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Monday 30 November 2009

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(Hansard)**

Lundi 30 novembre 2009

**Standing Committee on
General Government**

Technical Standards and Safety
Statute Law Amendment Act,
2009

**Comité permanent des
affaires gouvernementales**

Loi de 2009 modifiant des lois
en ce qui a trait aux normes
techniques et à la sécurité

Chair: David Oraziotti
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 30 November 2009

Lundi 30 novembre 2009

The committee met at 1437 in room 151.

**TECHNICAL STANDARDS AND SAFETY
STATUTE LAW AMENDMENT ACT, 2009**

**LOI DE 2009 MODIFIANT DES LOIS
EN CE QUI A TRAIT AUX NORMES
TECHNIQUES ET À LA SÉCURITÉ**

Consideration of Bill 187, An Act to amend the Technical Standards and Safety Act, 2000 and the Safety and Consumer Statutes Administration Act, 1996 / Projet de loi 187, Loi modifiant la Loi de 2000 sur les normes techniques et la sécurité et la Loi de 1996 sur l'application de certaines lois traitant de sécurité et de services aux consommateurs.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. Welcome to the Standing Committee on General Government to consider clause-by-clause for Bill 187.

We have seven proposed amendments. The first amendment, item number 1 here, has been put forward by the NDP, Mr. Tabuns.

Before we get to that—that's in section 2—there are no amendments in section 1. So I'm just going to ask committee: shall section 1 carry? All in favour? Opposed? It's carried.

Section 2: Mr. Tabuns, the first item is yours.

Mr. Peter Tabuns: I move that sections 3.1 to 3.24 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be struck out and the following substituted:

“Revocation of letters patent

“3.1 The letters patent and supplementary letters patent of the Technical Standards and Safety Authority are revoked.

“Transfer to Ministry of Consumer Services

“3.2 All powers, duties, functions and responsibilities that could be exercised or performed by the Technical Standards and Safety Authority before the revocation of its letters patent under section 3.1 are transferred and assigned to the Ministry of Consumer Services.”

Very simply, we had arguments from the CFIB; Communications, Energy and Paperworkers; the Ontario Public Service Employees Union, and although all of them were good, the CFIB was quite correct in its argument. Whether we pass this responsibility on to another body or not, in the end, government is held responsible

for enforcement of safety regulations, and to hand it off to an agency that is conflicted at its central purpose doesn't help us and doesn't protect the safety of people in this province. So I move a return of these functions to the hands of government.

The Chair (Mr. David Oraziotti): Mr. Mauro, response?

Mr. Bill Mauro: The government won't be supporting this motion. We don't feel it advances the goals of the legislation. We continue to have confidence in the TSSA. We think it's important to remind people that the expert propane safety review panel that provided a significant report and recommendations made 40 recommendations, 33 of which have been implemented, two of which are contained in this legislation, and only five remaining, which are the purview of other jurisdictions. For those reasons, we won't be supporting the motion.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mauro, Moridi.

The Chair (Mr. David Oraziotti): That motion is lost.

The next motion is yours as well, Mr. Tabuns. Go ahead.

Mr. Peter Tabuns: I move that section 3.6 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be amended by adding the following paragraph:

“2.1 To carry out without charge inspections of unsafe conditions at the request of any affected person.”

It seemed to be fairly clear from presentations made to us that people who saw unsafe conditions and reported them were being pressed on the whole question of who's going to pay for that inspection. I think it needs to be made very clear in the objects of this corporation that inspections of unsafe conditions should happen notwithstanding the ability of a complainant or an operator to comply with payment for that inspection. I would say

that the correction of that problem is a significant one and should be incorporated into this act.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Mauro, go ahead.

Mr. Bill Mauro: We won't be supporting the motion. Mr. Tabuns is referring, I think, to some concern around whistle-blowers, and we believe that protection for them can be included in the TSSA memorandum of understanding. It's also important to remind people that we believe that workers have a right to refuse unsafe work as part of the Occupational Health and Safety Act as it exists already today, which would trigger a Ministry of Labour response, as well as just the TSSA response. So, for those reasons, we won't be supporting the motion.

Mr. Peter Tabuns: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Tabuns, number 3 is yours.

Mr. Peter Tabuns: I move that section 3.6 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be amended by adding the following paragraph:

"3.1 To implement around hazardous facilities safety zones that conform at least with the standards of the American Environmental Protection Agency."

An issue that comes up in discussion with Maria Augimeri and with people who represent areas that are home to any sort of industry that could have an explosive effect on a community is a request for standards for exclusion or safety zones.

I noted in reading the propane safety panel review that our standards are not as high as those set by the American Environmental Protection Agency, and this amendment is meant to correct that problem.

The Chair (Mr. David Oraziotti): Mr. Mauro, go ahead.

Mr. Bill Mauro: We won't be supporting the motion. Under propane regulations from December 2008, the American Environmental Protection Agency standards can be used now to calculate a safe distance already. It's important to note as well that we believe that each location as it exists currently has and can implement safety management plans in conjunction with their fire departments and their local municipalities in conjunction with a variety of players. So that authority already exists.

In addition to that, the TSSA currently has the ability to revoke the licence of an operating establishment should they feel that it's operating in an unsafe manner and, by doing so, would fundamentally shut the building down.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Peter Tabuns: I'll just say that what is in place at the moment is not adequate and, thus, I want my amendment to go forward. There being no further debate, I'd call for a recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for on NDP motion 3.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Tabuns, number 4 is yours.

Mr. Peter Tabuns: I move that section 3.6 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be amended by adding the following paragraph:

"4.1 To provide notice and full reasons to the public, safety authorities and other stakeholders of any variance from requirements aimed at protecting public safety and the environment."

Following on what we've heard that the TSSA has the ability to provide variance for regulations and, frankly, those who may well be impacted by those variances should be aware of them and should have an opportunity to speak to them: Right now, that is not the case. This makes people aware of the situation and at least gives them a start on objecting where they feel an action has been taken that doesn't properly protect public interest.

The Chair (Mr. David Oraziotti): Mr. Mauro?

Mr. Bill Mauro: We won't be supporting the motion. We find the language in it around "informing the public" too vague to be appropriate for the legislation.

As far as notifying the public, that's part of the TSSA's mandate currently. The authority to do it is based on risk already as exists; often a call to a fire marshal, local authorities and even, if necessary, to Emergency Management Ontario, is already there and available. So for those reasons, we won't be supporting it.

Mr. Peter Tabuns: A recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for motion 4.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi, Munro.

The Chair (Mr. David Oraziotti): The motion is lost. NDP motion 5: Mr. Tabuns.

Mr. Peter Tabuns: Five is the lucky number.

I move that section 3.11 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be struck out and the following substituted:

“Chief safety and risk officer

“3.11(1) The minister shall appoint a chief safety and risk officer who shall be paid out of funds appropriated by the Legislature for that purpose.

“Independent review of corporation’s activities

“(2) The chief safety and risk officer shall independently review the corporation’s activities or proposed activities related to the public safety responsibilities assigned to the corporation under this act and the regulations.

“Reports

“(3) The chief safety and risk officer may prepare a report on any matter related to the corporation’s activities or proposed activities referred to in subsection (2) if the officer considers it in the public interest to do so.

“Same

“(4) The chief safety and risk officer shall prepare an annual report and such other reports as may be requested by the minister.

“Publication of reports

“(5) Reports prepared by the chief safety and risk officer shall be made available to the public.”

Very simply, the initiative of having a chief safety and risk officer gives an appearance of an independent voice that will be able to challenge misguided or weak initiatives on the part of the TSSA itself. But in a situation where that person is dependent on the board of directors of that corporation for his or her income, his or her revenue, I don’t think that they have adequate independence. So even if you support the corporation and the continuance of the corporation in the form put forward in this legislation, it would make sense for this government and future ones to have an independent safety and risk officer who can monitor what’s going on there, reach into the organization, investigate and report back to the minister and hopefully, in those reports, to the public as well.

The Chair (Mr. David Oraziotti): Mr. Mauro?

Mr. Bill Mauro: The motion, we believe, would indicate government control over the TSSA, and that’s not the objective of this legislation. As well, already contained in the legislation is a level of enhanced accountability and transparency by giving the Auditor General full access to conduct value-for-money audits, something that was not there heretofore. The chief safety and risk officer will be required to report publicly on an annual basis, as is contained in the legislation.

The Chair (Mr. David Oraziotti): Mr. Tabuns: Further comment?

Mr. Peter Tabuns: Mr. Mauro’s words were interesting to me. I think that one can discern an attempt by the government to push its responsibilities for public safety away onto the shoulders of the TSSA. He may well be right. Any action to the contrary that shows deep government involvement in trying to protect the public would implicate the government in trying to protect the public. So I understand why the government is rejecting

this initiative, but I would say: Ultimately, the next time there’s a significant safety failure, the government will have a very great deal of difficulty accounting for why it didn’t take action that it could have when this matter was up for debate here.

No need to prolong debate; I’m ready for a recorded vote when debate has concluded.

The Chair (Mr. David Oraziotti): Any further comment? A recorded vote has been called for on NDP motion 5.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi, Munro.

The Chair (Mr. David Oraziotti): The motion is lost. We now move to Conservative motion 6: Ms. Munro.

1450

Mrs. Julia Munro: I move that section 2 of the bill be amended by adding the following:

“Two-year review

“3.21.1(1) Two years after the Technical Standards and Safety Statute Law Amendment Act, 2009, receives royal assent, the minister shall ensure that a review is conducted of the performance, governance and activities of the corporation and that a report setting out the findings from the review is prepared.

“Review

“(2) The review conducted under subsection (1) shall include, but not be limited to, a review of the following:

“1. The mandate of the corporation.

“2. The costs and compliance impacts specifically affecting small business.

“3. The costs and fee structure for inspections under the act.

“4. The appeal processes from decisions under the act.

“5. Risk management practices.

“6. Efficacy of inspections under the act.

“7. Efficacy of government oversight of the corporation.

“8. Public notification of activities and decisions of the corporation.

“9. Independence of the chief safety and risk officer.

“10. Governance structure of the corporation and stakeholder activities of the corporation.

“Same

“(3) The review conducted under subsection (1) shall include extensive public consultations.

“Report

“(4) The minister shall deliver the report prepared under subsection (1) to the Speaker of the assembly, who shall lay the report before the assembly at the earliest reasonable opportunity.”

In putting together this motion for an amendment—it tries to reflect many of the areas that have been raised in

the public hearing process on frustrations or limitations or personal experiences that businesses have had, or the community at large have had, with the interaction with the Technical Standards and Safety Act. It seemed to me that putting forward a review was the best way to make sure that those items that have been addressed throughout the bill would have an opportunity, through a public process, to be reviewed.

I'll just go over the rationale briefly for the inclusion of these particular ideas.

The first one, on the mandate: We heard in the presentations last week, particularly from the CFIB, that the mandate has grown. The mandate is too broad, and it needs to be more clearly defined and restricted.

The question of costs and compliance impacts: We heard that small business has a number of specific issues in terms of this bill and in terms of the TSSA. One of them is that it's hard for individual small businesses to be able to take time from their own business to participate in the activities of the TSSA in terms of being representatives. It's much easier for a larger company. Again, the questions of fee structure and actual decisions that are made by the TSSA need to recognize that one size doesn't fit all. We have many sizes in this particular area.

The third: There was recognition that the question of the fee structure and the costs for inspections—we heard about how there is the danger of people feeling that no one would ever report anything because of the cost of inspections. We think that that needs to be addressed and we need to know, at the end of two years, that changes have been made. People then would have the opportunity to come back and look at and discuss these issues in a public process.

Several of the deputants the other day recognized that there's no appeal process, and so this simply recognizes that limitation and asks that this be included.

With risk management practices—again, a highly variable and difficult issue for people to understand and manage, but that doesn't mean that it shouldn't be dealt with.

The Communications, Energy and Paperworkers Union of Canada referred to the question of inspections and suggested that there had been a decrease in the number, and they also alluded to the fact that it had something to do with the fee system, which I mentioned.

The CFIB certainly talked about how the TSSA is not sufficiently accountable to government, and used the example of refrigerator regulation being imposed when there was absolutely no actual proof of the need.

Also, it's clear from the presentation made to us by the Toronto councillor that in the public's mind, it is the government that's responsible for public safety.

The question about public notification of activities and decisions of the corporation—are you the parliamentary assistant, Mr. Mauro?

Mr. Bill Mauro: I'm the sub.

Mrs. Julia Munro: Oh, okay. Sorry. But you did—

Mr. Bill Mauro: I am the—

Mrs. Julia Munro: Okay. I just wanted to make reference to a comment that you made in response to the earlier NDP motion about it being too vague with regard to the public role in presentation. This amendment would offer the government, obviously, the opportunity to essentially establish those parameters, which would speak to your concern that you suggested earlier about the particular amendment.

The question of the independence of the chief safety and risk officer: It was noted by the Communications, Energy and Paperworkers Union that they fear that the officer wouldn't be independent because he will be appointed by the TSSA board. In a review of the nature I am proposing, those fears would obviously be allayed.

Finally, the question of the governance structure of the corporation: Both the Communications, Energy and Paperworkers Union and the CFIB agree that there need to be changes made to the membership of the board to better represent their collective and diverse interests.

So, for those reasons, I'm suggesting that the government look at this particular amendment.

The Chair (Mr. David Orazietti): Mr. Mauro, go ahead.

Mr. Bill Mauro: We won't be supporting the motion.

Most of the comments were directed, I think it's fair to say, generally speaking, at issues of transparency and accountability.

Bill 187, for the first time, will include the ability for the TSSA to come under the purview of the Auditor General, to conduct a value-for-money audit. So I'm not sure what more might be expected to be done in that regard to increase the level of transparency and accountability to the public. As members here know, the Auditor General is an independent legislative officer who reports back to the Legislature, not to the government, and the inclusion of this piece in this legislation is extremely significant.

I should also mention that the risk and safety officer will be reporting publicly on risk challenges to the public at large on an annual basis.

For those reasons, we won't be supporting the motion.

The Chair (Mr. David Orazietti): Mrs. Munro, go ahead.

Mrs. Julia Munro: I just want to briefly comment—and I don't want to drag this out. The first issue that you raised about having the Auditor General able to be the vehicle for that transparency: There's a fairly narrow range of his abilities when we look at the mandate that he was given earlier by the government with regard to the eHealth materials. So I would just suggest to you that this particular group of ideas in the amendment that I've put forward is much broader than that which the Auditor General would normally be looking at.

1500

The Chair (Mr. David Orazietti): Mr. Mauro, any further comments? Seeing none, Conservative motion number 6: All those in favour?

Mrs. Julia Munro: Recorded vote.

Ayes

Munro, Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost.

The last amendment that is proposed is NDP motion number 7. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that section 2 of the bill be amended by adding the following section to the Technical Standards and Safety Act, 2000:

“Application of certain acts

“Ombudsman Act

“3.22.1(1) The corporation is deemed to be a governmental organization for the purposes of the Ombudsman Act.

“Freedom of Information and Protection of Privacy Act

“(2) The corporation is deemed to be an institution for the purposes of the Freedom of Information and Protection of Privacy Act.”

Very simply, I think it’s a good idea that the Auditor General have access to this corporation. I think that for the people of Ontario, it would make sense that the Ombudsman also have access and that citizens of this province, through freedom of information, would have access to the information that is available in the operation of this corporation.

The Chair (Mr. David Oraziotti): Mr. Mauro?

Mr. Bill Mauro: I think, as the member knows, that it’s somewhat similar in nature to the first NDP motion. As the member knows, FIPPA and the Ombudsman do not apply to the non-public sector. The effect of the motion would be to allow the Ombudsman and FIPPA access to what we see as a business organization, I guess it’s fair to say.

Having said that, the enhanced accountability, as I said with the previous motion, will be there, we feel, as provided by the abilities given to the Auditor General under this legislation. For those reasons, we won’t be supporting the motion.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Peter Tabuns: Just a recorded vote.

The Chair (Mr. David Oraziotti): Okay, when we get to that. Ms. Munro.

Mrs. Julia Munro: Yes. I just want to comment on the government’s position with regard to the fact that it’s not the kind of organization that would normally come under the Ombudsman or freedom of information. Just for the record, I point out that the money that the Auditor General would be evaluating is actually private money; it’s not public money. I would just point out that, on the one hand, the Auditor General is stepping into a different realm, and this NDP motion simply contemplates allowing two other equally public figures, in terms of their reporting to the Legislature, the opportunity to do so as well.

The Chair (Mr. David Oraziotti): Any further comments?

Ayes

Munro, Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. That’s section 2. Shall section 2 carry? All those in favour? Carried.

I guess we can do sections 3 through to 18, as there are no other amendments that are proposed. Shall sections 3 through and including section 18 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 187 carry?

Mr. Peter Tabuns: Recorded vote.

Ayes

Jaczek, Kular, Mangat, Mauro, Moridi.

Nays

Munro, Tabuns.

The Chair (Mr. David Oraziotti): Okay, it’s carried. Shall I report the bill to the House? Carried? Opposed? Okay, it’s carried.

Thank you. That’s it. Committee is adjourned.

The committee adjourned at 1505.

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