is the most effective way for us to address the specific concerns that they raised, as opposed to putting this issue in either section 1 or section 2. It's not that we did not listen and take action, given the suggestions and the recommendations made by our fellow citizens who are First Nations. We have addressed or we plan to address them in the package that's filed with all three parties. We think that is the appropriate way to bring clarity to the issues they raise, and not for this bill to enter into an area of constitutional law, where it is our position and I would assume the position of each and every government that ever has or will come through this place that the Constitution Act is supreme in this country. As our legal counsel for the ministry said, we don't have to tell people we're acting under section 92 of the British North America Act either.

We'll be voting for our amendments and ask for all-party support, given the level of concern for the amendments we are proposing in regard to First Nations in this bill, given the feedback that we got quite eloquently from them.

Mr. Tabuns: Mr. Chair, I believe the arguments have been well made by the First Nations, and the Chiefs of Ontario state here: "It's been our experience that despite numerous court cases stating that the governments must negotiate with First Nations, the Ontario government reputedly"—they use the word "reputedly," but I would guess it's a typo and should be "repeatedly"—"refuses to do so. This often leads to expensive court cases, ultimately deteriorating government-to-government relationships."

There has been a history of bad relationships. I don't think anyone in this room can deny that. They want to act to ensure that the greatest possible protection exists for their rights. I have to say, governments have been taken to court before on not respecting the Constitution. To the extent that First Nations have greater protection in this act, there will be greater respect on their part for the act itself.

I think we've made all our arguments. They're all on record. I don't think a lot of minds are going to be changed at this point, but I think you're making a mistake, frankly.

The Chair: Thank you, Mr. Tabuns. I'll take that as the will of the committee to proceed to the vote at this time.

Mr. O'Toole: Recorded vote.

Mr. Tabuns: Recorded, please.

The Chair: Shall section 1.5, referent to PC motion 4.1, carry?

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: I declare that section to have been defeated.

We'll now move to section 2, with the presentation of government motion 5, subsection 2(1).

Mr. Wilkinson: I move that the definition of "commercial motor vehicle" in subsection 2(1) of the bill be struck out.

In explanation, this motion is made to remove the definition of "commercial motor vehicle" from the bill. The term "commercial motor vehicle" is used in section 91 of the bill. It is the intention of the government to vote to remove section 91, which relates to offences committed using vehicles, from the bill because it is not anticipated to be relevant for the operation of the bill. Therefore, it would not be necessary to define "commercial motor vehicle" in the bill. So that's why we've moved this motion.

Mr. Tabuns: I don't want to belabour this, but can you tell us what your original thinking was, having reference to commercial motor vehicles in the act in the first place, and what has caused you to change your analysis?

Mr. Wilkinson: I knew you'd ask me that question.

Mr. Tabuns: You're right.

Mr. Wilkinson: It may not take me five minutes to flip to section 91. I say to my friend, I guess it goes to the question of doing these things in order. I can say that in regard to section 91, it provides for the service of offence notices or summonses on the operators of commercial motor vehicles and deems that to be, in most instances, service upon the owner or lessee of the vehicle and on the operator's employer.

Now, 91(1) states that the procedure for the serving of an offence notice or summons to the operator of a commercial motor vehicle in respect of an offence under Bill 43—subsection 91(2) states that the delivery of an offence notice or summons to the operator of a motor vehicle may also be deemed to be served to the employer of the operator.

Subsection (3) indicates that subsection (1) does not apply if, at the time of the offence, the vehicle was in the possession of the operator without the consent of the owner. The burden of proof will remain on the owner.

Subsection (4) stipulates that the holder of a permit under part II of the Highway Traffic Act shall be deemed to be the owner of the vehicle for the purposes of section 91, providing that the plate of the vehicle corresponds to the plate listed in the permit.

Subsection 91(5) provides for the non-application of subsection (4). If the number plate was displayed on the vehicle without the consent of the holder of the permit, the burden of proof will remain with the holder of the permit.

It is the intention of the government to remove that section which relates to offences committed using vehicles from the bill because we can see no instance where it will actually have effect. Obviously, someone thought it should be in there. I think on sober second thought it was decided that there would be no practical application of that part of the bill, and so it should be struck.

The Chair: Mr. Tabuns.

Mr. Tabuns: Okay. I have to say first, I grew up in Hamilton.

Interjection.

Mr. Tabuns: That explains it all; yes, I know. Many have said that, including my caucus colleagues.

In any event, one of the things that shaped modern environmental thinking in Ontario was a series of interesting events, unfortunate events, that occurred around dumping of toxic waste in this province in the 1970s and 1980s. In Hamilton harbour at one point there was something called the magic box. It was at the end of a pier in Hamilton harbour, and trucks could back down this pier, the top of the magic box would be opened, they would dump the contents of their truck into the magic box, the lid would be put down and the box, which extended down below the waterline, would dispose of all the waste that had been therein dumped.

1150

So I have some memory that commercial vehicles can be used in the process of damaging water supplies. On the basis of a primordial memory of the magic box, I'm going to oppose this change because I think you can use commercial vehicles to damage water sources.

The Chair: Thank you, Mr. Tabuns. If there are no further questions or comments, we'll proceed to the vote on government motion 5.

Mr. Tabuns: Recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: I declare government motion 5 to have carried.

We'll now move to the presentation of NDP motion 6.

Mr. Tabuns: Mr. Chair, this amendment changes the definition of "drinking water threat" to include activity in an airshed. I want to note that activities in airsheds can have impact on water quality.

Mr. Wilkinson: Just a point of order now: You actually have to read the motion in first before we debate it, so we have it on Hansard.

Mr. Tabuns: Oh, I'm sorry. Thank you very much. You know, if you don't do this every day, you forget.

I move that the definition of "drinking water threat" in subsection 2(1) of the bill be amended by striking out the portion before clause (a) and substituting the following:

"'drinking water threat' means an existing activity, possible future activity or existing condition that results from a past activity, including an activity or condition in an airshed,"

I think there is direct interaction between air and watersheds, that the operation of a toxic plant or factory that emits toxic fumes, particles, dust or lead into the air has the potential to contaminate a watershed and thus, when we talk about protection of water, we have to talk about protection of the airshed.

My riding, Toronto–Danforth, includes an area of south Riverdale that was subjected to extraordinarily heavy lead contamination earlier on in the last 50 years. When you have a lead-smelting plant, the lead doesn't travel that far and you can well have a condition where you have contamination in surface water from deposition from the air. So I think it's to our advantage to be comprehensive in this act and include this particular amendment.

The Chair: Thank you, Mr. Tabuns. Are there any further questions or comments? Seeing none, we'll proceed to the consideration of NDP motion 6.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated. We proceed now to the consideration of government motion 7.

Mr. Wilkinson: I move that the definition of "drinking water threat" in subsection 2(1) of the bill be struck out and the following substituted:

"'drinking water threat' means an activity or condition that adversely affects or has the potential to adversely affect the quality or quantity of any water that is or may be used as a source of drinking water, and includes an activity or condition that is prescribed by the regulations as a drinking water threat; ('menace pour l'eau potable')."

This motion would amend the definition of "drinking water threat" to mean activities and conditions that adversely affect or have the potential to adversely affect

the quality or quantity of any water that may be used as a drinking water source. As well, a drinking water threat could include an activity or a condition that is prescribed as a drinking water threat. The references to existing activities and possible future activity or existing condition that results from a past activity would be removed. Where it's necessary to distinguish activities that exist before a source protection plan comes into effect from activities that come into effect after the source protection plan comes into effect, the distinction would be made within the relevant provisions of the bill.

The Chair: Thank you. Mr. Tabuns.

Mr. Tabuns: I think it weakens protection and thus should be voted against, and I'd ask for a recorded vote when it comes to a vote.

Mr. Wilkinson: We had numerous delegations from both municipalities and industrial stakeholders about concerns that this bill would set raw water standards, which are best dealt with in other pieces of legislation. This bill is very focused on drinking water.

Ms. Scott: I just wanted to point out that we have an amendment to change the definition of "significant drinking water threat" coming up later, so we'll address it at that point.

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

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

Government motion 8.

Mr. Wilkinson: I move that the definitions of "groundwater recharge area," "motor vehicle," "permit inspector" and "permit official" in subsection 2(1) of the bill be struck out.

The Chair: Thank you. Mr. Tabuns?

Mr. Tabuns: I disagree with the direction the government is taking on this bill in eliminating "permit inspector" and "permit official." I would say that the bill as originally written, with all its failings, at least included permitting, which would be a higher standard than negotiation of risk management. There is case law that exists that gives us a better understanding of what we're going to have and not have. I would say, in fact, the original bill allowed authorities, where they needed to or where they felt it was justified, to negotiate risk management plans, but it also gave them the permit tool to protect public health and the state of the environment. This change, the deletion of "permit inspector" and "permit official," flows through the bill, changes the meaning of the bill, and I believe, for the protection of water and public health, should be opposed.

Mr. Wilkinson: Since this will be a theme that will go throughout the bill, I think we heard repeatedly when we were in committee that this bill requires, I guess you would say, the buy-in of the public and people affected to ensure it is implemented. It is not something that will ever be accomplished by government fiat first. We believe, given the feedback that we had from people, that we need to enshrine in the bill the idea that we are actually going to negotiate with people first, based on science, informed by science; that, by and large, the vast majority of landowners, particularly farm groups, are the best, and always have been the very best, stewards of the land and the water that flows over or under their land; and that we should start the process wherein the government interacts with landowners on the basis of having the carrot first and approach landowners to work collectively to protect the common drinking water.

This does not change any of the other bills that have to do with what is uncovered if there is a significant threat to drinking water. There are already numerous pieces of legislation that deal with very serious issues, but this has to do with how we are going to implement this. We all agree on the purpose of the bill. The question is, how do we implement it? I think we heard loudly and clearly that if we want the intent of this bill to actually be implemented, this is the better approach and we will end up with a better result for the good people of Ontario.

The Chair: Any further questions or comments? Mr. Leal.

Mr. Leal: When it comes to a vote, I'm going to get a recorded vote on this.

The Chair: Fine. Mr. Tabuns?

Mr. Tabuns: I think you do have to have buy-in, which is why I think you need to have funds allocated. So this is a useful step, that there's a stewardship fund. I think you have to have funds allocated so municipalities and conservation authorities can monitor and enforce with some assurance that they can do it with adequate resourcing.

I would say that many of the people who spoke to us know very well that if their water supply is contaminated to the point that it can't be used, for instance, for feeding their livestock, their business is over. I believe we consistently do face significant challenges to the state of our water. You must believe it as well, because you've brought forward this legislation. There is a question of what will be most effective in protecting water that is worth almost an unpriceable value to this society, because if we don't have that water, we can't function economically.

1200

I think you're making a mistake in retreating on this. I think you should stick with very strong protection. I think you should develop that public support through investment in education, investment in incentives, and, as we were told in Cornwall, in many ways acting like the pipeline companies that came through and said, "We need this change. We'll negotiate with you," but not abandoning on our part the tool and the power to take

action in a clear, necessary way where we have case law backing us up.

I've made my argument.

Ms. Scott: Just two comments, and I know we're going to deal with this further in government motions. The permit inspector is going to change. Will there be a definition coming? It's moving to—is it risk management inspector?

Mr. Wilkinson: I can say on behalf of the government that there is a series of amendments that change permit officials to risk management, but I think what you'll find—and this maybe goes to the member for Toronto–Danforth's point—is that we will be providing clarity by saying that the negotiation is the first order of the day, as opposed to the last order. I think we heard very, very consistently that the idea of having people show up with the stick first is not the way to get the desired behaviour that we want—by not recognizing, to start, that landowners are, by and large, the best stewards of their land and their water.

I just want to take some exception to what the member for Toronto–Danforth said. We're not removing the stick. The stick is still there. It's just that it's not the first order of the day; it is the last thing that is contemplated. He may have an opinion that says it should be the first thing used. After listening to people, we've decided that, by law, it shouldn't be the first thing; we should attempt first to negotiate with the landowner. I think that's where the stewardship fund, as you said, actually shows the good faith of the government, in our opinion.

Mr. Tabuns: Just for clarity on the record, I don't think permitting needs to be your first step, but you have to have it in your armoury.

Mr. Wilkinson: And it is here. We're not removing it, sir. We're not removing the fact that there can be orders placed on property at the end of the process which would be contemplated by the bill. The question is, where, in implementation, should that tool be? Should it be at the front of the toolbox or the back of the toolbox? What we're saying here is that, one, we need to recognize that the first order of business is managing risk and the second thing is that negotiation with landowners who are affected is the first order of business. But in the rare case where we have a landowner who through all of this process says, "I still do not feel that I have any responsibility for the common good," there can be an order placed on the property. It still doesn't preclude the fact that perhaps, because of financial hardship, there can be the provincial government playing an appropriate role to make sure that that is implemented because that is in the common good. The question is the approach that we take. But we're not getting rid of the ultimate tool of government to make sure that this bill is enforced.

Mr. Tabuns: We disagree.

Mr. O'Toole: Very briefly, this is a very technical bill. There are a couple of things. The groundwater recharge area is sort of being struck out. In the first instance, it was going to be defined in regulation. The question in that respect is, where do we get this groundwater recharge area straightened out—if not in regulations, somewhere else?

The other thing: If you look at "permit inspector" and "permit official" being dropped, there must be other amendments coming along, because if you look in part IV, all of that section completely, from 42 onwards right down to 43, includes the same language.

It again goes back to the generality—I want a response—of the drafting here. The changes are just unbelievable. Take the time and get it right. I'm serious. Take a look at it. You must be embarrassed. The number of amendments here are outrageous. There are more amendments than what's in the original bill.

Interjections.

Mr. O'Toole: I'm sorry. It's troubling for me to see something so hastily done on such an important topic.

The Chair: Seeking the will of the committee, shall we proceed with the vote before lunch or after lunch?

Mr. Wilkinson: Just to clarify the record, I can say to my friend from Durham that there's a subsequent motion, being that we are dropping the definition of "groundwater recharge area" and replacing it with "significant groundwater recharge area." We've been told repeatedly that we need to provide some clarity in regard to the issue of "significant," so we will deal with that. We are dropping "motor vehicle," and we've already had a discussion about section 91. And we are renaming permit inspectors to risk management officials and then bringing meat to that by mandating that there will be negotiation as the first step, not the last step. You can't negotiate after you've already put an order on. We should attempt first to negotiate with the landowner, although we still have the ability to put an order on a property.

The Chair: Thank you. Are the members ready to proceed to the vote? Taking that as a yes, a recorded vote on government motion 8.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

The committee is recessed until 1 p.m.

The committee recessed from 1206 to 1301.

The Chair: Members of the committee, I call the committee back into session. I also respectfully remind all committee members that we have something in the order of about 218 amendments still pending. As I understand it, it has been agreed to by all parties to complete them by the midnight hour tomorrow. In any case, we'll now proceed to the presentation of government motion 9, for which I call upon, very respectfully, Mr. Wilkinson.

Mr. Wilkinson: Thank you, Mr. Chair. It's amazing how lunch puts everyone in a good mood.

I move that the definition of "regulations" in subsection 2(1) of the bill be amended by striking out "under this act" at the end and substituting "under sections 99 and 100."

That amendment is technical for clarity.

The Chair: Any further questions or comments? Shall we proceed to the vote?

All those in favour of government motion 9? All opposed? Carried.

We'll now proceed to consideration of PC motion 9.1, which has been lately added, secondary package. Ms. Scott.

Ms. Scott: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'surface rights property' means lands where the surface rights are held separately from the mineral rights;"

That's just a clarification in the definitions.

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

Mr. Tabuns: If you could just explain—because this is a late one—where you intend to go with this amendment.

Ms. Scott: It's just to provide more clarity to those impacted by the subsection in respect to some of the industries that we're concerned about, that the surface rights—and there's already MOE legislation dealing with that. So it's more of just a clarifying note.

Mr. Wilkinson: We'll be voting against the motion because we believe that the bill, as drafted, actually by giving primacy to the Clean Water Act, makes the necessity for this clarification redundant.

The Chair: We'll proceed with the vote. Those in favour of PC motion 9.1? Those opposed? Defeated.

We'll now proceed to consideration of PC motion 10.

Ms. Scott: I move that the definition of "significant drinking water threat" in section 2 of the bill be struck out and the following substituted:

"'significant drinking water threat' means a drinking water threat that, according to a risk assessment using scientifically rigorous methodology with quantifiable results, clearly poses or has the potential to pose a significant risk that is clearly distinguishable from a drinking water threat that does not pose or have the potential to pose a significant risk;"

The Chair: Any further comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 10? Those opposed? Defeated.

NDP motion 11: Mr. Tabuns.

Mr. Tabuns: I move that the definition of "significant drinking water threat" in subsection 2(1) of the bill be struck out.

I believe that simply referring to regulations is not enough for us to make a decision on, and, frankly, if something's a drinking water threat, it's a drinking water threat. I have further amendments in this package to address that.

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

Mr. Tabuns: Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 12.

Mr. Wilkinson: I move that clause (a) of the definition of "vulnerable area" in subsection 2(1) of the bill be struck out and the following substituted:

"(a) a significant groundwater recharge area,"

That is consistent with the previous debate that we had about the need to define a significant groundwater recharge area.

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

Interjection: Recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Tabuns.

The Chair: Carried.

PC motion 13.

Ms. Scott: I move that section 2 of the bill be amended by adding the following definitions:

"'adverse effect' means impairment of the quality or quantity of a municipal drinking water source;

"'exposure' means the probability that a contaminant introduced into a water supply will actually be drawn into a municipal drinking water supply;

"'hazard' means the probability that a threat will actually be introduced into a municipal drinking water supply, with a low hazard indicating that management practices have mitigated the inherent threat and high hazard indicating that such management practices are absent;

"'pathway' means the route by which a contaminant may reach a municipal drinking water source, allowing the contaminant to move quickly to the drinking water source thereby increasing the risk;

"'risk' means the probability that a pathway exists for a threat to be delivered to a drinking water source and the probability that a threat will be delivered to a municipal drinking water source;

"'threat' means a chemical, chemical compound or pathogen associated with a land use activity capable of contaminating a present or future water source to the extent that it would provide degraded water should the water be used as a municipal drinking water source but which can be managed to reduce the associated hazard;"

This was brought up again through committee, concerns—a lot from the agriculture groups—about the need for definitions; the term "adverse effect" needs to be defined and amended as such.

The Chair: Any comments? We'll proceed to the vote. All those in favour of PC motion 13? All opposed? Lost.

We'll now move to government motion 14.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'designated Great Lakes policy' means a policy designated in a source protection plan as a designated Great Lakes policy; ('politique des Grands Lacs désignée')."

This is the first time we're dealing with issues in regard to the Great Lakes. This motion would add a definition of "designated Great Lakes policy" to the bill to accompany our proposed amendment that I'll be making to section 19, which would allow policies in a source protection plan to be designated "Great Lakes policies" to which planning decisions and prescribed instruments must conform. Such designation would be subject to the approval of the minister when he or she approves a source protection plan. It particularly addresses non-governmental environmental organization stakeholder requests that Great Lakes requirements be clarified and strengthened. I think we heard that consistently. I know that we heard particularly from the Great Lakes and St. Lawrence Cities Initiative, Friends of the Rouge Watershed, the Canadian Federation of University Women and Friends of the Tay Watershed. I believe that this bill provides the clarity they're seeking.

1310

The Chair: Thank you. Any further questions?

Mr. O'Toole: I had the privilege this summer of attending a Great Lakes legislative conference in Chicago; all parties were represented there. The Great Lakes agreement on water-taking and other issues around both quality and adverse taking of water was widely discussed. So I hope that the mover of this is aware that there are precedents here in terms of agreements both federally and provincially, and with states, on who has jurisdiction to legislate things with respect to those waterways.

Mr. Wilkinson: I thank the member for Durham for his comments. I can assure you that, after the delegations, though the Great Lakes—in many instances, those agreements that we enter into with our cousins from the south—is a federal matter, the question of the water coming from Ontario going into the Great Lakes is something that this bill has to concern itself with, which is why we've put in the amendment.

I asked one of our deputants whether or not they felt that this was happening in any other states or provinces affected by the Great Lakes. He said no, that, if I remember correctly, our proposed bill would set the gold standard. I believe our amendments now make this a platinum standard, and we would hope that our neighbours in our watershed would adopt this type of protection for the Great Lakes and get this right up to the top of the watershed before this water ever gets into our Great Lakes.

The Chair: Thank you. Any further questions or comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 14? All those opposed? Carried.

We now proceed to NDP motion 15. Mr. Tabuns.

Mr. Tabuns: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'precautionary principle' means the principle that, where there is a threat of serious or irreversible damage to an existing or future source of drinking water, lack of full scientific certainty should not be used as a reason for postponing measures to prevent the threat;"

As those of us who sat through the hearings know, we had very strong representation from environmental groups, health groups, and even cottagers calling for inclusion of the precautionary principle explicitly in this act. I believe, as do many others, that a precautionary approach should be the first principle of all environmental legislation, particularly that dealing with water.

We know that inclusion of the precautionary principle has been recognized in other acts in Canada, including the Canadian Environmental Protection Act, the Oceans Act and the Endangered Species Act. Even the minister, when she talked about this bill in the opening session, talked about the fact that this act was inherently precautionary. So I can't see that adoption of this language would in any way violate the act's direction.

I note that the Supreme Court of Canada, when it was dealing with the case of Spraytech v. the town of Hudson, cited the Bergen Ministerial Declaration on Sustainable Development, 1990, saying: "In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation."

The Supreme Court went on to say that scholars have documented the precautionary principle's inclusion "in virtually every recently adopted treaty and policy document related to the protection and preservation of the environment."

When environmental groups were before us, when health groups were before us, they called for inclusion of the precautionary principle in this act. Frankly, failure to act on a precautionary basis can have substantial consequences. I cite lack of action on the part of the world when it comes to climate change. I would say that the reason Justice O'Connor spoke about the need for a precautionary approach in his recommendations—and it is true, he did not use the words "precautionary principle," but "precautionary approach"—reflects the fact that, at times, a failure to act in a precautionary way can have substantial, irreversible consequences.

It makes sense that those who will be actually carrying out this act should know from the very beginning that

their instructions are to act in a precautionary way when they are assessing threats and taking action to prevent those threats from causing damage to our population. That's the basis for moving this motion.

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

Mr. Wilkinson: Since this is the first time we're actually going to deal with this issue, I thought it would be appropriate—I want to thank the member for making the motion. We have a difference of opinion on this in the sense that I do agree with the minister that the bill is inherently precautionary. I think it does fulfill the intention of Justice O'Connor, who had a very lengthy review of this whole issue. I can assure you that the precautionary aspect or methodology is what is going to inform the regulations and rules that will be applied by our minister, and I believe subsequent ministers, to this act. But I do note, from a question of balance, that we had many, many deputations as well on the other side about what they fear would be the unintended consequences, or perhaps intended consequences, of not having, as a basis, science informing the bill, as opposed to informed speculation. So we believe the bill is inherently precautionary and we will endeavour to ensure that our rules and regulations themselves are precautionary in the spirit of O'Connor, who looked at this matter in quite some detail.

Mr. Tabuns: I think there's a really substantial issue here, because I heard this a lot from MPPs during the presentations, this suggestion that incorporation of the precautionary principle was an abandonment of science. I have to ask those who put that on what basis the precautionary principle should not be considered scientific or prudent. When humanity deals with complex, difficult problems, the full course of which is not always evident, it has very frequently been to its disadvantage to ignore the precautionary approach. When governments and when United Nations bodies incorporate the precautionary principle into the text of agreements and acts, it's not an abandonment of science; in fact, by the scientific and health communities and environmental communities, that's seen as a recognition of science, its strengths and its limitations. So you can make a variety of arguments about this, but to say that the precautionary principle is outside of scientific knowledge or outside of scientific practice is simply wrong. I'd have to ask anyone who makes that argument, "Okay. So tell me why acting in a precautionary way is not scientific. Tell me why environmental groups, UN bodies and nation-states incorporate the precautionary principle into their legislation and agreements if they have not based it on science."

Mr. Wilkinson: And I would say that you'd be absolutely right if the bill itself was not precautionary. Then you'd make the argument that we have to put it in the bill because the bill itself is not precautionary. But it is precautionary. Everything that we learned from O'Connor is precautionary, and this is one thing.

My concern is that it's very important—we can have all the laws in the world. The question is, how do we implement this bill? We've gone beyond the needing to do it to, "How do we implement it?" I think we heard quite eloquently from many, many groups about what is required on the ground to make sure this bill is implemented. So we have a difference of opinion as to how one does that. You would like it enshrined in the act, and we feel that the act itself is precautionary and that everything we will do in regard to the rules and regulations will be precautionary.

Again, we have a difference of opinion, but I look ahead to what I'm hearing from people about what we need to do to get the action implemented. I took great note of those people who felt that the implementation of this bill would fall if we were to do what you're suggesting. That would cause tremendous problems with getting the kind of buy-in we need from people to take the actions required.

1320

The Chair: Thank you. If there are no further questions or comments on this particular motion—

Mr. Tabuns: Recorded.

The Chair: —we'll proceed to the recorded vote for NDP motion 15.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We will proceed now to government motion 16.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definition:

"'public body' means,

"(a) a municipality, local board or conservation authority,

"(b) a ministry, board, commission, agency or official of the government of Ontario, or

"(c) a body prescribed by the regulations or an official of a body prescribed by the regulations; ('organisme public')"

This motion would add a definition of "public body" similar to that found in the Municipal Act, 2001, so it is to ensure that there is clarity between two pieces of provincial legislation.

The Chair: Any comments? Seeing none, we will proceed to the vote. Those in favour of government motion 16? Those opposed? Carried.

Government motion 17.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definitions:

"'risk management inspector' means a risk management inspector appointed under part IV; ('inspecteur en gestion des risques')

"'risk management official' means the risk management official appointed under part IV; ('responsable de la gestion des risques')."

Again, we've already had a debate about risk management officials versus permit officials, and this is just one more part of the act where that has to be done so that there is consistency, based on our previous vote.

The Chair: Thank you. Any further comments?

Mr. Leal: A recorded vote, please.

Ayes

Flynn, Leal, O'Toole, Ramal, Scott, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: Carried.

Government motion 18.

Mr. Wilkinson: I move that subsection 2(1) of the bill be amended by adding the following definitions:

"'significant groundwater recharge area' has the meaning prescribed by the regulations; ('zone importante d'alimentation d'une nappe souterraine')

"'significant threat policy' means,

"(a) a policy set out in a source protection plan that, for an area identified in the assessment report as an area where an activity is or would be a significant drinking water threat, is intended to achieve an objective referred to in paragraph 2 of subsection 19(2), or

"(b) a policy set out in a source protection plan that, for an area identified in the assessment report as an area where a condition that results from a past activity is a significant drinking water threat, is intended to achieve the objective of ensuring that the condition ceases to be a significant drinking water threat; ('politique sur les menaces importantes')."

This motion would add definitions of "significant groundwater recharge area" and "significant threat policy" to the bill. You will recall that we just removed "groundwater recharge area," and this is a substitution so that we bring clarity to this issue.

Mr. Tabuns: There are two issues here, Mr. Chair, that I think are highly problematic.

The first is the pig-in-a-poke issue. We're being asked to vote on a definition which is simply a title with reference to regulations. I think it's fundamentally wrong that you ask us to vote on a definition without the definition being before us, something that's going to be dealt with in the regulations. So I don't think any opposition member—and, frankly, the government members who are not going to be part of writing regulations—should vote for it. You are being asked to give a blank cheque. Now, some have more confidence in the cheque-signer than I do, but still, you really are not being asked to make a decision; you're being asked to simply pass on authority.

The second part of this is the simple reality that saying that the threat will only be dealt with if it's significant raises huge questions about where that line is going to be. If we have a toxic waste dump over fractured limestone, and through that limestone flows the water supply to a First Nations reserve, is that a significant threat? Is it significant if it's a very small reserve? Is it significant only if it's a big reserve? If you have a situation where a sewage lagoon is near a creek but that creek only serves one or two people much farther down the line, is that significant?

I think that your wording here—first of all, I think your non-provision of a definition that we can understand, that we can read, debate, and decide on as to whether or not it's acceptable is fundamentally the wrong way to approach writing laws. Secondly, I think your approach to "significant" is problematic. We have an Environmental Protection Act that says that putting deleterious substances in water is wrong. It doesn't talk about size of the deleterious substance, scope, etc; it just says it's wrong. You know I've had an interesting discussion about pollution in Ontario and how you can get around it, somewhat like in the Middle Ages, when you could buy absolution by paying penance money. But that being said, this should not be supported by this committee. We should not have definitions before us that aren't defined.

Mr. O'Toole: Just briefly to be on the record, Ms. Scott and I have roughly the same idea of this provision allowing the regulations to do the defining as somewhat a moot question, because we really don't know what the regulations will say. The point has been made quite well by Mr. Tabuns. I'd say that even if you look at the "significant threat" policies, it's another example where we're voting on something where we don't really know, at the end of the day, what the regulation states, as well as what the significant threat might be—past, present or future. It goes back to the argument that Mr. Tabuns was making in his previous argument with respect to the policy in the broadest sense of avoiding precautionary principle issues. I just wonder how genuine the province is—or the government, for that matter—when they voted down the precautionary principle.

Do you follow what I'm saying here? If you really meant that, you would have made sure that that principle was not just in principle stated overall by the bill, but by the actions that we're discussing here, and not really knowing what those regulations will say.

I look at Bill 102—which was a bill that was passed after a lengthy set of amendments—on prescription medication. The druggists were here, upset like heck. You finally acquiesced during the final clause-by-clause on that bill, Bill 102. Now I'm finding out from all the pharmacists that you've just gone about—the regulations now are doing what you didn't do in legislation. It's quite draconian—tragic, actually, in a democratic sense.

So I can't be supporting this. I feel badly about that. Again, we want to restate: Get this right. It's just too important. The way you're approaching this—now I'm

having to go to section 19 to get some grasp on what this amendment actually does. But even there, reading that, I don't know, because it's in the regulations that you're going to define these threats. So you've got us chasing something here.

I challenge some of the members on the other side—I see the puzzled looks on their faces. Now they're starting to realize that they're in this and they can't get out.

The Chair: Mr. Wilkinson.

Mr. Wilkinson: I'm sure that some of my agricultural stakeholders will be very interested to read the transcript of what the member from Durham just said about the precautionary principle. I'm sure to make sure I add that to my Christmas card to all of them and quote you on that. They'll find that quite fascinating. I think maybe my friend from Peterborough may be doing that.

It goes to the issue—

Interjections.

Mr. Wilkinson: I hear the members opposite. If one assumed, incorrectly, that somehow a minister could write regulations and that somehow they would be written in secret and they would be promulgated in this province, it would belie the fact that all of these issues that need to be resolved through regulation will all be posted through the Environmental Bill of Rights website. This will be a very transparent process. We are in the process now of setting up a framework piece of legislation which then can live and breathe through regulation so that this can be a responsible government instrument to get the policy objective.

I would agree with the point if somehow the implementation of this was going to be in secret. This will all be done in the light of day. So I think that, given the complexity of it and given the fact that we are in uncharted territory, the best way to deal with this issue is through regulation and through what is a very transparent process in the province of Ontario, given our environmental laws.

The Chair: Are there any further questions or comments? Seeing none, we'll proceed to the vote on government motion 18.

Mr. Tabuns: Recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

NDP motion 19.

Mr. Tabuns: Mr. Chair, before we go there, the package I have of my own prepared motions includes a motion that the definition of "significant drinking water threat" be struck out, and it isn't in this package that's been given to us. So I don't know at what point it left the radar screen, but I would like to have that considered.

1330

The Chair: You might advise the clerk specifically, Mr. Tabuns.

Mr. Tabuns: My apologies. It appears I made a mistake there.

The Chair: Mr. Tabuns, I'm advised that we voted on that NDP motion 11; it was defeated.

If we could proceed now with NDP motion 19.

Mr. Tabuns: The lunch break clearly causes problems. Thank you.

I move that section 2 of the bill be amended by adding the following subsection:

"Adverse affect

"(1.1) For the purpose of this act,

"(a) an activity or condition adversely affects the quality or quantity of any water that is or may be used as a source of drinking water if it contributes to,

"(i) harm or discomfort to any person,

"(ii) an adverse effect on the health of any person,

"(iii) impairment of the safety of any person,

"(iv) loss of enjoyment of drinking water, or

"(v) degradation in the appearance, taste or odour of the water; and

"(b) adverse affects shall be measured from existing or potential water supplies that are used for human consumption and shall be deemed to be a danger to the health or safety of persons, notwithstanding that the water quality may be improved through treatment."

I am trying to deal with the lack of definitions in this act by bringing forward a definition that I think is straightforward, clear and, frankly, is derived from the Environmental Protection Act definition of "adverse effect." My hope is that at least in part there will be some clarity in this bill and that lawmakers will actually get a chance to vote for or against the language in the bill, as opposed to a situation where lawmakers get to read about the final definition of the bill on a website and are able to send out an e-mail but not vote yea or nay on whether that change reflects their actual intent. I would hope the government would support this amendment so that there will be greater clarity in this act.

The Chair: Are there any further questions or comments?

Mr. Wilkinson: Similar to our previous debate, we believe that the people need to be consulted, and the way to do that is through the existing mechanism we have in this province for the development of regulations in a transparent way.

The Chair: We'll proceed to the vote on NDP motion 19.

Mr. Tabuns: Recorded.

The Chair: A recorded vote.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll proceed now to the consideration of that section, as amended. Shall section 2, as amended, carry?

Interjection: Recorded vote.

The Chair: A recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

We now proceed to NDP motion 20: 2.1, a new section.

Mr. Tabuns: We had this debate before lunch. The wording is somewhat different from that proposed by the Conservatives but largely addresses that whole question of abrogation or derogation. My hope is that over lunch the parliamentary assistant and his colleagues have had a chance to further consult and have come to the conclusion that they can correct their error made before lunch and vote in favour of this amendment.

Mr. Wilkinson: I'd like to go on record that, after consultation, we are even more convinced of the wisdom of voting against this and dealing with First Nations issues in the government package that will be forthcoming.

The Chair: Mr. Tabuns, if you might read the amendment as well.

Mr. Tabuns: Oh, sorry. My apologies.

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

"Existing aboriginal or treaty rights

"2.1 Nothing in this act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982."

The Chair: Thank you. If there are no further comments, we'll proceed to the consideration vote.

Mr. Tabuns: Recorded.

The Chair: Shall section 2.1, NDP motion 20, carry? Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We now consider NDP motion 21, which is 2.2, new section.

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

"Consultation with aboriginal peoples

"2.2(1) The crown in right of Ontario shall not delegate its duty to consult with aboriginal peoples in connection with matters related to this act.

"Funding

"(2) The crown in right of Ontario shall ensure that aboriginal peoples are provided with sufficient funding to permit them to participate in a meaningful way when they are consulted by the crown in connection with matters related to this act."

The simple reality is that although there is a constitutional requirement to consult, something that the courts have reinforced, far too often consultation does not happen. That lack of consultation results in conflicts such as we've seen at Big Trout Lake or Caledonia. This amendment not only emphasizes that the government has to consult with First Nations on a nation-to-nation basis, but that they have the funds needed to actually put together their analysis of the situation and respond in an informed, well-researched way. Failure to proceed with this sort of amendment will mean that effectively First Nations aren't given the respect that they deserve and will not have the tools with which to respond to requests for consultation. So I would say that the government said quite clearly today that they're going to respect the Constitution, that they have respect for First Nations. They should be adopting this amendment.

The Chair: Any comments, questions?

Mr. Wilkinson: Mr. Chairman, I can assure you that the government will respect the Constitution and include that bills drafted are in compliance with the Constitution. As well, I would reiterate that the courts have held that the crown cannot delegate its constitutional duty to consult with aboriginal peoples where such a duty already exists. Therefore, the nature of the amendment is again one of stating the obvious, which is already there. Beyond that, it actually binds the government in regard to a question of money and I do not believe that an opposition motion can be entertained by the committee where it binds the government to money. I believe it's the minister of the crown who has to make that a motion.

The Chair: Would you like legislative counsel to comment on that area?

Mr. Tabuns: Yes, please.

Mr. Beecroft: Standing order 56 says, "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown."

So ultimately, the question of whether a motion does that or not is a question for the Chair to decide based on the arguments that the people may want to make. I don't know that there's anything more I can really say about that. There are Speaker's rulings on these issues from time to time.

The Chair: The Chair is not prepared to rule that out of order. We'll proceed to the vote.

Mr. Tabuns: Recorded.

The Chair: Recorded vote. Shall section 2.2, the reference to NDP motion 21, carry?

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 22.

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

"Exercise of powers

"2.3 In the administration of this act, the government of Ontario, the minister and all bodies subject to the provisions of this act shall exercise their powers in a manner that protects the environment and human health and that applies the precautionary principle."

It puts the precautionary principle, a guiding principle, in the body of the act and directs the government, the ministers, to take it into account in their exercise of powers. Notwithstanding the arguments that were made earlier, I would say that this has to be explicit in the act so that all those who are given authority to follow through on the act's direction understand that it is at the heart of the government's thinking. Frankly, if it's in legislation, it has greater weight than a commentary by the minister in introducing the bill.

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The Chair: Mr. Wilkinson?

Mr. Wilkinson: On behalf of the government, I can assure you that the minister will have regulations by the Lieutenant Governor in Council which will ensure that the precautionary principle will be reflected in all directors' rules and all regulations.

The Chair: If there are no further questions or comments—

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 23.

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

"Instruments before source protection plans take effect

"2.4 No instrument that has the potential to cause significant or irreversible harm to a source of drinking water in a vulnerable area shall be issued or otherwise created under any act unless a source protection plan has taken effect under this act for the source protection area to which the instrument relates."

Right now, we are in a period without this act in place, without its protections in place. There will be a period of transition. This amendment is intended to ensure that in the period of transition, until the act is fully in place, that damage that may occur to the environment will be forestalled, will be prevented, and thus the amendment before you.

The Chair: Any questions or comments? Seeing none, we'll proceed to the vote on NDP motion 23. Shall section 2.4 carry?

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

With the will of the committee, seeing as no amendments have been proposed so far for sections 3 and 4 together, we'll block consider both of these sections. The question therefore is, shall sections 3 and 4 carry? Carried.

We'll now move to section 5, NDP motion 24.

Mr. Tabuns: I move that section 5 of the bill be struck out and the following substituted:

"Other source protection areas

"5(1) The minister shall, not later than six months after this act receives royal assent, establish source protection areas under this act in all parts of Ontario that are not covered by the source protection areas established by subsection 4(1).

"Source protection authority

"(2) The ministry is the source protection authority for the source protection areas established under subsection (1)."

The government is protecting sources of drinking water in the parts of the province, largely in the south, covered by conservation authorities. I don't think that's equitable. There are concerns in other watersheds in this province, in the north and in central Ontario, that need this protection. We should be treating all sources of drinking water equally. Hence, the expansion of the scope of the act.

The amendment does three things. It requires the minister to establish source protection areas across the province. It says it has to be done in six months, so there's a timeline. It says the Ministry of the Environment will serve as the source protection authority; it designates who has responsibility. I would say, frankly,

that we do need to have this sort of amendment brought forward so that there's full coverage across this province.

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

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 5 carry? Carried.

We'll now consider section 6. Seeing as no amendments have come forward, shall section 6 carry? Carried.

Mr. O'Toole: Seeing as these sections have carried already—I know it's maybe out of order. I'm just reading in these sections here that there are—a question to the parliamentary assistant: Are they actually going to close down some of the conservation authorities?

Interjections.

The Chair: It's open to debate, though. Mr. Wilkinson.

Mr. O'Toole: Because that's what it's basically saying here.

Mr. Wilkinson: What this bill talks about is the creation of source water protection committees, inspired by the work of Justice O'Connor. We see conservation authorities as a valuable resource in providing an appropriate template. Source water protection authorities are not identical to our conservation authorities. There are many cases where two or more will be brought together. They're already doing some common scientific work right now. So I would say that those two issues are divorced, that there may be some overlap with conservation authorities and source water protection committees but they're not mutually exclusive. This bill deals with the creation of source water planning committees and source water protection authorities.

The Chair: Thank you. If there are no further questions, we'll proceed to the consideration of the next section, PC motion 25.

Ms. Scott: Good. I move that subsection 7(1) of the bill be struck out and the following substituted:

"Source protection committees

"7(1) The minister shall establish a drinking water source protection committee for each source protection authority's source protection area and the committee shall be the lead authority with respect to terms of reference, the assessment report and the source protection plan."

I think this was brought forward a lot from the presenters when we were on committee, that the appropriate role of the source protection authority or the conservation authority—and I know there's overlapping; we just had that discussion. They are to facilitate the process and provide the technical assistance. So the source protection authorities must not be in the position to supplant the authority of the source protection committees.

With this amendment, the approach would ensure that there's a separation between the broad watershed responsibilities of the conservation authorities and the more narrow objectives of protecting drinking water sources within the watershed.

The Chair: Thank you, Ms. Scott. Are there any further questions or comments?

Mr. Wilkinson: We'll vote against this motion because we think it would actually undermine the approach that has inspired this bill about the necessity for this to be, as I said, from the groundwater up, using local people. It would effectively remove source protection authorities from their intended role in this bill. This motion would essentially have the province dictating who sits on source protection committees, and the government believes that these decisions should be made locally, in accordance with the minister's regulations. These decisions should not be made in Toronto. Rather, these decisions should be by the communities which will be affected by the source protection plan. The minister will appoint the chair, and the communities will appoint stakeholders, with recommendation.

Again, we think this is contrary to our intent as a government bringing this bill forward.

The Chair: Ms. Scott.

Ms. Scott: The minister will appoint the chair, and then who's going to select the committee members, again, just to maybe confirm that? Who does the selection of the committee members for the rest of the source protection committees?

Mr. O'Toole: The riding association.

Mr. Wilkinson: Now, Mr. O'Toole, even that's beneath you.

It's quite clear in the bill. What you're saying in your amendment, and perhaps you're not getting the intention that you want, is that somehow the minister should be appointing all of these people. There have been many, many stakeholders who have come, and I refer you to a further amendment where we're going to be broadening the number of people who can be on a source water protection committee so we can get the kind of cross-section that makes sense in that local area where people draw on the same drinking water. We're getting rid of the requirement that it must be 16.

In this process, stakeholders will identify themselves to the chair. We will, through regulations and amendments that will be proposed shortly, deal with the whole question about how these source water committees should be constituted so they truly do reflect those people who are drinking that water and those stakeholders.

This would actually negate any of the work that we have undertaken by amendment to respond to the stakeholders who have come and spoken to us, particularly that one week that we were on the road. We won't be able to vote for this. We would probably seek your

support on some of our further amendments about the source water committees and how they'll be struck.

1350

Ms. Scott: I appreciate the member's comments and I think that we heard that a lot at committee. If one agriculture representative is on, is it just from the dairy farmers, or are there more representatives? Going back to more of a grey area, there are amendments coming forward and, unfortunately, regulations. Maybe the government will commit to public hearings on the source protection committee's composition as they come forward in regulations.

Mr. Wilkinson: To work, it must be driven by the people, not by the ministry. That's really the intention of this bill. It might be simpler for us to have this kind of top-down approach, but we are committed, through this bill, to having a ground-up approach. So we can't preclude and prescribe right now that there will be a member from this group or that group. We're going to let each different committee make recommendation as to the best way to represent their own community. We had great debate over this about public health officials. If I'm a farmer, and I'm a reeve and I'm also the warden, do I wear one hat or three? All of these questions have to be dealt with, and we think the best way to do that is not to try to be overly prescriptive in this kind of top-down exercise, but actually allow this to come from the people most affected. It's just our approach to it.

Mr. O'Toole: To be quite direct about it, and complimentary to Ms. Scott for the work that she's done on this bill, it's clear that you've listened to the input from stakeholders, and Ms. Scott, here, who led that charge. That means that originally the committees were going to be appointed by the minister and there were 16. We were just quite concerned that, as with many of the other things you've done, it ends up being sort of a dog and pony show, technically, from your own caucus appointees, if you will.

So I'm happy to say that if I can believe what you say, that these committees will be appointed from local—like we have agricultural advisory committees in the municipalities today. Those kinds of consultations at the very genesis of this change are important. If that's your intention, I'd be supportive of that, but I haven't been able to believe many of the promises you've made in the last three years, so I have some uncertainly about going forward. It's like this bill; you've changed, I agree. You should go back to the drawing board and try to get this thing right. But anyway, there are my comments.

Mr. Wilkinson: I'm not surprised. When in doubt, you would have everything be run from the top down. Your history shows that and I'm sure that's exactly why you—

Mr. O'Toole: Chair, it's clear that he didn't listen.

The Chair: Thank you. If we might proceed to the vote, if there's no official commentary left. Those in favour of PC motion 25?

Mr. Wilkinson: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Flynn, Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Defeated.

We now proceed to NDP motion 26.

Mr. Tabuns: I move that section 7 of the bill be amended by adding the following subsections:

"Time limit

"(1.1) Each source protection authority that is a conservation authority shall establish a source protection committee under subsection (1) not later than four months after this act receives royal assent.

"Same

"(1.2) Each source protection authority that is not a conservation authority shall establish a source protection committee under subsection (1) not later than six months after the authority's source protection area is established."

Mr. Chair, one of the problems that I have and others have with this bill is a lack of timelines, a lack of a sense of urgency for implementation. In putting forward this amendment, we are intending that there should be clarity about when these committees will be established. I'm trying to move this process along as quickly as possible.

The Chair: Thank you, Mr. Tabuns. Are there any further questions or comments on motion 26?

Mr. Tabuns: Just recorded, that's all.

The Chair: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 27.

Mr. Wilkinson: I move that subsection 7(2) of the bill be amended by striking out "not more than 16 members" and substituting "the number of members prescribed by the regulations."

We've gone over this ground, Mr. Chair. I note that many of our environmental non-governmental organizations, agriculture, industry and municipal stakeholders all requested that source protection committees be flexible and representative of the local watershed. We believe that this amendment will go a long way in ensuring that all voices are heard.

Mr. O'Toole: Again, I commend the parliamentary secretary there for agreeing with Ms. Scott on this one. It's sort of like we've been moving this all through. I commend you on the amendment. We'll be supporting it.

The stakeholders you've mentioned that were excluded, and I think deliberately so—this is my suspicion. You've been forced in the public forum here to react to what we wanted all along: much more clarity and openness. So we'll be supporting this.

The Chair: We'll proceed to the vote. Those in favour of government motion 27?

Mr. Wilkinson: Recorded vote.

Ayes

Flynn, Leal, O'Toole, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

PC motion 28.

Ms. Scott: I move that section 7 of the bill be amended by adding the following subsection:

"Same

"(2.1) The members of the source protection committee,

"(a) shall have specific knowledge of water protection or of farming techniques and best practices; and

"(b) shall be representative of the community within the source protection area."

This goes back to our earlier discussion about concern for the composition of the committees, and whether all the stakeholders within that source protection committee area will be represented. I hope that the government would see to support this so that we ensure the source protection committees are representative of all the stakeholders that are involved in the area.

The Chair: Any comments?

Mr. Wilkinson: We won't be supporting the motion because we feel that the approach we've taken—Ontario is a very large province. We have to make sure that we do this from watershed to watershed, from ground watershed to ground watershed. The minister with her guidelines has made very clear that the people who will be appointed to source planning committees will have all of the material they need to make sure that they can make informed decisions on behalf of their neighbours.

Mr. O'Toole: Just a final summation. If you look at the previous amendment, the committee was making considerable progress. There was unanimous consent on that. It was on the expansion—a government motion, I might say.

Now we've come to an opposition amendment, proposal; a friendly amendment, if you will. I can see the blinkers already going up there. They're going to ignore any input from anyone except the civil servants who are here.

Mr. Wilkinson: It's great, Mr. Chair. I say, with all due respect, that if we hadn't seen the first two opposition motions that were intended to gut the bill and throw away three years worth of hard work, perhaps we'd have just a bit more faith. But we don't.

The Chair: We'll proceed now to the vote on PC motion 28.

Mr. O'Toole: Recorded vote.

Ayes

O'Toole, Scott.

Nays

Flynn, Leal, Tabuns, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 29. Mr. Tabuns, the floor is yours.

Interjections.

Mr. Tabuns: Don't try to ruin my reputation, Kevin.

I move that section 7 of the bill be amended by adding the following subsections:

"Conflict of interest

"(4.1) Where a member of a source protection committee, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the committee at which the matter is the subject of consideration, the member,

"(a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;

"(b) shall not take part in the discussion of, or vote on any question in respect of the matter; and

"(c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.

1400

"Pecuniary interest

"(4.2) Sections 2 and 3 of the Municipal Conflict of Interest Act apply, with necessary modifications, for the purposes of determining whether a member has a pecuniary interest referred to in subsection (4.1).

"Where member to leave closed meeting

"(4.3) Where the meeting referred to in subsection (4.1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration.

"When absent from meeting at which matter considered

"(4.4) Where the interest of a member has not been disclosed as required by subsection (4.1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (4.1) at the first meeting of the committee attended by the member after the meeting referred to in subsection (4.1).

"Exceptions

"(4.5) Subsections (4.1) to (4.4) do not apply to a pecuniary interest that a member may have,

"(a) in respect of an allowance for attendance at meetings, or any other allowance, honorarium, remuneration, salary or benefit to which the member may be entitled by reason of being a member;

"(b) by reason of the member having a pecuniary interest which is an interest in common with residents of the source protection area generally; or

"(c) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member."

I am moving these amendments because the reality is that these source protection committees will be making decisions that can have an impact on very large investments. The changes, the assessments, the designations of land areas that change land use planning can, in the end, be of great consequence to people in an area who decide to build or not build a building in an area.

My experience—oh, the clerk has changed. You turn around for a moment and they metamorphose. Anyway, when you're dealing with substantial changes in land use value, there will be interests in those decisions that will be quite substantial. We have to know that the committees that are dealing with these questions are free from conflict of interest. Thus, I propose that we incorporate conflict-of-interest guidelines, based on municipal conflict of interest, so that those who are making decisions that will have multi-million dollar impacts will be given guidance as to how to act and so that the public who are dealing with the decisions that flow from their deliberations have some confidence that people are acting in the general interest, not in a narrow interest.

I think it's in the government's own interest to have as clean a process as possible and one with the greatest possible credibility. Thus, I would urge the government to support this and I would urge the opposition to support this on the same basis. They are interested in holding the government accountable and want the operations of any bill to be clean and above approach, and should be supporting this on that basis.

The Chair: Any further questions or comments?

Mr. O'Toole: Just briefly, I do respect the motives for introducing this, but I put on the table the consideration that water is an essential element completely, in every respect, to all of us. Now, if in acting in good intent—there is a disclosure requirement at the beginning of every public meeting in terms of municipal as well as provincial engagements. But my sense here is—for instance, where I live in the country now, if it's determined that somehow there is an aquifer or something, I would, with all good intentions, not have the knowledge to know that there was something that I could be potentially involved in affecting a downstream development. It could be a subdivision and ultimately they find out that there's a reservoir. So I think you could be asking for a lot of litigation here, that other persons may find cause.

So I think a general provision of good intentions of disclosure; specifically, if you have a property that you're in the midst of—that would be in violation of the act today, without even this on the table. So I can't support it, but I want to be on the record as saying that it's so broad here that every one of us who flushes a toilet, the waste water, potentially—or water-taking permits, or someone who is in agriculture, the greenhouse business or whatever, where's water's a big, big issue, a huge issue. Let's just keep this thing so that they can function at the municipal level without a lot more than is already in these conflict disclosure requirements.

Seeing how the clerk is back, it's time to stop.

Mr. Tabuns: Just very briefly, Mr. Chair, land use plans will have to conform with the source protection assessments and direction. Effectively, we will be rezoning land in watersheds. Zoning has significant financial implications. There will be people who will have a great interest in the outcome of these decisions. At the very least, we should regulate self-interest in these decision-making bodies using existing language from existing legislation that is commonly understood in this province and should be commonly applied.

The Chair: If there's no further commentary, we'll proceed now to the vote.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 30.

Mr. Tabuns: I move that section 7 of the bill be amended by adding the following subsections:

"Public meetings

"(7) Every meeting of a source protection committee shall be open to the public.

"Municipal Freedom of Information and Protection of Privacy Act

"(8) A source protection committee is an institution for the purpose of the Municipal Freedom of Information and Protection of Privacy Act."

As the act is written now, there is a lack of transparency and accountability. We heard that from numerous deputations. This amendment goes some distance to providing that transparency and accountability. Frankly, it's just plain common sense. Meetings of the source protection committees should be open to the public, and people should be able to access information.

Mr. Wilkinson: I would say to the member opposite that in regard to the last matter and this matter, the way that we're dealing with this is that we'll be adding a proposed clause (m) to section 99, which we feel will be able to address this concern and allow the appropriate debate that needs to happen during the regulation-making process to unfold. I think we're all in agreement with the principle. The question is, how do we do this? We're looking forward to our amendment to section 99.

Mr. Tabuns: I would just say again that that puts it into the regulations and outside of the hands of law-

makers who, in this room and in the Legislature, should in fact be assessing those things in some depth.

Mr. O'Toole: With all good intentions, I am looking for some harmony here in these discussions. I think Mr. Tabuns makes a very good point, and I don't think it imposes any undue restrictions or encumbrances on the government.

I've looked at the amendment to 99, and it doesn't do anything of the sort. It is a very general amendment. It says, "governing the number of members of source protection committees," and "governing the operation." I would expect they would operate under existing laws or regulations governing these publicly constituted committees.

So I don't see why you wouldn't support this, and I'm appealing to you to find some harmony, that you would support Mr. Tabuns. It's strange that I'm trying to help Peter out here, but—

Mr. Tabuns: It is. It's frightening, John, but keep going.

Mr. O'Toole: It's not frightening. It's actually encouraging. If this place functioned properly—and it's not today. Today is evidence. They haven't supported one of your amendments. We've supported several of theirs. I can see we're going down the road here all their way, as if they are the only ones who ever had a decent, respectable, well-thought-out idea, which simply isn't the case. So I am asking for unanimous consent on this motion.

Mr. Wilkinson: I say to Mr. O'Toole, I think you'd have to have research go back and take a look at every bill ever drafted when you were in government and exactly how many opposition motions were ever adopted in eight years. So I find that just a wee bit rich from the member from Durham on this one.

The question here is, what is the basis? We believe in the principle, but we still believe that those people in the community have to come to this. That's why the minister has been very, very clear about how this is a matter that is going to go through the other process to ensure that all of these rules get dealt with.

1410

Mr. Tabuns: I have to say I find it extraordinary that you would not support having these meetings open and public.

Mr. Wilkinson: They will be.

Mr. Tabuns: Then put it in the legislation. You're asking it to be left to regulation. In fact, if it's left to regulation, as you have argued today, there may be a future government that doesn't like the idea of things being open. Put it in the legislation to strengthen the hand of the public to make sure it can get into these meetings, be there, observe the deliberations and hold decision-makers accountable.

Mr. Wilkinson: But there are consultations that are going on right now. This is a framework piece of legislation which sets out what O'Connor told us to do, and that's what we're trying to do here. There will be many, many things that are going to be determined by regulation. There's not going to be a one-size-fits-all when it comes to protecting water. So what we've said is, we're having what is an open and transparent process to make sure that we have the buy-in from the communities. These are questions that are going to be raised. I think the public consultations that will inform this type of work allow citizens to actually comment on this in an open and transparent way, as opposed to what I think could be perceived, that that debate had already been precluded. We need to hear from the people. The whole process is about how to empower the people, not things coming down from above.

Mr. Tabuns: I would say, frankly, when it comes to public access to political deliberations of a body like the source protection committee, that's one of the things that I don't see as debatable. I think we've gone through a number of centuries of struggle for democratic rights, and one of the advantages of democracy is that those who are in that society have the right to be present when decisions are made and to hear what the debates are. All I'm saying is, you should embody that in this act and you should embody in the act the transparency necessary for decision-makers to be held accountable. I'm a bit taken aback that you wouldn't support public meetings being entrenched, respected, built into the act and approved by us such that a future cabinet couldn't roll it back.

The Chair: We'll proceed now to the vote on NDP motion 30.

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll consider now the section as a whole. Shall section 7, as amended, carry? Those in favour? Those opposed? Carried.

We'll now proceed to section 8, PC motion 31.

Ms. Scott: I move that section 8 of the bill be amended by adding the following subsection:

"Impacts to be considered, source protection plan

"(2.1) In preparing the terms of reference for the source protection plan, the source protection committee shall consider the social, cultural and economic impacts of environmental protection measures to be contained in the plan."

I think what we want to do here is to stress the consultative process, going back to the point earlier, the open public meetings, and to take a holistic as well as a scientific approach in the bill.

The Chair: Thank you. Any questions or comments? Seeing none, we'll proceed to the vote. Those in favour of PC motion 31?

Mr. O'Toole: Recorded.

Ayes

O'Toole, Scott.

Nays

Flynn, Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 32.

Mr. Wilkinson: I move that subsections 8(3), (4) and (5) of the bill be struck out and the following substituted:

"Resolution of municipal council

"(3) The council of a municipality in which any part of the source protection area is located may pass a resolution requiring the terms of reference to provide, for the purpose of subclause 13(2)(e)(ii), that the assessment report consider any existing or planned drinking-water system specified in the resolution, other than a drinking-water system prescribed by the regulations for the purpose of this subsection, if,

"(a) in the case of a drinking-water system that obtains its water from groundwater, the system has a well in the municipality that serves as the source or entry point of raw water supply for the system; or

"(b) in the case of a drinking-water system that obtains its water from surface water, the system serves a building or other structure located in the municipality.

"Location of wells and intakes

"(4) A resolution passed under subsection (3) is not effective unless it identifies the location of every well and intake that serves as a source or entry point of raw water supply for the drinking-water system.

"Resolution of upper-tier municipality

"(5) Subsection (3) does not apply to the council of an upper-tier municipality unless the upper-tier municipality has authority to pass bylaws respecting water production, treatment and storage under the Municipal Act, 2001.

"Resolution of lower-tier municipality

"(6) A resolution passed under subsection (3) by the council of a lower-tier municipality that does not have authority to pass bylaws respecting water production, treatment and storage under the Municipal Act, 2001, is not effective unless it is approved by a resolution passed by the council of the upper-tier municipality.

"Resolution after approval of terms of reference

"(7) A resolution may be passed even after the terms of reference are approved under section 10, but in that case, the resolution is not effective unless the terms of reference are amended under section 11.1."

This addresses non-governmental environmental organizations and our municipal partners' request for additional flexibility regarding the inclusion of non-municipal systems and the ability to amend terms of reference.

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

Mr. Tabuns: Mr. Chair, through you to the parliamentary assistant, one of the big problems that I'm going to have with this is that you have in here, "other than a drinking-water system prescribed by the regulations for the purpose of this subsection." So there's a big black hole in the middle of this amendment that says, "There's a chunk here that you won't know about until after the regs come forward." I called it a pig in a poke earlier; now it's a black hole. It doesn't matter. You're asking us to vote for something where I don't know what the exact terms are going to be. So that's a problem I have with this.

The other one that I have is: "(b) in the case of a drinking-water system that obtains its water from surface water"—I don't know why you wouldn't say "groundwater and surface water"—"the system serves a building or other structure located in the municipality."

We had testimony in our hearings where people were talking about nursing homes or schools that drew their water from wells—groundwater, not surface water. So why are you limiting it to surface water and not addressing groundwater?

Mr. Wilkinson: My understanding is that we're addressing both of those concerns, and it has to deal with the issues that were raised by our stakeholders, particularly municipalities. As well, there's a further amendment to the bill, given the testimony from people about the necessity—that the minister should also have authority to designate in certain areas. I know that in a future government amendment that's coming, we're also making sure that the minister will have that authority, which at present is missing in the bill. So I see this as fitting in with the amendments that are coming subsequently this afternoon.

Mr. Tabuns: So there will be another amendment saying, "In the case of a drinking-water system that obtains its water from groundwater, the system serves a building or other structure located in the municipality"? Is that coming?

Mr. Wilkinson: Well, for that specific question, I will refer to our friends from the Ministry of the Environment, just so we can bring some clarity for you, Mr. Tabuns.

Ms. Cynthia Brandon: Cynthia Brandon from the legal services branch of the Ministry of the Environment. I just wish to clarify for you that clause 3(a) is dealing with groundwater, and clause 3(b) is dealing with surface water. It's just really where the intake is for the particular water. If it's groundwater, then it will be dealt with under clause 3(a). If it's surface water, the intake is—it had to do with the fact that a municipality's intake for their surface water may, in fact, be out in the lake, which isn't actually technically perhaps part of the municipality. So that's why we split it into groundwater in (a) and surface water in (b). So they are both, in fact, covered.

Mr. Tabuns: Thank you.

The Chair: If there are no further questions or comments on government motion 32, we'll proceed now to the vote. Those in favour? Those opposed? Carried.

Shall section 8, as amended, carry? Those in favour? Those opposed? Carried.

Section 9: NDP motion 33.

1420

Mr. Tabuns: I move that section 9 of the bill be amended by striking out "and" at the end of clause (a) and by adding the following clauses:

"(c) publish the proposed terms of reference on the Internet and in such other manner as the source protection committee considers appropriate;

"(d) give notice of the proposed terms of reference in accordance with the regulations to all persons who made oral or written representations to the source protection committee on the terms of reference, and to the persons prescribed by the regulations, together with information on how copies of the terms of reference may be obtained and an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations; and

"(e) publish notice of the proposed terms of reference in all local newspapers in the source protection area, together with information on how members of the public may obtain copies of the terms of reference and an invitation to the public to submit written comments to the source protection authority within the time period prescribed by the regulations."

The interest here, Mr. Chair, simply is to ensure that people who are interested in these matters are contacted, made aware of what's going on and have an opportunity to give input. Frankly, to have them fully informed, to try multiple routes to contact them and ensure that they are part of the process, I think, is to the advantage of the province and to the bill.

The Chair: Thank you. Any comments?

Mr. Wilkinson: We'll have a government motion on this subsequently.

Mr. O'Toole: As far as the debate goes, Ms. Scott and I considered this and we don't see any problem with the openness that's being proposed by the NDP. I'm anxious to see or hear what the parliamentary assistant is saying that they are bringing forward. Specifically, if you look at the implications of some of these plans in the source protection—the terms of reference, the resolutions of council, how it will affect land values and the risks going forward for landowners in those areas, the implications—I think there needs to be a widespread distribution so that everyone is given every opportunity, on the Internet and through the other forms of media, so that they are aware.

In planning today, there is a proper notice requirement for anyone living with or affected by a certain rezoning or official plan amendment that they get notice. So all he's saying here is pretty much the same thing, that anyone who has made representations be given some formal notice. It may sound a big rigorous, but you know, you could be sitting on a potential risk yourself if you're a landowner. These terms of reference are so broad, and in a technical way you wouldn't know if there was an aquifer. There might be a stream in your backyard. You have no idea what the implications are. It could be next to a golf course and all of a sudden you've got this problem. Do you understand what I'm saying? I think you need to open it up.

It doesn't seem you're willing to accept one friendly amendment. The previous one was quite friendly, I thought [*inaudible*] on the meeting process. Now we've got this one here. Let's see. I want a recorded vote on this too, but I am looking for some acquiescence here in terms of proper public process, public notice. We are trying to work co-operatively here, and certainly that's—

The Chair: I think we all appreciate your spirit of co-operation, Mr. O'Toole. Given that, we'll perhaps move to the vote on NDP motion 33.

Mr. Tabuns: Recorded.

The Chair: A recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll proceed now to government motion 33.1, which again is part of the secondary package.

Mr. Wilkinson: I move that section 9 of the bill be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) publish the proposed terms of reference on the Internet and in such other manner as the source protection committee considers appropriate, together with an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations."

We feel that the source planning committee itself should have the ability to determine in each and every source planning authority area what is the appropriate way of making sure that this information gets out to people and that that advice should be inspired by the people on the ground and not the people from up above.

The Chair: Thank you. Any comments?

Mr. Leal: Can I get a recorded vote on that one, please?

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

Ayes

Flynn, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Shall section 9, as amended, carry? Carried.

Section 10: NDP motion 34.

Mr. Tabuns: I move that subsection 10(1) of the bill be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) any written comments received by the source protection authority after publication of the terms of reference under clause 9(c)."

I want to make sure that local people are well aware of what's going on, that their local knowledge informs the decision-making process and, frankly, that their comments are passed on to the minister in the course of the minister's considering the proposed terms of reference.

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

Mr. Wilkinson: Mr. Chair, we'll have a substantive amendment to subsection 10 momentarily.

The Chair: Thank you. Proceeding to the vote.

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated. Government motion 35.

Mr. Wilkinson: Mr. Chair, I just want to note that we are withdrawing government motion 35 and replacing it with government motion 35(a), if people would like to go to that.

Interjection.

Mr. Wilkinson: Pardon? Just give me one second.

The Chair: Mr. Wilkinson, from what I can determine, I believe your substituted motion is labelled 36.1. If you might verify that?

Mr. Wilkinson: We'll just take a second here, Mr. Chair. I'm just going to check, since we want to make sure we get this bill right. If you'll give me one moment.

Interjections.

Mr. Wilkinson: Okay. Now we're all on the same page, 36.1.

The Chair: Mr. Wilkinson, the floor is yours. Motion 36.1.

Mr. Wilkinson: Thank you. I wouldn't be the first party here today to walk in an amendment.

Mr. Tabuns: So motion 35 is gone, adios?

Ms. Wynne: It's gone.

The Chair: Yes, Ms. Wynne is correct; motion 35 is gone. We will now proceed to NDP motion 36.

Mr. Tabuns: Fine.

Mr. Wilkinson: We're in agreement.

Mr. Tabuns: I move that section 10 of the bill be amended by adding the following subsection:

"Additional drinking-water systems

"(4) Without limiting the generality of subsection (2), the minister may, on the request of any person, make an amendment to the terms of reference to provide, for the purposes of subclause 13(2)(e)(iii), that the assessment report consider any existing or planned drinking-water system specified by the minister that is located in the source protection area."

This gives a mechanism allowing individual wells or groups of wells to be assessed if requested. This is giving the minister power, when requested by the public, to require the assessment reports to include any existing or planned drinking-water system in the source protection area and expands the scope of the bill.

The Chair: Thank you, Mr. Tabuns. Any comments on NDP motion 36?

Mr. Wilkinson: In the subsequent motion 36.1 that we'll be presenting, we've had to make sure that we have consistency throughout the whole bill, so our legal team has drafted this to make sure that we do have consistency. We look forward to that.

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

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Now returning to government motion 36.1, replacement of government motion 35.

1430

Mr. Wilkinson: I move that section 10 of the bill be struck out and the following substituted:

"Submission to minister

"10(1) The source protection authority shall submit the proposed terms of reference to the minister, together with,

"(a) any comments that the source protection authority wishes to make on the proposed terms of reference;

"(b) the summary of concerns referred to in clause 9(a); and

"(c) any written comments received by the source protection authority, within the time period prescribed by the regulations, after publication of the proposed terms of reference under clause 9(c).

"Minister's options

"(2) The minister shall,

"(a) approve the terms of reference; or

"(b) require the source protection authority, within such time period as is specified by the minister, to,

"(i) amend the terms of reference in accordance with the directions of the minister, and

"(ii) resubmit the terms of reference to the minister.

"Resubmission

"(3) If terms of reference are resubmitted to the minister under clause (2)(b), the minister may,

"(a) approve the amended terms of reference; or

"(b) approve the amended terms of reference with such additional amendments as the minister considers appropriate.

"Failure to resubmit

"(4) If terms of reference are not resubmitted to the minister under clause (2)(b) within the time period specified by the minister, the minister may approve the terms of reference with such amendments as the minister considers appropriate.

"Exception

"(5) The minister may not require or make any amendment to the terms of reference under subsection (2), (3) or (4) that prevents an assessment report from considering any drinking-water system specified in a resolution passed under subsection 8(3).

"Additional drinking-water systems

"(6) Without limiting the generality of subsections (2), (3) and (4), the minister may require or make an amendment to the terms of reference to provide, for the purposes of subclause 13(2)(e)(iii), that the assessment report consider any existing or planned drinking-water system specified by the minister that is located in the source protection area.

"Same

"(7) Despite subsections (2), (3), (4) and (6), the minister shall not require or make an amendment to the terms of reference to provide, for the purposes of subclause 13(2)(e)(iii), that the assessment report consider an existing or planned drinking-water system prescribed by the regulations for the purpose of this subsection."

This replacement government motion particularly deals with a lot of the concern that was raised in committee about the role of the minister in regard to the terms of reference and provides greater clarity to that and accountability and responsibility on behalf of the government.

Mr. O'Toole: I fully agree and, one more time, I'd sort of try to be co-operative here. I'd be asking for a recorded vote on this one. We'll certainly be supporting it in the general terms of openness here and, respectfully, what the NDP was trying to work toward, I believe, as well. It's in that tone that I think we should try to find some consensus here on this important bill. Recorded vote, please.

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

Ayes

Flynn, Leal, O'Toole, Ramal, Scott, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: Carried.

Shall section 10, as amended, carry? Carried.

We'll now proceed to NDP motion 37.

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

"Publication of decision

"10.1 As soon as reasonably possible after the minister makes a decision whether or not to amend the terms of reference under subsection 10(2), the minister shall publish notice of the decision on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

"(a) a brief explanation of the effect, if any, of any comments and other material submitted under subsection 10(1) on the minister's decision; and

"(b) any other information that the minister considers appropriate."

We're saying the minister has to publicly post and explain reasons for amending or not amending the terms of reference. Again, it's the whole question of transparency and accountability, making sure that the public can see what's going on and making sure the minister knows the public will know what's going on.

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

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 37.1.

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

"Publication of approval

"10.1 As soon as reasonably possible after terms of reference are approved by the minister, the minister shall publish notice of the approval on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

"(a) a brief explanation of the effect, if any, of the comments and other material submitted under subsection 10(1) on the minister's decision; and

"(b) any other information that the minister considers appropriate."

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

Mr. Tabuns: I just wanted to say again that imitation is the sincerest form of flattery.

The Chair: Thank you for that truism, Mr. Tabuns.

Mr. Wilkinson: Let the record show that I, the parliamentary assistant, echo that sentiment.

Interjection: Recorded vote.

Ayes

Flynn, Leal, Ramal, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Now NDP motion 38.

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

"Deadline for terms of reference

"10.2 The minister shall take such steps as are necessary to ensure that he or she makes a decision whether or not to amend the terms of reference under subsection 10(2) not later than six months after the source protection committee is established under section 7."

Again, we need timelines. We need to be setting targets for the ministry, for the source protection committees and for the source protection authorities. Frankly, to leave this work without timelines and targets means that we will wind up with nothing happening. With too many pressures in life, if there are not timelines and targets, then an item is simply going to be missed. I'd urge the government to actually put a little more teeth into the act with this amendment.

The Chair: Thank you, Mr. Tabuns. Any comments?

Mr. Tabuns: Recorded vote.

The Chair: Shall section 10.2, with reference to NDP motion 38, carry?

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Section 11, NDP motion 39.

Mr. Tabuns: I move that section 11 of the bill be amended by striking out "available to the public" and substituting "available to the public on the Internet and in such other manner as the source protection authority considers appropriate."

Again, it's to make sure that information is as widely available as possible and as accessible as possible to the public.

The Chair: Thank you. Any comments?

Mr. Tabuns: Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 40.

Mr. Wilkinson: Mr. Chair, we withdraw government motion 40 in favour of government motion 40.1.

The Chair: Please proceed.

Mr. Wilkinson: I move that section 11 of the bill be struck out and the following substituted:

"Terms of reference available to public

"11. If the minister has approved terms of reference, the source protection authority shall ensure that the terms of reference are available to the public as soon as reasonably possible on the Internet and in such other manner as the source protection authority considers appropriate."

I want to thank the member for Toronto–Danforth for bringing this to our attention but we feel, from a practical point of view, that it is important that the committee that has the responsibility should best inform how that information is distributed. At the very least, of course, it has to be on the Internet, but specifically where it should be to make sure that people get the information should be left in their hands.

Mr. Leal: A recorded vote.

Mr. O'Toole: I was just going to say the same thing.

The Chair: Thank you both. We'll proceed now to that recorded vote.

Ayes

Flynn, Leal, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

Shall section 11, as amended, carry? Carried.

We now proceed to government motion 41.

1440

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

"Amendment of terms of reference

"11.1(1) The source protection committee may propose amendments to the terms of reference in the circumstances prescribed by the regulations.

"Same, minister

"(2) The minister may order a source protection committee to prepare amendments to the terms of reference in accordance with directions set out in the order.

"Consultation

"(3) In preparing an amendment under subsection (1) or (2), the source protection committee shall consult with the municipalities that are affected by the amendment.

"Application of ss. 9 to 11

(4) Sections 9 to 11 apply, with necessary modifications, to an amendment under subsection (1) or (2)."

This motion would add a new section to the bill to allow for the amendment of terms of reference. Consultation with affected municipalities would be required before the amended terms of reference are provided to the source protection authority and the minister for approval.

I can say that it addresses many of the concerns raised by our environmental stakeholders in regard to non-municipal systems. As well, we heard comment on Hansard from the Trent Conservation Coalition, the Raisin Region Conservation Authority and South Nation Conservation.

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

Mr. O'Toole: It still goes back to the same section, the minister too: "The minister may order a source protection committee to prepare"—in other words, it's sort of like they are being ordered how to vote—"amendments to the terms of reference in accordance with directions set out in the order." At the end of the day, the minister and cabinet in secret will be running this thing. I can't support that.

Mr. Wilkinson: I just want to quote from Hansard. I remember having a specific conversation with Mr. Meek of the Raisin Region Conservation Authority; I believe we were in Cornwall. I said to Mr. Meek, "So you'd have a double check there to make sure we're not missing people who really should have the benefit of making sure that their water is safe?" And he replied, "The Clean Water Act should allow these non-municipal areas to be studied in the same respects as the municipal areas," so I find it interesting to watch my friend from Durham vote against the government motion. I know I'll be voting for it.

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

Mr. O'Toole: Mr. Chair, it's a matter of integrity here. I would say that as much of this bill is being dealt with in amendments, as much of it is being dealt with in regulations, more of what we're actually voting for is unseen than is seen. Quite frankly, on this particular one I'm suggesting that this person you referred from the conservation authority at the municipal level isn't here. In fact, what this does is give the minister final say. If you've read this, the minister has the final say by order or terms of reference. So the local municipality that you're downloading to now has to go out and spend the money to do these studies and source area definitions and all these various things and there's not one cent for them for enforcement. So they're being handed here pretty onerous responsibility and liability.

Really, this is what you're doing. Ultimately, you're technically circumscribing to get around the liability issues in this file. I can see this clearly now. The minister can say that they can have input. They're responsible for enforcement and their recommendations, public notice and all that stuff. They're the ones who are going to have to put the websites up and pay for all these public notices and all the newspaper articles. This is downloading of a major, major responsibility. I'm certain that the members over there don't get it, but that's what is happening here.

Thank you for the opportunity to make that clear. Yes, I'm happy to have a recorded vote on this. No, I won't be supporting it.

Mr. Wilkinson: Following those comments, I know the good member from Durham always brings a unique paradigm to all the discussions that he brings to the House. I say that with the greatest sense of charity and humour.

We were very clear, when we heard from stakeholders, that they thought it was a fundamental flaw of the bill that the terms of reference did not have the full accountability of the minister behind it, as do other sections. I think this is a necessary amendment. It provides a certain amount of reasonableness to ensure that if a municipality were to decide to exclude a local nursing home, for example, the minister could look at that issue and ensure that that is part of it.

In regard to the member's allegations about the enforcement provision, I'm sure he'll be supporting our amendment in regard to the ultimate liability of enforcement of the bill when it comes forward later on in discussion.

Mr. O'Toole: The whole bill is being dealt with through amendments.

The Chair: If there are no formal comments, we'll move to the vote.

Shall section 11.1, which refers to government motion 41, carry? I understand it's a recorded vote.

Ayes

Flynn, Leal, Ramal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

Section 12: NDP motion 42.

Mr. Tabuns: I move that subsection 12(1) of the bill be amended by striking out "shall be deemed to require consideration of" in the portion before paragraph 1 and substituting "must comply with."

The act is problematic in that there is no real meaningful protection for the Great Lakes themselves, and we all know its importance in terms of drinking water for Ontarians. We believe that the act should have been a starting point for future provincial actions to protect the Great Lakes.

Right now, source protection authorities only have to consider various agreements, when in fact there are agreements here that they shouldn't just be considering but should be complying with. So this amendment makes protection of water quality and quantity of the Great Lakes a central component of the terms of reference. Frankly, we should be complying with these domestic and international agreements. I'm surprised it was not in the original act proposed by the government.

I would ask the official opposition, along with whichever government members are in the mood for it, to come along and vote in favour of this amendment.

Mr. Wilkinson: I appreciate the amendment. I know that if you look ahead to the government package in regard to section 76, you'll see that, let alone that we were told in committee, I believe, that the province was going to set a gold standard for those of us in the Great Lakes watershed, this will probably set a platinum standard which other provinces and states will want to emulate in regard to the strengthening of the question of making sure targets are incorporated as consideration by those source planning authorities that have water flowing into our Great Lakes. So we feel that that package in

section 76 is the appropriate way to deal with the matter, given the fact that it is one of cross-jurisdiction between us and our federal government. But that's the appropriate place to deal with this issue.

Mr. O'Toole: I think on this bill—it's quite interesting. I was at that conference, as I said, this summer in Chicago that made reference to this particular water quality agreement and a couple of other acts that are signed by the states and the provinces. In fact, I think for the record it's important that the first agreement was signed by Norm Miller's father, Frank Miller. It's quite interesting. I have a copy of that agreement that was signed.

Here's the difficulty I have with this NDP amendment changing it to "must comply with." I think the parliamentary assistant is probably right. Given the importance of water, the continuous review of all those—as our knowledge increases, we realize that some of those agreements themselves that he's implying "must conform with" may be inadequate. There are challenges in the courts on bottled water and a whole bunch of other issues that weren't thought to be issues at the time of the drafting of those source protection issues.

So I tend to support this, to "require consideration," because if it was "must comply with," they're out of date, many of those agreements, going back to the 1970s and 1980s. So I'll be supporting the current wording that the government has in the legislation.

The Chair: If there are no further questions or comments, we'll proceed to the vote on NDP motion 42.

Mr. O'Toole: Recorded vote.

Ayes

Tabuns.

Nays

Leal, O'Toole, Ramal, Scott, Wilkinson, Wynne.

The Chair: Defeated.

Shall section 12 carry? Carried.

Section 13: government motion 43.

1450

Mr. Wilkinson: I move that the English version of subclause 13(2)(c)(ii) of the bill be amended by striking out "ground water and surface water" and substituting "groundwater and surface water."

Explanation—I think there's one required. This motion is made to ensure consistency in drafting throughout the bill in setting out "groundwater" as one word rather than two. It is always important that we are consistent in our legal application. I earnestly seek all-party support on this.

The Chair: If there's no further commentary, we'll proceed to the vote. Those in favour of government motion 43? Those opposed? Carried.

NDP motion 44.

Mr. Tabuns: I move that clauses 13(2)(d) to (g) of the bill be struck out and the following substituted:

"(g) identify, for each watershed identified under clause (a),

"(i) existing activities that are drinking water threats,

"(ii) possible future activities that would be drinking water threats, and

"(iii) existing conditions that result from past activities and that are drinking water threats;"

This amendment requires that we have protection for all watersheds in the source protection areas. Instead of only requiring that surface water protection zones and wellhead protection areas related to existing and planned municipal drinking water systems be identified in assessment reports, we're requiring that all existing and possible future drinking water threats are identified in the entire watershed, including private water systems.

The emphasis on municipal water systems in southern Ontario omits private water systems and water systems in parts of central and northern Ontario.

This came at us quite consistently in the course of the hearings. People wanted coverage beyond municipal drinking water systems. They wanted it extended. That was pretty clear from cottagers; that was pretty clear from other environmental groups. I think this is a reasonable amendment to the act that allows for a broadening of protection and that has public support.

Mr. Wilkinson: In response to the member from Toronto–Danforth, a couple of things. We just passed an amendment that actually, in our opinion, deals with this issue of those people who perhaps are not covered, because we've just given the minister, after some debate, the ability to designate. This is a vast province, and it is important that now he or she has the ability to do that.

In this amendment, which I think is intended to broaden the scope, I hearken back to the words of Justice O'Connor, because I feel our function here is to, in a sense, complete a chapter of history that was opened with the tragedy in Walkerton, and I feel that this bill is part of that. So in a sense, I'm inspired by what he said.

On page 105 of part two of the Walkerton inquiry, Justice O'Connor indicates that source protection plans should identify the areas where "a significant direct threat exists to the safety of drinking water...."

Then again, on page 106 of part two of the Walkerton inquiry, the good justice states, "I envision that the planning process would identify areas where the protected measures for drinking water sources are critical to public health and safety, and that in such cases, the plan would govern municipal land use and zoning decisions. However, other measures in the plan need not require such rigidity," I would assume because he considered the vastness of this province. And so we believe that the bill as currently drafted by the government actually fulfills the intention of the recommendation of the one person who probably gave the greatest consideration, the greatest thought, to this whole issue.

The Chair: Thank you. Any further comments on NDP motion 44? Seeing none, we'll proceed to the vote.

Mr. Tabuns: Recorded, please.

Ayes

Tabuns.

Nays

Leal, Ramal, Wynne, Wilkinson.

The Chair: Defeated.

NDP motion 45.

Mr. Tabuns: I move that clause 13(2)(e) of the bill be struck out and the following substituted:

"(e) identify all the surface water intake protection zones and wellhead protection areas that are in the watersheds identified under clause (a) and that are related to existing and planned drinking water systems;"

This is not as comprehensive as my previous amendment, but it does require that surface water intake protection zones and wellhead protection areas related to existing or planned drinking water systems be addressed in assessment reports in all source protection areas across the province regardless of whether the drinking water system is municipal or not.

I tried for a higher standard with the previous amendment. Not getting it, I'm trying for the next best thing.

The Chair: Thank you. Are there any comments?

Mr. Wilkinson: Same arguments.

The Chair: We'll proceed to the vote.

Mr. Tabuns: Recorded.

The Chair: Recorded.

Ayes

Tabuns.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 46.

Mr. Tabuns: I've had it suggested to me that I need to change the numbering on this.

I move that clause 13(2)(e) of the bill be amended by striking out "and" at the end of subclause (i), by adding "and" at the end of subclause (ii) and by adding the following subclause—I'm sorry. I'm going to stop for a second.

Mr. Clerk, you suggested that I would have to change the number here to 10(6). I'm not fully aware of which numbers apply to which.

The Clerk of the Committee: You had an earlier amendment, number 36. If that amendment in and of itself didn't carry, this one on its own would be out of order. There was a subsequent government amendment that came in behind that. This can still be in order if in fact you're referring to their numbering and not the earlier amendment that was defeated.

Mr. Tabuns: So am I talking about subclause (vi) or subsection 10(6)?

The Clerk of the Committee: Subsection 10(6). You're making reference to their amendment.

Mr. Tabuns: Right. Okay, I see. So—"(iii) existing and planned drinking water systems that, pursuant to an amendment to the terms of reference that was made by the minister under subsection 10(6), the terms of reference provide for the assessment report to consider;"

This amendment requires that, for the existing or planned drinking water systems the minister adds under our amendment 10(6), all surface water intake protection zones and wellhead protection areas are to be identified, again, to expand the scope of coverage of this bill.

The Chair: Thank you, Mr. Tabuns.

Mr. Wilkinson: We have the same arguments in opposition.

Mr. Tabuns: Recorded vote.

The Chair: We'll proceed to the vote.

Ayes

Tabuns.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

We'll now move to PC motion 46.1.

Ms. Scott: I'll leave it to the clerk to clarify if I have to amend some of this wording if it's affected by the previous amendments we've passed. But I'll read it out.

I move that clause 13(2)(e) of the bill be amended by striking out the portion before subclause (i) and substituting the following:

"(e) identify all the surface water intake protection zones, wellhead protection areas and surface right properties within vulnerable areas that are in the watersheds identified under clause (a) and that are related to:"

This comes from stakeholders in many municipalities to keep the decision-making at the local level: for those municipalities with large populations on surface rights properties and known vulnerability to act to safeguard drinking water and initiate the process that I believe was envisioned in the act. Other municipalities may have different circumstances, so they could choose not to act in that manner.

The Chair: Thank you, Ms. Scott. Any further comments? Seeing none, we'll proceed to the vote on PC motion 46.1.

Mr. O'Toole: Recorded.

Ayes

O'Toole, Scott.

Nays

Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 47.

Mr. Tabuns: I move that clauses 13(2)(h) and (i) of the bill be struck out and the following substituted:

"(i) for each activity and condition identified under clause (g), specify the location where, or area within

which, the activity or condition is or would be a drinking water threat; and"

It's a question here of using the term "drinking water threat" instead of "significant drinking water threat." If it's a threat, it's a threat, and I don't think it needs to be modified by the word "significant."

1500

The Chair: Thank you. Any comments?

Mr. Wilkinson: I'm with O'Connor on this one, Mr. Chair.

The Chair: Proceeding to the vote, those in favour of NDP motion 47?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 48.

Mr. Wilkinson: I move that clauses 13(2)(d) to (i) of the bill be struck out and the following substituted:

"(d) identify all the significant groundwater recharge areas and highly vulnerable aquifers that are in the source protection area;

"(e) identify all the surface water intake protection zones and wellhead protection areas that are in the source protection area and that are related to,

"(i) existing and planned municipal drinking-water systems that serve or are planned to serve major residential developments,

"(ii) existing and planned drinking-water systems that, pursuant to resolutions passed under subsection 8(3), the terms of reference provide for the assessment report to consider,

"(iii) existing and planned drinking-water systems that, pursuant to an amendment to the terms of reference that was required or made by the minister under subsection 10(6), the terms of reference provide for the assessment report to consider,

"(iv) existing and planned drinking-water systems prescribed by the regulations that serve or are planned to serve reserves as defined in the Indian Act (Canada);

"(f) describe the drinking water issues relating to the quality and quantity of water in each of the vulnerable areas identified under clauses (d) and (e);

"(g) list, for each vulnerable area identified under clauses (d) and (e),

"(i) activities that are or would be drinking water threats, and

"(ii) conditions that result from past activities and that are drinking water threats;

"(h) identify, within each vulnerable area identified under clauses (d) and (e),

"(i) the areas where an activity listed under clause (g) is or would be a significant drinking water threat, and

(ii) the areas where a condition listed under clause (g) is a significant drinking water threat; and"

Mr. Chair, I know that this addresses a number of recommendations, which we had from environmental NGOs, from First Nations and other non-municipal systems, that they would be included in the planning process. I would say in particular that it deals with the whole issue of class of activity, which is a recommendation that we heard loud and clear from a number of our affected landowners and farm groups.

The Chair: Mr. Leal.

Mr. Leal: Mr. Chair, this is a substantial amendment, and because it is, I'll be asking for a recorded vote on this one.

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

Mr. O'Toole: I guess this one here, with the recorded vote and to give some explanation of why I'll be voting against it, you have to look at the entire section 13, which in the public's mind—perhaps the parliamentary assistant could allay some of these suspicions, your motives. If you look at a section here that has not been amended, subsection (2), and if you look at primarily "Assessment reports," "Contents,"—and I'll only identify a couple of things—first it says:

"An assessment report shall, in accordance with the regulations, the rules and the terms of reference" do the following things: identify all the watershed areas—that's great; characterize the water quality and quantity—now we're starting to get into the quantity thing; set out a water budget and also identify "the different ways that water enters and leaves the watershed." You get into water-taking permits and measuring.

This is where the public believes this is the first step towards metering wells. I put to you, unless you're going to be honest here and tell them, how can you measure quality and quantity unless you're actually measuring all the outputs on water-taking permits as well as my well? If you aren't measuring it, you can't do the job. And if you are, why don't you be honest with the people and say you are going to be actually metering all the wells? I don't have a problem with that. What I have a problem with is, again, the process of honesty, of openness. Just tell the people the truth for a change.

This is quite serious, and I don't want any sidestepping on the issue. This is what this section is doing. I agree with the quality issue; Mr. Tabuns does; everyone does. You are going to be setting out in regulation—are you going to establish these things under the various watershed areas?

The quality and the quantity comes next. The quantity is going to be that every little bubbling, percolating area in the province is going to have to be monitored by some engineer, not some clerk—a whole regime of people out there, up in the Laurentians and all over, in the forest and various things, taking all these water samples and measuring and metering.

Look, just be honest. This is not doable as it's described here. Tell the people that you're actually going to be measuring the quantity of water, and that means metering it and charging them for it. Just be honest. I didn't say I was against it.

Mr. Wilkinson: We're still trying to figure out how the Laurentians got into Ontario, but anyway. They might be in another province. Anyway, that's the other side of the Ottawa River.

I know in the rather fevered mind of the member from Durham—I have never seen someone start connecting non-existent dots.

Let's just be clear. First of all, there is no metering of private wells, and it does not say that. It is in your very vibrant imagination; only you could come up with something like this.

Interjection.

Mr. Wilkinson: Exactly, when we're geographically challenged.

If I follow the kind of convoluted logic of the member from Durham, he somehow believes that this bill requires the government of Ontario or source planning protection to monitor every molecule of water; far from it. There's something called the science of hydrogeology. Perhaps when you were just a lad in high school, they didn't have that, but we have that now in Ontario, and that's what's inspiring all of the work that's being done, some $120 million worth of work that's being done. No one is suggesting that every molecule will be monitored, but how can we value something if we don't know how much is coming in and how much is going out?

We already have a regime where there is metering of commercial wells. People have permits to take water. It does not require a rocket scientist but perhaps somebody with just some common sense and just a little bit of scientific method to be able to come up with, in regard to every watershed, an assessment of something that has not been done in this province; that is, trying to get a handle on that great pristine reservoir that we are privileged as citizens of this planet to be stewards of, whether it is the Great Lakes, one of the greatest sources of fresh water on the planet, or—as the deputy mayor of Walkerton told us, we are sitting on an asset that perhaps is five times greater, underneath our feet. So it is important for us to be able to create not just the question of quality, but also of quantity.

No one is suggesting or has suggested, other than some opposition members up to perhaps some nefarious no-good, that somehow we're going to have monitoring of every source of water. But we do have a sense of what's going into an aquifer, and we also have an ability to monitor what is going out. That's what will inform the water budget, and for those who want to postulate and hypothecate all over this province to try to spread misinformation, you go right ahead. We'll go with the bill and what it says, which is very clear and doesn't actually allow for any fevered speculation.

The Chair: Thank you. Ms. Scott.

Ms. Scott: Just to follow up my colleague Mr. O'Toole, who made a very valid point, we have to say, in Peterborough—although I can't remember the stakeholder that presented. The fact that you want to, in the surface water intake zones, account for the amount of water going out—you're saying you're not going to meter the wells within that zone, but how are you going to know? So it's what's not in the bill that's scaring a lot of the people. I think that's what Mr. O'Toole and a lot of the stakeholders were trying to mention to you, suggest to you. You said we're instilling fear. We didn't have to instil fear at all. These people read the bill themselves, and it's what it didn't say that's scaring them and its relation to monitoring of their private well system. So just explain how you're going to make these mechanics work, if you can.

Mr. Wilkinson: The bill is not dealing with every molecule of water. It's dealing with an assessment report that is not based on my well or someone else's well; it is based on the entire aquifer of the region where people draw on the common source of drinking water. Not every molecule coming in or going out can be measured, but obviously science and the advancing science of hydrogeology are allowing us to get to a position where we can agree on the amounts coming in and going out and, therefore, determine a budget.

1510

I think one of the most forward-thinking things of this bill is that it goes beyond just the issue of quality and also addresses the one of quantity. It is a leap of Herculean proportion to somehow address in this bill, when it's dealing with the entire watershed of, say, everybody in the Thames River valley, that somehow this bill has to do with each and every private well. It's a canard; it's wrong; it keeps on being replicated. There is nowhere in the bill that it says that that is exactly what is happening. It takes a certain amount of either informed or misinformed speculation to read into a bill something that clearly is not there.

Mr. Tabuns: I'm concerned with this section, not because it expands the areas that are going to be examined but because their protection still relies on undefined phrases or words such as "significant drinking water threat." I don't know how good the protection is that I'm voting for or against and I find that highly problematic.

I also don't like the fact that in the original clause there was provision for assessment of future risks which seems to have been dropped from this amendment. So both because of a great lack of precision and because of what appears to be a reduction in the scope of the assessment of risk, assessment of concern, I can't support this amendment.

Mr. O'Toole: I misspoke. I suppose I was referring to northern Ontario, the Laurentian Shield, and that's what I believe serves as an important breakwater for water recharge and discharge in the province; more specifically, in the broadest sense, even if you're determining the taking of water, whether it's through a water bottle company or for a large livestock operation that is taking, as the footprint of agriculture increases, larger and larger quantities of water and must have clean and safe water for livestock.

We understand that, and it's becoming more important input. That's what this needs to clarify. You can say it now, and I would prefer to see it in writing from the minister. I don't mean to be personal or critical. I'm just saying that that's what the public believes. If you're doing it directly at some meter on some wellhead—and there are parts of this bill that say "every well," so it is at the micro level. The previous sections we've already dealt with said that every well must be identified, and there are certain wells that must be capped and closed appropriately and all that, which is unimportant. It's the obsequious nature of how you're going about this to avoid telling people how you're going to measure it. Are you going to look at the broad science of it? Say here's an aquifer. There are 19 farms, 4,000 livestock heads, here's the ministry's management plan, and model all this stuff, which is probable, and then say, "In this area, on the tax bill will be the following charge." That's what you're going to be doing, because all of this monitoring is going to be paid for by the people in that watershed. That's how it's going to be paid for. The government doesn't have any magic chequebook anywhere except those users.

We do agree with safe, clean quantities of drinking water—nobody has a problem with that—but be honest with the people. That's what it is. I look at the members here who aren't even really participating in the debate; they're just having lunch and voting yes when John tells them. This is a very serious bill. We heard from across Ontario. It's complicated from the point of view that many people don't have the opportunity and we have to ask questions and get research material from staff. You're trivializing many of the concerns that are out there and you've changed some things here which we've agreed with.

Let's turn this around and try to find a little line of co-operation on this thing, because right now I see you've got a script, you've got several ministry people on a technical bill, and, "These are the ones you vote yes on," Jeff, Kevin, Khalil, Kathleen and the rest.

Interjection.

Mr. O'Toole: I said Kevin. "And here are the ones you vote no on." The "no" votes are all the NDP ones and all the Conservative ones, and I put to you that some of them are well considered from our stakeholders and they're going to be disappointed. I can tell you that this section is troubling because of its lack of clarity, honesty and openness. That's what is missing. Some of the amendments I kind of agree with, but the general thrust here is what is not on paper.

Mr. Wilkinson: I think there are three things we can do. We can recall Hansard, where my minister said clearly in the Legislature, on the record, that domestic wells will not be monitored. I don't know how much clearer it can be, but some people don't want to listen to what our minister has to say. If they want to keep on spreading disinformation in a partisan fashion, they can.

I would say to my friend from Toronto–Danforth, in regard to future activities, I read the amendment that I put in with (g)(i), "activities that are or would be drinking water threats," so it seems to me that that speaks to the whole issue of the future.

Just so we all have a primer on hydrogeology, I'd like to ask one of our good friends from the ministry to come up so that we understand that those people who are running around the back country saying that somehow this is voodoo science are absolutely wrong. There have been tremendous advances made in regard to science, in regard to hydrogeology. I was just wondering if you might be able to join us, Ian. Thank you.

Mr. Ian Smith: My name is Ian Smith. I'm the director of the drinking water program management branch at the Ministry of the Environment. We've been working with our colleagues at the Ministry of Natural Resources now for about 18 months to draft technical guidance and rules that water resources engineers will be following as they do the water budgets for each of these watersheds. In particular, we're been developing a tiered set of rules or directions for these water resource engineers to follow who are currently working at the conservation authorities. So they initially do a sketch water budget for the entire watershed. In areas where municipalities are taking water for drinking water supplies, they do a more detailed budget. Where they sense from that more detailed budget that there may be a water shortage, they will then go to a further, more detailed budget.

Finally, if at the end of all that they've come to a point where they believe there's an overallocation of water, they would go to a full-scale, quantified water quantity budget that would feed directly into the semi-quantitative risk assessment, and would allow us to calculate at the source protection committee that there was a significant risk for water shortages in that aquifer or that surface water system.

Through all of that, the direction we have been providing is that they will estimate water-takings from things such as the multiple private systems or systems which are currently not required to report their water-takings, such as under the permit to take water program.

Mr. O'Toole: With due respect, my next-door neighbour is Walter Gibson. He has I believe a Ph.D. in agronomy. He does all the water studies for Durham region. You can look up his name. I've spoken to him on it and he says that, yes, they can model these data, as you've described in other terms, so I'm not completely misspoken on this. I think you can quantify development applications. I know of subdivisions in my area that actually are on one big, giant well. It's an underground lake, underneath the subdivision. Maybe visually we don't see water that way, but that's apparently what it is: a huge underground lake that they're feeding water from. It should be safe and clean and they should have some idea of how to measure it, and I'm sure they do, through seismographic studies and other kinds of things.

We're only saying here in the argument, and why we're taking so much time on this, is that in this section you are measuring it. You're using smart meters like you're doing electricity that way. Do you understand? They're modelling it and they are going to charge for it.

You're going to end up with like the York-Durham pipe; there's a huge problem there of all the water draining out of the system. I'm sure you're following that one: a huge issue.

I would suspect that when there's a development application, you're going to say, "You're going to pay so much for some kind of charge to make sure we can transfer water from Lake Simcoe," or someplace, and that's what you're going to be doing. That's all I'm saying. So you are not using the old, prehistoric little water meters. But you are measuring it and we're going to pay for it and it's going to get more expensive for sure, that's all, and agriculture will pay by the number of livestock units and their nutrient management plan.

I'm fairly accurate, fairly comfortable and fairly confident in what I say. I dislike someone presuming that I'm not, because I am.

1520

Mr. Wilkinson: I say to Mr. O'Toole that it's interesting that you've changed your position from the beginning.

Mr. O'Toole: You're reading the notes quite well that they've given you to read.

Mr. Wilkinson: I notice you've changed your position from when you started, because you didn't say again the canard that you had at the beginning of your long tirade about the metering of private wells. So I'm glad you acknowledge that and that there is science and there is modelling.

As to your assertion that there would be some types of charges to agriculture, thanks for making the case for exactly why, with an attitude like that, the good farmers of Ontario shouldn't vote your party back into office.

The Chair: Thank you. May I now call for the vote on government motion 48?

Interjections.

The Chair: Recorded vote.

Mr. Tabuns: I have to make one comment, please.

The Chair: Mr. Tabuns, please go ahead.

Mr. Tabuns: I'd just note that it was pointed out by the parliamentary assistant that in (g), the term that is used is "drinking water threats," both in (i) and (ii), but when we go to (h), it's "significant drinking water threat" that is the operative and ultimately determinant phrase. I think we can't get away from this. We have an undefined term that actually is going to determine how action is taken, and I think that's highly problematic for this bill. Thus, I will not be supporting this amendment.

The Chair: Thank you. If there are no further comments, we'll proceed to the vote on government motion 48.

Ayes

Flynn, Leal, Wilkinson, Wynne.

Nays

O'Toole, Scott, Tabuns.

The Chair: Carried.

NDP motion 49.

Mr. Tabuns: I move that section 13 of the bill be amended by adding the following subsection:

"Climate change

"(2.1) In preparing the assessment report, the source protection committee shall consider the effects of climate change."

Water systems are dynamic. They are affected by climatic conditions. We in Ontario will see substantial changes in our operating environment over the next few decades. We will see drought in some areas, floods in others, and in some instances combinations of both at different points in the year. Our systems of water provision will be strained and challenged in ways that we have to prepare for now. The reality is that we will be setting in motion investments, changing land use planning and putting in place infrastructure that will have to deal with conditions as they are today but also conditions that will be here over the next 30, 40 and 50 years. Frankly, if a source protection committee is going to do an adequate job, it has to assume that conditions over the next few decades could be very different from the ones we are facing now. If we want to protect water resources, we have to incorporate that into our planning and acting at this stage. I would urge that this amendment be adopted by the government so that its plans reflect those changes that are coming down the pipe, as it were.

The Chair: Thank you. Further comments?

Mr. Wilkinson: I believe the director's rules that will be contained under section 98 are the best way of addressing the concerns raised by the member.

The Chair: Thank you. Any further comments?

Mr. Tabuns: If I'm correct, section 98 refers to regulation.

Mr. Wilkinson: Absolutely.

Mr. Tabuns: I think it needs to be recognized in law, not in regulation. We are looking at a significant disruption of our environment, of our local ecology. I believe the concerns that have been evinced by the parliamentary assistant about potential changes in government in the future should never be set aside. Frankly, we should be embodying this in the legislation so that action on climate change has as much protection as we can give it and it is not put into the regulations section, where the cabinet in two or three years, with a government that may not be as friendly to these issues, could simply dispense with it.

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

Mr. Tabuns: Recorded vote; that's it.

Ayes

Tabuns.

Nays

Flynn, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 50.

Mr. Wilkinson: I move that section 13 of the bill be amended by adding the following subsection:

"Identification of drinking water threats

"(2.1) Clauses 2(g) and (h) do not apply to a vulnerable area in the circumstances prescribed by the regulations."

By way of explanation, I can say that this motion is made to provide that the requirement to identify activities and conditions that are drinking water threats in areas where they are or would be significant drinking water threats does not apply to vulnerable areas in prescribed circumstances. Therefore, in circumstances set out in the regulations, it would not be necessary to identify significant drinking water threats in some vulnerable areas.

It particularly addresses agriculture and industry concerns by focusing and prioritizing work in areas of high risk. It clarifies that this is not a bill intended to establish wellhead protection areas around domestic wells. Again, it goes back to the issue of clarity as to what this bill does protect and what it doesn't propose to protect.

The Chair: Comments?

Mr. Tabuns: A simple comment: Once again, we're being asked to vote in favour of something where the text is not available to us, so we can't decide whether we're for or against it. It's the pig-in-the-poke problem.

Mr. Wilkinson: Well, we're either for the framework or we're not.

Mr. Tabuns: "Framework" left undefined means that we as legislators are just simply saying, "You fix it," without giving you direction. I don't think that's a reasonable way to run government, and it's certainly not a way for us to be held accountable, because I can always say, "I voted in favour of the framework. Yes, they put in something that makes all of us crazy but, in fact, we trusted them." I don't think it's reasonable, John, and if you were on this side of the table, I think you'd be taking the same position as me.

Mr. Wilkinson: As someone who actually sits in government, the idea that this place can micromanage every detail is beyond me. Prescribing everything in legislation so that any time we decide from a common-sense point of view that it's wrong, it requires us to get back into the legislative calendar to fix it, is wrong. There is always a balance. We may disagree, but in principle there always is a balance between legislation and regulation. There has to be.

It has taken years and years just to get to this point, I say to my friend. So again, we need to be in a position where we're getting on with it. There is a tremendous amount of work being done by so many people who are waiting to see and receive a signal as to whether or not we're moving forward with this legislation. I think the time has come for action. We can endlessly debate this and endlessly have this go around and around. There are some things that should be developed by regulation.

Mr. Tabuns: I won't argue that there shouldn't be some things developed by regulation. In fact, I think you're right. There is a question of balance. But when you leave out substantial definitions, that's problematic. I can see where you would want to have regulation for smaller items, but when you're talking about definitions and you're continually, in the course of this bill, not defining items or having us adopt sections where large chunks are undefined, that's problematic. It means that you can't be held accountable and I can't be held accountable. I think that's wrong in a democracy.

The Chair: Thank you, Mr. Tabuns. We'll proceed now to the vote on government motion 50.

Mr. Tabuns: Recorded.

Ayes

Flynn, Leal, Wilkinson, Wynne.

Nays

Tabuns.

The Chair: Carried. Shall section 13, as amended, carry? Carried.

Section 14: NDP motion 51.

Mr. Tabuns: I move that section 14 of the bill be amended by striking out "and" at the end of clause (a) and by adding the following clauses:

"(c) publish the proposed assessment report on the Internet and in such other manner as the source protection committee considers appropriate;

"(d) give notice of the proposed assessment report in accordance with the regulations to all persons who made oral or written representations to the source protection committee on the assessment report, and to the persons prescribed by the regulations, together with information on how copies of the assessment report may be obtained and an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations; and

"(e) publish notice of the proposed assessment report in all local newspapers in the source protection area, together with information on how members of the public may obtain copies of the assessment report and an invitation to the public to submit written comments to the source protection authority within the time period prescribed by the regulations."

I note that the government has cribbed my notes and given a Reader's Digest version in the next amendment. However, I think mine is the better amendment and urge all present to vote in favour of it.

1530

The Chair: Thank you, Mr. Tabuns. We'll proceed to the vote unless there are any further comments.

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Leal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 51.1.

Mr. Wilkinson: I move that section 14 of the bill be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) publish the proposed assessment report on the Internet and in such other manner as the source protection committee considers appropriate, together with an invitation to submit written comments to the source protection authority within the time period prescribed by the regulations."

It goes to the same issue. We agree with the NDP in regard to the issue of transparency, but what other means beyond the Internet should be used should be determined by the local people and not by fiat from 135 St. Clair West.

The Chair: Comments?

Mr. Leal: Recorded vote.

The Chair: Recorded vote, to which we will proceed.

Ayes

Flynn, Leal, O'Toole, Scott, Tabuns, Wilkinson, Wynne.

The Chair: Carried.

Shall section 14, as amended, carry? Carried.

New section 14.1: PC motion 52.

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

"Environmental Review Tribunal

"14.1(1) The Environmental Review Tribunal shall convene for the purpose of conducting one or more hearings within the source protection area or in the general proximity of that area for the purpose of receiving representations respecting the proposed assessment report, or any matter relating to the proposed assessment report.

"Duty of tribunal

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

"Parties

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

"Decision

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

"Appeals from tribunal decision

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

We heard the recommendations for this throughout. There needs to be more of a robust appeals process for those impacted by the bill. This is trying to get away from the government's punitive approach that it has taken with this bill so that those accused have any and all reasonable means to ensure that these actions are fair and just.

The Chair: Thank you. Any further comments on PC motion 52?

Mr. Wilkinson: On behalf of the government, we won't be supporting this because we feel that in the question of the assessment report, an adversarial hearing based on competing scientists is not the way to engender the type of collegial work that we need to be happening at the local level. There is due process, there are appeals, but in the question here what I foresee is an attempt to completely hamstring this process and have it diverted into years and years of contentious litigation rather than focusing on what people have told us and what Justice O'Connor told us to do, which is to get the people who are sharing the common source of drinking water around the table and let them sort it out.

To me, there is plenty of due process in this. But to start this whole thing by having duelling lawyers is not going to get us to where we want to be, which is protecting our sources of drinking water.

Ms. Scott: The reason for the amendment and its purpose is, the way the government approached it initially is going to be confrontational. With this in place, we hope there aren't as many confrontations, so if there is a more explicit due process, as you inferred that the other will be due process—a lot of our stakeholders don't feel that way, and thus the amendment has been brought forward.

Mr. Wilkinson: I was wondering if you talked to the stakeholders after we put in our package, where we have the OFA and OFEC, Conservation Ontario and the Association of Municipalities of Ontario, who have all decided that, given the amendments that they asked for and that we're providing, their anxiety has gone down substantially. I think it has engendered the goodwill required to allow for implementation to happen. In the absence of those government amendments, I could see the point that you're trying to raise. But I think that a lot of those fears have been put down, despite those who want to create fears.

Again, I point to the minister coming and putting in the stewardship fund. I think all of those things, as a package, have allowed us to take the right approach. For this to work, we need people to come around the table and work together. If the first opportunity, which is presented in this amendment, is, "Well, just go to court," this whole thing is just going to be gridlocked in no time. I can think of many lawyers who will be lining up to get to this work.

That doesn't mean that we don't have to have appeals and there won't be lawyers, but here we are looking at the whole question of the assessment report. The issue is how it impacts people ultimately. So I believe that the

appropriate way to do it is the way that we've proposed in our bill. I think the fear has been greatly reduced by the package the government has put into this bill in regard to amendments.

Ms. Scott: I'd like to thank the member and acknowledge that, yes, there were a lot of amendments to correct the bill; some have been rectified in some of the government amendments. I guess we'll wait to see when we go through the 226 or 230 amendments we have.

Mr. Wilkinson: They're not all ours.

Ms. Scott: No, they're not.

The Chair: Thank you. We'll proceed now to the consideration of PC motion 52. Shall section 14.1, referring to PC motion 52, carry? Those in favour? Those opposed? Defeated.

NDP motion 53.

Mr. Tabuns: I move that subsection 15(1) of the bill be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) any written comments received by the source protection authority after publication of the assessment report under clause 14(c)."

Again, followed by a government motion that I don't think is as good as mine, I'd urge you all to vote for my amendment.

The Chair: Thank you, Mr. Tabuns. Any comments?

Mr. Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 53.1.

Mr. Wilkinson: I move that subsection 15(1) of the bill be amended by striking out "and" at the end of clause (a), by adding "and" at the end of clause (b) and by adding the following clause:

"(c) any written comments received by the source protection authority, within the time period prescribed by the regulations, after publication of the proposed assessment report under clause 14(c)."

It's for the same reason, as to why we feel that this is the best way to ensure transparency.

The Chair: Further comments on government motion 53.1? Seeing none, we'll proceed to the vote.

Mr. Wilkinson: Recorded vote.

Ayes

Flynn, Ramal, Tabuns, Wilkinson, Wynne.

Nays

O'Toole, Scott.

The Chair: Carried.

Shall section 15, as amended, carry? Carried.

Section 15.1, new section, NDP motion 54.

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

"Publication of decision

"15.1 As soon as reasonably possible after an assessment report is approved by the director, the director shall publish notice of the approval on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

"(a) a brief explanation of the effect, if any, of any comments and other material submitted under subsection 15(1) on the director's decision; and

"(b) any other information that the director considers appropriate."

Again, it's part of the exercise of making this bill more accessible, more open and more transparent.

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

Mr. O'Toole: I'm seeing a little bit of a pattern developing here. It would appear that the government, rather than voting even tokenistically with one opposition—NDP or Conservative—motion or amendment, has reviewed them and redrafted them, almost identically, so that they couldn't or wouldn't support any opposition motions here. It's such trivial abuse. It's tragic that that's the way it's working. I'll be supporting Mr. Tabuns's motion, knowing that they came up with the idea and the government's just copying them and submitting their own, which just shows the willingness to co-operate here is at a low point.

1540

The Chair: Mr. Ramal.

Mr. Khalil Ramal (London–Fanshawe): Thank you, Mr. Chair. Mr. O'Toole has inspired me to speak this afternoon. I don't know why he talks in the committee as if we are here making a deal, a trade-off. He forgot about the direction of the government to ensure all the people of Ontario have clean and safe water. It's not about, "Give me one; I'll give you another one." So the issue is about philosophy and direction. That's why we're honoured and privileged to be part of a government that looks after the people of Ontario.

The Chair: Thank you, Dr. Ramal. Any further comments?

Mr. Wilkinson: Mr. Chair, just for the record, we applaud the amendments that were put forward by the NDP, but upon reflection we have to make sure that they fit in with all of the amendments. It's always to the government to carry it so that these bills are drafted in a consistent fashion.

I think it's time to vote yet again.

The Chair: Agreed. All those in favour of NDP motion 54? Shall section 15.1 carry?

Interjection: Recorded vote.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 54.1.

Mr. Wilkinson: Well, Mr. Chair, to no one's surprise, I move that the bill be amended by adding the following section:

"Publication of approval

"15.1 As soon as reasonably possible after an assessment report is approved by the director, the director shall publish notice of the approval on the environmental registry established under the Environmental Bill of Rights, 1993, together with,

"(a) a brief explanation of the effect, if any, of the comments and other material submitted under subsection 15(1) on the director's decision; and

"(b) any other information that the director considers appropriate."

The Chair: Thank you, Mr. Wilkinson. Any further comments? Proceeding directly to the vote—

Mr. Wilkinson: Recorded vote.

The Chair: Recorded.

Ayes

Flynn, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

New section 15.2: NDP motion 55.

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

"Deadline for assessment report

"15.1 The minister shall take such steps as are necessary to ensure that the director approves the assessment report under section 15 not later than 12 months after the source protection committee is established under section 7."

Again, it's a question of establishing timelines so this process moves forward. Certainly, in discussing an earlier opposition motion, the parliamentary assistant expressed his concern about things being tangled and tied up forever, so I would hope that, keeping those words in mind, he will open his heart and mind to this particular amendment and support it.

Mr. Wilkinson: My natural inclination to agree with my friend is tempered by the fact that I am actually on the government side of the House and perhaps—well, it's not that it's my first wish, but perhaps one day you'll have that opportunity, I say to my friend. What you would see, when you look at the vast quantities of work that have to be done by the ministry, is that it is far better for the ministry to be able to give advice to the minister as to what are the appropriate timelines. We are trying to do something right across this province in 19 different source protection authorities plus other areas that may be included, and for the efficient running of government it is important for us to be able to control those timelines. I understand some anxiety, but I can assure you on behalf of our government that we will be moving expeditiously with getting the bill through and implemented. I think we've gone a long way in making sure that the bill does get implemented and doesn't become a question of litigation, as suggested by the opposition.

Mr. Tabuns: Based on that argument, I'd urge you strongly to support this amendment.

The Chair: Thank you. We'll proceed to the vote on NDP motion 55. Shall section 15.2 carry?

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

No amendments having been received for section 16, we'll vote directly. Shall section 16 carry? Carried.

NDP motion 56.

Mr. Tabuns: I move that section 17 of the bill be amended by striking out "available to the public" and substituting "available to the public on the Internet and in such other manner as the source protection authority considers appropriate."

Again, it's my ongoing concern that this bill be operated, implemented in a way that's fully accessible, transparent to the public. I see in 56.1 that I have inspired action on the part of the government.

The Chair: Thank you, Mr. Tabuns. Further comments?

Mr. Wilkinson: Mr. Chairman, I think there could be inspiration breaking out in the House, as we say. You know, you've inspired us to actually, in our amendment, add "as soon as reasonably possible," so I think it might actually be a stronger amendment. But we appreciate the thought and have taken it into consideration.

Mr. Tabuns: I'd be happy to add that.

Mr. Wilkinson: Well, if you'd be prepared to add that, we'd be more than happy.

Mr. Tabuns: Okay. I will reread: I move that section 17 of the bill be amended by striking out "available to the public" and substituting "available to the public as soon as reasonably possible on the Internet and in such other manner as the source protection authority considers appropriate."

The Chair: At this time we're voting on the amendment to the amendment, so we'll open that for the floor. We'll proceed directly to the vote. Mr. O'Toole?

Mr. O'Toole: This is an amendment to the amendment. This is another case where I think the NDP have done a good job in terms of bringing some of these amendments forward and the government has done a good job of copying or imitating them. In fact, it shows

the haste and ill-conceived process that this bill has gone through. Now we're dealing with amendments to the amendments; they're being walked on and walked off. This bill is so serious and so important. I wish the government would have taken the time to draft it correctly and consulted thoroughly, as opposed to this charade that's going on here this afternoon and tomorrow. I'm very surprised.

The Chair: Thank you, Mr. O'Toole. Shall we vote on the amendment to the amendment?

Mr. Wilkinson: Just after I put on the record that I couldn't disagree more with the member for Durham.

The Chair: Thank you. We'll now proceed to the vote on the amendment to the amendment. Those in favour? Those opposed? Carried.

May we now proceed to the vote on the amendment, as amended, NDP motion 56.

Mr. Tabuns: Recorded.

The Chair: Recorded vote.

Ayes

Flynn, O'Toole, Ramal, Scott, Tabuns, Wilkinson, Wynne.

The Chair: None opposed. Carried.

Mr. Wilkinson: On behalf of the government I withdraw government amendment 56.1.

The Chair: Thank you, Mr. Wilkinson.

NDP motion 57.

Mr. Tabuns: I move that subsection 18(1) of the bill be amended by striking out—

Mr. Wilkinson: Point of order.

The Chair: Point of order, Mr. Wilkinson.

Mr. Wilkinson: I believe we need to vote now on section 17, Chair.

The Chair: Shall section 17, as amended, carry? Carried.

Proceed, Mr. Tabuns. NDP motion 57.

Mr. Tabuns: I move that subsection 18(1) of the bill be amended by striking out "significant drinking water threats" wherever it appears and substituting in each case "drinking water threats."

We've had this debate through the day. "Significant drinking water threats" is not defined. I have put forward a motion regarding drinking water threats themselves. I think that for us to actually do our work as legislators we should be using terms that are defined and not simply leaving definition later to regulation. Beyond that, by using the word "significant," one has to ask, "So how protective is that and where will that threshold be set?" I think it's clearer and cleaner to use the definition that I put forward and to adopt this amendment.

1550

The Chair: Thank you, Mr. Tabuns. Any further comments? We now move to consideration of NDP motion 57.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 58.

Mr. Tabuns: I move that subsection 18(3) of the bill be amended by striking out "available to the public" and substituting "available to the public as soon as reasonably possible."

Given a recent suggestion of amendment by the government ranks there, I would think that they would be very open to that wording.

The Chair: Any further comments on NDP motion 58?

Mr. Wilkinson: Actually, Mr. Chair, I know that the government plans to table a motion shortly that will deal with this issue, and as a result we will be voting against it.

The Chair: We'll proceed with the vote. Those in favour of NDP motion 58?

Mr. Tabuns: Recorded.

Ayes

O'Toole, Scott, Tabuns.

Nays

Flynn, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Government motion 59.

Mr. Wilkinson: Mr. Chairman, I respectfully withdraw government motion 59. We have provided a replacement motion which is known as motion number 59.1.

The Chair: Proceed.

Mr. Wilkinson: Thank you. I move that subsections 18(1), (2) and (3) of the bill be struck out and the following substituted:

"Interim progress reports

"18(1) If the director has approved an assessment report, the source protection authority shall prepare and submit reports to the director in accordance with this section, at intervals specified under clause (2)(a), that,

"(a) with respect to each activity specified under clause (2)(b), describe the measures that have been taken to reduce the potential for the activity to adversely affect the raw water supplies of drinking-water systems specified in clause 13(2)(e);

"(b) with respect to each condition specified under clause (2)(c), describe the measures that have been taken to reduce the potential for the condition to adversely affect the raw water supplies of drinking-water systems specified in clause 13(2)(e); and

"(c) contain such other information as is specified under clause (2)(d).

"Same

"(2) When the director approves the assessment report, the director may, in writing,

"(a) direct that reports be submitted under this section at intervals specified in the direction;

"(b) specify, for the purpose of clause (1)(a), one or more activities that are listed in the assessment report and for which the assessment report identifies one or more areas where the specified activity is or would be a significant drinking water threat;

"(c) specify, for the purpose of clause (1)(b), one or more conditions that are listed in the assessment report and for which the assessment report identifies one or more areas where the specified condition is a significant drinking water threat; and

"(d) specify other information for the purpose of clause (1)(c).

"Available to public

"(3) Subject to subsection (3.1), the source protection authority shall ensure that the reports are available to the public as soon as reasonably possible after they are submitted to the director.

"No personal information

"(3.1) When a report is made available to the public under subsection (3), the source protection authority shall ensure that it does not contain any personal information that is maintained for the purpose of creating a record that is not available to the public."

We offer this amendment for clarity and to make sure that it lines up with previous and planned motions of the government.

The Chair: Thank you. Further comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 59.1? Those opposed? Any opposed to government motion 59.1? Carried.

PC has the floor if they'd like to notify us of their notice on motion 60.

Shall section 18 carry, as amended?

Ms. Scott: Wait a minute, wait a minute. Just to clarify a little bit of the—

Ms. Wynne: He asks and then you vote against it.

Ms. Scott: Yes. Thank you. We just want to say the Progressive Conservative Party recommends voting against section 18 of the bill. I know there have just been some amendments brought forward, but it's going back to the due process that the government has not been taking with respect to the assessment report, with respect to landowners who are impacted by this.

Also, it contradicts recommendation 14 of the Walkerton inquiry, part two, where it stated that the water protection plan prepared at the individual property level be consistent with the source protection plan for the watershed in which the property is located.

It's for those reasons, in trying to digest the amendments which have just gone through from the government, we vote against section 18.

The Chair: Thank you, Ms. Scott.

Shall section 18, as amended, carry? Those in favour? Opposed? Section 18, as amended, carries.

Section 19: NDP motion 61.

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

"Precautionary principle

"(1.1) In preparing a source protection plan, the source protection committee shall apply the precautionary principle."

I understand the government's position has been that this act is inherently precautionary and so their actions will be precautionary. I'm suggesting they need to provide instruction to source protection committees that they themselves shall apply the precautionary principle so there's no question of how they are meant to approach the question.

Mr. Wilkinson: That is exactly what will happen when we give directions by the director and with our regulations.

Mr. Tabuns: So in fact we can expect that when the regulations come forward, the source protection committees will be told that they have to apply the precautionary principle?

Mr. Wilkinson: What I can tell my friend is that the precautionary principle would also be reflected in the director's rules and any Lieutenant Governor in Council regulations governing how assessment reports are prepared and risk assessments are carried out. We believe that that will ensure the common goal that we've discussed and ensure that we're going to get the desired result that we want and not actually have this bill hamstrung to the point where we would have difficulty making sure it's implemented. So in our considered opinion, we believe that is the appropriate way to make sure the precaution that Justice O'Connor talked about actually becomes a reality and not a litigious football ad infinitum.

Mr. Tabuns: So you won't be using the words "precautionary principle" when you write the regulations and give instructions?

Mr. Wilkinson: Well, there's a difference between using, as we've discussed, the precautionary principle in legislation and in regulation. I'm sure that our regulations will be well considered.

Mr. Tabuns: My comment stands.

The Chair: Mr. O'Toole.

Mr. O'Toole: I would ask one of the staff people to give us a written explanation of what their interpretation of the precautionary principle is, and/or you can do that verbally here today. I personally feel that I'd like to hear it and have it expressed on the record here by a person who's trained in the area.

Mr. Wilkinson: For those of us who were out on committee for the entire five days, I believe that actually we did have deputations on this and some clarity that was provided by research in regard to the precautionary principle, if I recall. I would never have known about Bergen, Norway, if they hadn't.

Mr. O'Toole: I didn't attend every day of the hearings, and I don't think the Hansard record—I would

like, for the record, what the ministry considers it to be, because I'm of the understanding now that it's going to be implicit in the regulations. So it would be nice to know what the guidelines are going into that process. Is it past, present and future considerations of risk or—the only way not to make a mistake is, don't do anything.

Mr. Wilkinson: Perhaps you weren't here on the first day. I know that my minister took time out of her very busy schedule to address this committee at the beginning of the hearings and stated on the record that we believe that the bill is inherently precautionary. So one can be assured that it's the intention of the government to be precautionary in the bill and in everything that would flow out of this bill in regard to regulation.

Mr. O'Toole: All I'm asking for, Chair, through you, is a copy of what the ministry states as the precautionary principle in its theoretical definition. It should be fairly easy. Thank you.

The Chair: Thank you, Mr. O'Toole. We'll proceed now to the vote on NDP motion 61.

Interjection: Recorded.

The Chair: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

NDP motion 62.

Mr. Tabuns: I move that paragraph 2 of subsection 19(2) of the bill be struck out and the following substituted:

"2. Policies, including specific measures, that are intended to achieve the following objectives:

"i. Ensuring that every existing activity that is a drinking water threat ceases to be a drinking water threat.

"ii. Ensuring that no possible future activity that would be a drinking water threat ever becomes a drinking water threat."

1600

Again, it's the whole question of the use of the term "significant"—an undefined term that would make for a less rigorous threshold for taking action. So I'm moving that we go to a term that's already defined in legislation and that will give us more rigorous protection.

Mr. Wilkinson: Given the comments of Justice O'Connor and his inspiration, for us to bring in a comprehensive amendment that deals with every drinking water threat, that "every" word would have to be defined by somebody. "Every" is every, and as a result, I don't think we'd ever be able to look at what Justice O'Connor told us to do, which is that you go with the "significant" first. That's what you have to do. So you have to assess what is significant, what is medium and what is a low risk. This bill is all about making sure that if there is a significant risk, it cease to be significant.

If instead we go down the path of looking at all risks everywhere all the time, we will never be able to marshal our resources to where the greatest danger to the common good is. So I think Justice O'Connor looked at that very issue and wrote in his report that if government is to take action, it must be based on the principle of assessing a risk. One can make tremendous arguments that there is risk to everything. The question is, how do we get to "significant risk"?

Mr. Tabuns: Given that "significant risk" is still undefined, if there had been a definition, perhaps this discussion would not be taking place, but in fact it isn't defined.

Mr. Wilkinson: But I know exactly what "every" means, and what you're saying is "every." I know what that is. I don't need a definition to know that from your position it should be "all." I say with respect that, in the practicality of having a bill that needs to be implemented so that we have something where we can look back and say that we actually did something, we can't be caught up in the question of trying to do "all" all at once. So we have to go to "significant."

Mr. Tabuns: Again I'd say that if you'd defined it, then we might not be having this debate.

Mr. Wilkinson: And the people who are drinking that water are going to help us define what is "significant," because they're entitled to be heard in this discussion.

Mr. Tabuns: No. You will define it and you'll set it out in regulation. They will get to send you an e-mail or a letter, but cabinet will define it, not the Legislature.

Mr. Wilkinson: The source planning committee will define it.

Mr. Tabuns: So "significant" will be defined by the source planning committee and not in regulation?

Mr. Wilkinson: "Significant" will be defined in regulation—

Mr. Tabuns: Right. That's what I said.

Mr. Wilkinson: —but the question of prioritizing work will be defined by the source protection committee.

Mr. Tabuns: I'm sure.

Mr. Wilkinson: All the ministry will do is make sure that there's a coordination so that, as we heard from so many areas where we have a source planning authority which has—I give you the example of the city of Ottawa, which is a municipality surrounded by I think three different watersheds—that level of coordination, we don't have people running around, reinventing the wheel.

Mr. Tabuns: You're still going to define it, but not in time for us to vote on it.

The Chair: This will be our final vote of this day. We will now proceed to the vote on NDP motion 62.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Flynn, Leal, Ramal, Wilkinson, Wynne.

The Chair: Defeated.

Ms. Wynne: Are you finished with the business? Okay. I just wanted to clarify, Mr. Chair: We've gone through 63 motions. We have to get through 226. My understanding is that there is an agreement that we would go tomorrow from 10 until 4 as well and we would complete those motions. Is that the situation?

The Chair: That is our understanding.

Ms. Wynne: Okay. Thank you.

The Chair: The clerk advises me that there is no agreement to complete, although we were advised differently earlier.

Ms. Wynne: We've been told that there was.

Mr. O'Toole: I had asked earlier the clerk of the committee to get the subcommittee report. This is not time-allocated, and as such we've been allocated two days, 10 to 4, and probably will not complete it, given the fact that it's a very technical bill with a lot of amendments. Basically, the bill is completely changed from many of the public hearings. We'll have to see about that tomorrow. So it's not time-allocated.

Ms. Wynne: No. I understand it's not time-allocated. That's why I was just clarifying that the arrangement was, though, that there would be two days of hearings and we would complete.

Mr. O'Toole: It doesn't mean it'll be complete.

Mr. Wilkinson: The committee is to report back to the House.

The Clerk of the Committee: The committee has been given two days in which to look at clause-by-clause. The times that the committee meets are set by the committee and therefore can be changed by the committee. Unless the whips' agreement was amended, we still only have two days. If we're not finished, we'll continue when the House returns, on our regular scheduled time.

Ms. Wynne: But the whips' agreement was two days.

The Clerk of the Committee: Two days of clause-by-clause is what we were given over the recess.

Ms. Wynne: Thank you.

The Chair: Thank you. This committee stands adjourned till 10 a.m. tomorrow.

The committee adjourned at 1606.

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Substitutions / Membres remplaçants
Hon. Laurel C. Broten, Minister of the Environment
Mr. Kevin Daniel Flynn (Oakville L)
Ms. Laurie Scott (Haliburton–Victoria–Brock PC)
Mr. Peter Tabuns (Toronto–Danforth ND)
Mr. John Wilkinson (Perth–Middlesex L)

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