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**Standing Committee on
Justice Policy**

Cutting Unnecessary
Red Tape Act, 2017

2nd Session
41st Parliament

Thursday 26 October 2017

**Comité permanent
de la justice**

Loi de 2017 visant à réduire
les formalités administratives
inutiles

2^e session
41^e législature

Jeudi 26 octobre 2017

Chair: Shafiq Qadri
Clerk: Christopher Tyrell

Président : Shafiq Qadri
Greffier : Christopher Tyrell

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Thursday 26 October 2017

Jeudi 26 octobre 2017

The committee met at 0901 in committee room 1.

CUTTING UNNECESSARY RED TAPE ACT, 2017

LOI DE 2017 VISANT À RÉDUIRE LES FORMALITÉS ADMINISTRATIVES INUTILES

Consideration of the following bill:

Bill 154, An Act to cut unnecessary red tape by enacting one new Act and making various amendments and repeals / Projet de loi 154, Loi visant à réduire les formalités administratives inutiles, à édicter diverses lois et à modifier et abroger d'autres lois.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We're here, as you know, for clause-by-clause of Bill 154, An Act to cut unnecessary red tape by enacting one new Act and making various amendments and repeals. By my count, there are a thousand sections on this, so we might want to get to business.

Immediately following the clause-by-clause consideration, we'll be entertaining Mr. Romano's motion 126. Is it the will of the committee that we can stand down sections 1, 2 and 3? I will take that as an implicit yes.

We'll now work through clause-by-clause. We'll go, therefore, to a new PC motion which is labelled 1. The PCs have the floor. Mr. McNaughton.

Mr. Monte McNaughton: I move that the bill be amended by adding the following schedule:

“Schedule 0.1

“Ministry of Transportation

“1. The Highway Traffic Act is amended by adding the following section:

““Electronic applications by motor vehicle dealers

““6.1(1) A motor vehicle dealer registered as a general dealer under the Motor Vehicle Dealers Act, 2002 may do any of the following by electronic means or in an electronic format:

““1. Apply for a permit, number plates or a validation for a vehicle under subsection 7(7).

““2. Apply for a new permit for a vehicle under subsection 11(2).

““3. Apply for a used vehicle information package under subsection 11.1(2).

““4. Anything else as may be prescribed.

““Regulations

“(2) The minister may make regulations prescribing other things for the purpose of paragraph 4 of subsection (1).”

“Commencement

“2. This schedule comes into force on the first anniversary of the date on which the Cutting Unnecessary Red Tape Act, 2017 receives royal assent.”

The Chair (Mr. Shafiq Qaadri): I've just been asked respectfully by my Clerk that we need to essentially pause until he returns, in his words.

As I am not entirely caffeinated right now, I don't know if I fully comprehend it, but we need Mr. Romano to move that motion again, PC motion 1.

Mr. Ross Romano: I move that the bill be amended by adding the following schedule:

“Schedule 0.1

“Ministry of Transportation

“1. The Highway Traffic Act is amended by adding the following section:

““Electronic applications by motor vehicle dealers

““6.1(1) A motor vehicle dealer registered as a general dealer under the Motor Vehicle Dealers Act, 2002 may do any of the following by electronic means or in an electronic format:

““1. Apply for a permit, number plates or a validation for a vehicle under subsection 7(7).

““2. Apply for a new permit for a vehicle under subsection 11(2).

““3. Apply for a used vehicle information package under subsection 11.1(2).

““4. Anything else as may be prescribed.

““Regulations

“(2) The minister may make regulations prescribing other things for the purpose of paragraph 4 of subsection (1).”

“Commencement

“2. This schedule comes into force on the first anniversary of the date on which the Cutting Unnecessary Red Tape Act, 2017 receives royal assent.”

The Chair (Mr. Shafiq Qaadri): The amendment is out of order as it seeks to add a new section to the Highway Traffic Act, which is beyond the scope of the bill. So it is annulled.

To date, in reference to schedule 1, section 1 and section 2, we have not received any amendments, so I'll consider them en bloc. Shall schedule 1, section 1 and section 2, carry? Carried.

Shall schedule 1 carry? Carried.

We'll now move to schedule 2. We have not received any amendments for section 1. Shall that carry? Carried.

We'll now proceed to schedule 2, section 2, government motion 2. Ms. Martins.

Mrs. Cristina Martins: I move that section 10.2 of the Charities Accounting Act, as set out in section 2 of schedule 2 to the bill, be amended by adding the following subsection:

“Protection from liability

“(7) A trustee is not liable for loss to the trust arising from the making of a social investment if, in doing so, the trustee acted honestly and in good faith in accordance with the duties, restrictions and limitations that apply under this act and the terms of the trust.”

The Chair (Mr. Shafiq Qaadri): The floor is open for comments and questions.

Mrs. Cristina Martins: I just wanted to add, if I can, that this motion is in response to the Ontario Bar Association's concern that the bill has omitted an important provision to protect trustees from liability in certain cases where social investment has resulted in a loss despite the trustee having acted in good faith, and hence provides further protections for the trustee.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Martins. Ms. Fife?

Ms. Catherine Fife: I'm just wondering if there was a rationale of why this wasn't included at the beginning, at the first crafting of the legislation, and if there is any requirement that the trustee has training before they move forward with any investment.

Mrs. Cristina Martins: Again, this was perhaps something that had been omitted initially from the bill that was brought to our attention by the Ontario Bar Association. We've listened, and we've responded and have amended that particular section and subsection to ensure that there are additional protections for the trustee.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 2? Seeing none, we'll proceed then to the vote. Those in favour of government motion 2? Those opposed? Government motion 2 carries.

Shall schedule 2, section 2, as amended, carry? Carried.

May I take it to be the will of the committee to consider sections 3 to 39, inclusive, of schedule 2, as we've not received any amendments to date? May I take it en bloc?

Interjection: Yes.

The Chair (Mr. Shafiq Qaadri): Shall schedule 2, sections 3 to 39, en bloc, carry? Carried.

Shall schedule 2, as amended, carry? Carried.

Schedule 3 again: I have not received any amendments to date on sections 1, 2, 3 and 4. May I consider them as en bloc?

Mrs. Cristina Martins: Yes.

The Chair (Mr. Shafiq Qaadri): Shall, therefore, schedule 3, sections 1, 2, 3 and 4, inclusive, carry? Carried.

Shall schedule 3 carry? Carried.

We now proceed to schedule 4. There are no amendments received to date for section 1. Shall section 1 carry? Carried.

We now proceed to government motion 2.1. That's schedule 4, section 2, government motion 2.1. Ms. Martins.

Mrs. Cristina Martins: I move that section 2 of the Reducing Regulatory Costs for Business Act, 2017, as set out in schedule 4 to the bill, be amended by adding the following subsection:

“Public interest

“(2) If an offset required under subsection (1) is proposed to be made through a regulation made or approved by the Lieutenant Governor in Council, the Lieutenant Governor in Council shall, before making or approving the regulation, review it to take into account the protection of the public interest, including health, safety and the environment.”

The Chair (Mr. Shafiq Qaadri): The floor is open for questions and comments.

Just a moment.

All right. We have an existential issue here. The government motion 2.1 that was just read refers to a subsection in the bill which currently does not exist. Therefore, government motion 2.1 is out of order and, again, annulled from these proceedings.

Mr. Michael Wood: Wait a minute.

The Chair (Mr. Shafiq Qaadri): Okay.

Mr. Michael Wood: Given that there was a soft filing deadline for motions, it's still in order for anyone, any member of the committee, to make a motion. So it is possible to do a motion to strike out the existing section 2 of this schedule to the bill and replace it with a section 2 which contains a subsection (1), which repeats the existing section 2 and which adds the new subsection (2) which is added by the motion which was just ruled out of order. The question is, does anyone, any government member, wish to make such a motion?

Mrs. Cristina Martins: Yes.

The Chair (Mr. Shafiq Qaadri): We're going to take a five-minute recess to absorb the legalese.

The committee recessed from 0913 to 0925.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. We are still here considering clause-by-clause for Bill 154. Government motion 2.2: Ms. Martins.

Mrs. Cristina Martins: We have listened and taken advice of legislative counsel here, so motion 2.1—

The Chair (Mr. Shafiq Qaadri): It's 2.2.

Interjections.

Mrs. Cristina Martins: I move that section 2 of the Reducing Regulatory Costs for Business Act, 2017, as set out in schedule 4 to the bill, be struck out and the following substituted:

“Offset of administrative costs

“(2) Where a regulation governed by this act is made or approved and has the effect of creating or increasing one or more administrative costs, a prescribed offset must be made within a prescribed time after the regulation is made or approved.

“Public interest

“(2) If an offset required under subsection (1) is proposed to be made through a regulation made or approved by the Lieutenant Governor in Council, the Lieutenant Governor in Council shall, before making or approving the regulation, review it to take into account the protection of the public interest, including health, safety and the environment.”

The Chair (Mr. Shafiq Qaadri): The floor is open for comments, questions.

Mrs. Cristina Martins: I just wanted to bring to the table here and the record and to make mention that we have listened. We’ve listened to our stakeholders and we believe that providing the amendments I read here today provides a further reassurance and comfort to the concerns around this. I think it further strengthens our commitment to protecting the public interest.

The Chair (Mr. Shafiq Qaadri): Ms. Fife?

Ms. Catherine Fife: This is really interesting, but this is not what the stakeholders asked for. The stakeholders asked us, as legislators, to uphold our responsibility to establish laws, not to leave it to regulations and certainly not to leave it to the LG and cabinet. We’ve just seen a perfect example here. You referenced a subsection of the bill that didn’t even exist.

I think that if you even look from an environmental lens, this motion strikes us as essentially a get-out-of-jail-free card; to say, “Look, we’re going to bring in these very right-wing legislative changes to addressing regulations, be it health or public safety or environmental in the province of Ontario, and then we’re going to just leave it to cabinet and say they hold that responsibility.”

It’s ultimately the members of provincial Parliament who hold that responsibility. There are ongoing concerns already on the environmental file in this province. You saw the Environmental Commissioner of Ontario’s report that came out earlier this week. She says the Ontario government has long turned a blind eye to pollution that adversely affects many indigenous communities. The environmental justice part of its reconciliation with indigenous peoples has not been honoured.

Essentially, the concerns that many environmentalists across this province brought to this Legislature, including the Ontario Clean Air Alliance, the Northwatch group, the Ecojustice group, Greenpeace, the Environmental Defence, the Local Enhancement and Appreciation of Forests, the executive director of Ontario Nature—they didn’t ask for a loophole amendment here. They asked for schedule 4 and they were very clear that schedule 4 could not be fixed because it undermines the ability of the Legislature to protect the public safety, be it health care, be it the not-for-profit sector, be it the environment.

New Democrats will not be supporting this motion. It’s an effort on your part to appease the concerns around schedule 4 and, quite honestly, it does not go far enough.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 2.2?

Mrs. Cristina Martins: I just want to clarify here that the preamble does provide our commitment and our legal

obligation, if you will, to what it is that we are proposing in this piece of legislation.

0930

I just want to read the first part of the preamble, and I’m going to quote: “Ontario is committed to fostering a strong business climate that supports growth while ensuring appropriate regulatory oversights that protect the public, workers and the environment.”

The preamble already clearly states what our position is: that we want to ensure that we continue to protect the public, the workers and the environment through what we are proposing here in this bill, and that this bill intends to do that. It’s very, very clearly stated here in the preamble that what we are doing with this motion is really providing the reassurance and comfort on the concerns that have been previously raised by our environmental and labour stakeholders. We’re simplifying, we’re streamlining and creating more user-friendly services so that we can improve public protections and ensure at the same time, through very clear language, what our intent here is, and that is always to protect the public, workers and the environment.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 2.2?

Ms. Catherine Fife: The preamble is not legislation. The preamble is not regulation. When the Canadian Environmental Law Association came to us, they actually highlighted that the government has not provided any justification as to why immunizing the crown from liability is warranted or even appropriate under Bill 154. In fact, the inclusion of a crown immunity clause is a clear indication that the government is aware that its actions or omissions pursuant to the bill could cause adverse impacts on the public and may result in regulatory negligence lawsuits.

As it relates to how legislation is crafted and how this motion defers to cabinet and the LG—it does not reassure the public. For those reasons, we will not be supporting this motion.

The Chair (Mr. Shafiq Qaadri): Further comments on government motion 2.2? Seeing none, I will proceed to the vote. Those in favour of government motion 2.2? Those opposed? Government motion 2.2 carries.

Shall schedule 4, section 2, as amended, carry? Carried.

We have not received any amendments for the next 10 sections of schedule 4. May I take it en bloc? Sections 3 to 12 of schedule 4: Shall they carry? Carried.

Shall the preamble to schedule 4 carry? Carried.

Shall the title to schedule 4 carry? Carried.

Now we have NDP notice of motion: Ms. Fife.

Ms. Catherine Fife: Thank you, Chair.

I guess you know how I feel about schedule 4 by now.

As New Democrats, we are seriously concerned about the implications of schedule 4. We are joined by a number of organizations in opposition to schedule 4, including, as I mentioned, the Canadian Environmental Law Association, Environmental Defence, the Canadian Union of Public Employees, the Registered Nurses’ As-

sociation of Ontario, the Ontario Federation of Labour, the Toronto Environmental Alliance, Earthroots, the Canadian Association of Physicians for the Environment, the Ontario Clean Air Alliance, Greenpeace, the Wildlands League, Northwatch, LEAF, Ecojustice, Ontario Nature and, last but certainly not least, the Pembina Institute.

Schedule 4 of Bill 154 has serious implications for the health and safety of Ontarians, and therefore it should be removed in its entirety from this bill.

Section 2 of schedule 4, the one-for-one regulatory change, will necessitate the hasty and arbitrary removal of existing regulations which may be critically important to the public good, human health and the protection of the environment.

This is a direct quote from Environmental Defence: The implication behind the prescribed offset “is that new problems cannot be addressed through the regulatory process unless an existing regulation is removed.” We would contend that this is a flawed premise.

“Section 2 raises a very real concern that government officials” or the government or, as we just heard, the LG and cabinet may “avoid these trade-offs and forgo enacting regulations to protect health and safety, even in the face of clear and pressing needs.”

I think there is a responsibility for us as legislators to learn from history. Certainly, the lessons from Walkerton apply today as well. In Ontario, “similar requirements were put in place by the former Progressive Conservative government” under the leadership of Michael Harris and Ernie Eves. “An independent public inquiry determined that these requirements contributed to the Walkerton tragedy, which resulted in seven deaths and caused 2,300 people to become ill as a result of drinking water contaminated with *E. coli*.”

Section 4, under “Small business compliance,” fails to define the conditions where it would be appropriate to impose less onerous compliance requirements on small businesses. In fact, the bill does not even define what a small business is. Most importantly, however, the size of a business is not an indicator of risk. As we heard from the Canadian Environmental Law Association deputation, “Many hazardous waste operations in Ontario, which have the potential to cause serious environmental harm, would readily meet the” Canadian industry “definition of a small business.”

Section 7, “Recognition of excellent compliance,” imposes mandatory requirements on the government to “develop a plan to recognize businesses that demonstrate excellent compliance with regulatory requirements,” which strikes us as strange because it creates more work for the government. Ironically, it’s creating more red tape for the government, and the whole purpose of schedule 4 was to streamline and to reduce regulatory burdens. I will say that there is a right way to go about getting rid of unnecessary regulations, but this is not it.

We have some lessons to learn from other governments as well. Bruce Campbell is the former executive director of the Canadian Centre for Policy Alternatives. I’m sure members of the committee received this correspondence, and this is a direct quote: “My concern

about the contents of Bill 154, notably the one-for-one rule, stems from this research. The Harper government introduced a one-for-one rule into its 2012 regulatory policy: the result of the recommendations from its Red Tape Reduction Commission, which in turn was inspired by a similarly named commission of the Mike Harris Conservative government in the 1990s.”

I think that the concern that you’ve heard from the delegations who came forward is that they do not trust this process. There are a lot of issues of trust with this government. The fact that the Environmental Commissioner already has highlighted, just this week, that this government has not been able to maintain its current environmental regulatory obligations to communities across this province, including Grassy Narrows. And, most recently, Aamjiwnaang First Nation continues to breathe air that is heavily polluted by the industrial facilities of Chemical Valley in Sarnia—this is directly from the Environmental Commissioner—which contributes to serious health and environmental concerns. That is why you’ve seen the response from environmental groups from across this province. They have serious concerns around how this government—and, to be fair, any government—would go about reducing regulations.

The Environmental Commissioner had entitled her report as Good Choices, Bad Choices. Moving forward with schedule 4, as it’s crafted, is a bad choice for this government and, more importantly, it’s a bad choice for the people of this province. Thank you, Chair.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Fife. Are there any further comments on the NDP notice of motion?

Ms. Catherine Fife: Could I please have a recorded vote?

The Chair (Mr. Shafiq Qaadri): Actually, it’s not a votable—

Interjections.

The Chair (Mr. Shafiq Qaadri): You’re asking for a vote on the schedule?

Ms. Catherine Fife: Yes.

The Chair (Mr. Shafiq Qaadri): Yes, of course. I’ll see to that vote, unless there are any further comments. Therefore, shall schedule 4, as amended, carry?

0940

Ms. Catherine Fife: This is the amendment. We’re voting on the amendment, right?

The Chair (Mr. Shafiq Qaadri): It’s a notice, which is for our general edification. It’s not an amendment. So we’re now proceeding to the actual, entire section. That’s what I was asking. Okay. Shall schedule 4, as amended, carry? Recorded vote.

Ayes

Mangat, Martins, McNaughton, Potts, Romano, Vernile.

Nays

Fife.

The Chair (Mr. Shafiq Qaadri): Schedule 4, as amended, carries.

Proceeding to schedule 5: We have still not received any amendments for sections 1 to 3. The committee will consider those en bloc. Shall sections 1 to 3 of schedule 5 carry? Carried.

Shall schedule 5 carry? Carried.

Similarly now to schedule 6: We have not received any amendments for sections 1 to 129. May I consider those en bloc? Yes. Shall sections 1 to 129 of schedule 6 carry? Carried.

Shall schedule 6 carry? Carried.

Similarly for schedule 7: May I consider sections 1 to 85 en bloc? Yes. Shall sections 1 to 85, inclusive, of schedule 7, carry? Carried.

Shall schedule 7 carry? Carried.

Similarly for schedule 8: May I consider sections 1 to 150 en bloc? Yes. Shall sections 1 to 150 of schedule 8 carry? Carried.

Shall schedule 8 carry? Carried.

Now proceeding to schedule 9: Similarly for sections 1 and 2, we have not received any amendments. May I consider them en bloc? Yes. Shall sections 1 and 2 of schedule 9 carry? Carried.

Government motion 3: We're now on schedule 9, section 3.

Mrs. Cristina Martins: I move that clause 5(1)(b) of the Arthur Wishart Act (Franchise Disclosure), 2000, as set out in subsection 3(1) of schedule 9 to the bill, be amended by striking out “a fully refundable deposit” in the portion before subclause (i) and substituting “a deposit”.

The Chair (Mr. Shafiq Qaadri): Comments, questions, if any? We'll proceed to the vote. Shall government motion 3 carry? Carried.

Government motion 3.1.

Mrs. Cristina Martins: I move that clause 5(5)(b) of the Arthur Wishart Act (Franchise Disclosure), 2000, as set out in subsection 3(3) of the schedule 9 to the bill, be amended by striking out “a fully refundable deposit” in the portion before subclause (i) and substituting “a deposit”.

The Chair (Mr. Shafiq Qaadri): Ms. Fife?

Ms. Catherine Fife: Thank you, Chair. I'm wondering about the rationale for the government to move from a fully refundable deposit to just a deposit. Is there any rationale for why that was not included in the first draft?

Mrs. Cristina Martins: Thank you for your question. This is actually just correcting a drafting error. It's just to bring all the language in sync and for it to actually be the same. I believe one of the sections refers to it as “a fully refundable deposit,” whereas everywhere else it's actually written down as “a deposit”—so just to clarify and bring everything in par.

Ms. Catherine Fife: Thank you.

The Chair (Mr. Shafiq Qaadri): Any further comments on government motion 3.1? Seeing none, I'll proceed to the vote. Those in favour of government motion 3.1? Carried.

Government motion 4: Ms. Martins.

Mrs. Cristina Martins: I move that subclause 5(7)(g)(i) of the Arthur Wishart Act (Franchise Disclosure), 2000, as set out in subsection 3(7) of schedule 9 to the bill, be amended by striking out “as described in the disclosure document” and substituting “determined in the prescribed manner”.

Once again, this is clearly just to correct a drafting error and is not a substantive policy change. It's just to bring language in line.

The Chair (Mr. Shafiq Qaadri): Government motion 4: comments? We'll proceed to the vote. Those in favour of government motion 4? Carried.

Government motion 5.

Mrs. Cristina Martins: I move that clause 5(7)(h) of the Arthur Wishart Act (Franchise Disclosure), 2000, as set out in subsection 3(8) of schedule 9 to the bill, be amended by striking out “as described in the disclosure document” and substituting “determined in the prescribed manner”.

Again, a drafting error, and ensuring that we have language that is the same throughout.

The Chair (Mr. Shafiq Qaadri): Comments, government motion 5? If none, we'll proceed to the vote. Those in favour of government motion 5? Those opposed? Government motion 5 carries.

Government motion 6.

Mrs. Cristina Martins: I move that subsection 4(2) of schedule 9 to the bill be struck out and the following substituted:

“(2) Clauses 14(1)(h) and (i) of the act are repealed and the following substituted:

“(h) prescribing a manner or an amount for the purpose of subclause 5(7)(g)(i) or clause 5(7)(h);”

The Chair (Mr. Shafiq Qaadri): Comments? Seeing none, we'll proceed to the vote. Those in favour of government motion 6? Those opposed? Government motion 6 carries.

Shall schedule 9, section 3, as amended, carry? Carried.

We have not received any amendments to schedule 9, sections 4 to 15. May I consider them en bloc? Yes. Shall sections 4 to 15 of schedule 9 carry? Carried.

Shall schedule 9, as amended, carry? Carried.

With reference now to schedule 10, we have not received any amendments to date on sections 1 to 4. May I consider them en bloc? Yes. Shall sections 1 to 4 of schedule 10 carry? Carried.

Shall schedule 10 carry? Carried.

Similarly, schedule 11: We have not received any amendments to date on sections 1 to 41. May I consider them en bloc? Yes. Shall sections 1 to 41 of schedule 11 carry? Carried.

Shall schedule 11 carry? Carried.

We now return to the very beginning of the bill. Shall section 1 carry? Carried.

Shall section 2 carry? Carried.

Shall section 3 carry? Carried.

Shall the title—

Interjection.

The Chair (Mr. Shafiq Qaadri): Government motion 7.

Mrs. Cristina Martins: I move that the French version of the title to the bill be amended by striking out “diverses lois” and substituting “une nouvelle loi”.

Again, it’s just a clerical change to ensure that the French translation truly reflects the English.

Le Président (M. Shafiq Qaadri): Merci pour votre motion.

M^{me} Cristina Martins: De rien.

Le Président (M. Shafiq Qaadri): Y a-t-il des questions ou commentaires?

Mr. Arthur Potts: Carried.

Laughter.

Mr. Shafiq Qaadri: Any comments on the French in either language?

M^{me} Cristina Martins: Pas de questions.

The Chair (Mr. Shafiq Qaadri): Shall government motion 7 carry? Those in favour? Those opposed? Government motion 7 carries.

Shall the title of the bill, as amended, carry? Carried.

Shall Bill 154, as amended, be—

0950

Ms. Daiene Vernile: Chair.

The Chair (Mr. Shafiq Qaadri): Pardon me?

Ms. Daiene Vernile: May we get a recorded vote on the final?

The Chair (Mr. Shafiq Qaadri): Absolutely.

Ms. Daiene Vernile: Thank you.

The Chair (Mr. Shafiq Qaadri): That would be now, then. Shall Bill 154, as amended, carry? This is a recorded vote.

Ayes

Mangat, Martins, McNaughton, Potts, Romano, Vernile.

Nays

Fife.

The Chair (Mr. Shafiq Qaadri): Bill 154, as amended, carries.

Shall I report the bill, as amended, to the House?

Mr. Arthur Potts: Please do.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues, and thanks for discharging 400-plus sections. The committee is now recessed—

Interjection.

The Chair (Mr. Shafiq Qaadri): We actually have another section. I believe Mr. Romano is going to be presenting that. That is in reference to standing order 126. It’s just being handed out right now.

We’ll now proceed to the presentation by Mr. Romano referencing standing order 126. It needs to be read into the record, obviously.

Interjection.

The Chair (Mr. Shafiq Qaadri): The member will move the motion and then we have up to 30 minutes to discuss the motion, 10 minutes of speaking time for each party. Once the motion has been moved, then you’ll have an opportunity to make your remarks and then we’ll proceed in rotation. At the end of the 30 minutes, we will put the question.

Mr. Romano, you have the floor for your standing order 126-related motion. Go ahead, please.

Mr. Ross Romano: Thank you. So there won’t be any necessity to read the document. I trust it’s already on the record then.

The Chair (Mr. Shafiq Qaadri): You need to read it.

Mr. Ross Romano: Okay. Thank you. With respect to the letter that was just handed out by our Clerk, we’ll just quote the body of that letter from myself to Mr. Christopher Tyrell.

“Dear Mr. Tyrell,

“Pursuant to standing order 126, I wish to move the below motion at the earliest possible date, preferably next Thursday, October 26, 2017, at the committee’s normally scheduled time. The motion reads as follows:

“I move that the Standing Committee on Justice Policy undertake a study of the operation of the Independent Electricity System Operator and report on the agency’s accounting practices, record retentions, variance accounts, production of documents and contract management.

“Sincerely....”

The Chair (Mr. Shafiq Qaadri): You have 10 minutes now, and then, by rotation, each party up to 10 minutes.

Mr. Ross Romano: Thank you, Mr. Chair. It is the belief of the PC caucus that last week’s report by the Auditor General raises several concerns about the operations of the IESO and its independence as a system operator. I want to quote from a section of the report that the auditor released last week, which deals extensively with the actions that the ministry and the IESO undertook with regard to the fair hydro plan.

“In reviewing government emails and other documents, we found that senior officials and their advisers working on the fair hydro plan decided that the IESO’s December 31, 2016, financial statements needed both to show a regulatory asset and to include the IESO’s market accounts as assets/liabilities (market accounts track the buy-and-sell transactions between power generators and power distributors). Changing the IESO’s statements to show this would signal the IESO’s adoption of rate-regulated accounting in 2016. Neither of these changes had been made when the financial statements were initially submitted to the IESO’s board for approval in February 2017.

“Our review of email correspondence confirms that the approval of these financial statements of the IESO was deferred so that they could be changed. The prior five years of financial results on the IESO’s December 31, 2016, financial statements were restated to include regulatory assets and market accounts. Once this change

had been made, the financial statements were approved by the board in March 2017....

“In our review of email correspondence and discussions with the Ontario Energy Board, we noted that the Ontario Energy Board did not consider the IESO to be an electricity rate-regulated entity like OPG. Power generator contracts held by the IESO are negotiated contracts that have never been subject to an independent rate-regulatory process....

“The Auditor General indicated in her audit opinion dated August 18, 2017 ... that the government’s accounting was inappropriate when it recognized the IESO’s rate-regulated assets and market accounts in the province’s 2016-17 consolidated financial statements.”

These observations, made by an independent officer of this Legislature, unquestionably point to a corruption of typical practices at the IESO by political actors. It is almost unprecedented for a supposedly independent agency to recall its books, which have already been presented to that agency’s board of directors, in place of a new set of books under an unapproved Canadian accounting standard. These practices call into serious question the IESO’s independence as a market regulator and as a system operator, and suggest actions by the government which take place outside of the framework of the relationship between the ministry and the system operator, as envisioned by the Electricity Act.

These changes were made by the IESO without the presence of a published ministerial directive, which should have been required in order to implement these changes. That’s a particular concern because, as the auditor’s report notes, there were numerous senior public servants who objected to the change, which does not suggest that the accounting practices that are mentioned in the motion on the floor could present future problems for the system operator and, by extension, the Ministry of Energy in future governments.

As to the other practices by the IESO which are mentioned in the motion on the floor, reasonable grounds have been presented by last week’s report by the province’s Auditor General as well as subsequent disclosure by the ministry that have created a necessity for reviewing these procedures at the IESO.

With regard to the records retention: Both opposition parties, in addition to certain media outlets, have made freedom of information requests for materials and costs of consultants that worked with the government and the IESO on the government’s proposed electricity plan, and had those requests returned with a letter which stated no records correspond or, simply, with no response at all. This creates a potentially troubling situation regarding the ministry and the system operator’s obligations under the Freedom of Information and Protection of Privacy Act that only the Legislature has the appropriate ability to oversee.

The minister and the deputy minister have both publicly admitted that these documents exist. The minister, in question period on October 18, stated the following: “Our plan has been approved by her peers at some of Canada’s top accounting firms, including Ernst and Young, KPMG

and Deloitte. In the development of the fair hydro plan, we also consulted with numerous third-party advisers in the application of accounting standards. IESO’s management, IESO’s audit committee—”

Similarly, the deputy stated in the estimates committee on October 17: “We would have had a number of experts provide advice. We had retained Blakes as the law firm that would provide us advice on the legislation. We had E and Y; we had Deloitte, KPMG through our agencies as well as some advice to the government.” This calls into question not only the records retention practices of the system operator but also its document production practices, which are covered by the motion currently on the floor.

With regard to variance accounts, in her report the auditor mentions that the ministry revised their estimates on the amount of debt which will have to be taken on as a part of the government’s plan; however, the ministry refused to provide documentation on that estimate to the auditor.

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Only after the auditor’s report did the ministry publicly disclose its revised estimate. However, the ministry provided no additional documentation as to how this figure was arrived at and, of course, has taken additional months to provide the necessary documentation to the auditor in order to see if those estimates are verifiable.

Because the variance account where the debt is being accrued is held at the IESO, reviewing the variance accounts will provide the committee with the opportunity to verify the published estimates that the government has put forward to combat the auditor’s numbers.

Finally, the minister and the Premier have, on numerous occasions, stated that the plan’s purpose is to align contract costs with the life of the assets which were added to the system; however, those contracts are held by the IESO as counterparty to them. This means that the committee must investigate whether the assets tied to those contracts can be effectively managed over a longer time, while costs may be associated with extending the cost amortization of those contracts, and what risk to the ratepayer could have been avoided through alternative management of those contracts.

I’m asking members of this committee to vote to allow the committee to actually perform its oversight role, pursuant to standing order 126, and conduct a review of the Independent Electricity System Operator. We have more than reasonable grounds to call for such a review and, as members, this is a necessary part of the House’s oversight function.

The Chair (Mr. Shafiq Qaadri): To Ms. Fife.

Ms. Catherine Fife: New Democrats will be supporting this motion. We share the concerns that were articulated in the Auditor General’s report last week. The fact that there has never been an independent review of the IESO leaves us with more questions than answers. There have been well-documented instances where we, as legislators, would have good cause to question the documentation practices of the IESO, so I think it’s in the interest of all of our constituents and of the people of this

province to truly have an open and transparent review of IESO. Therefore, we will be supporting this motion.

The Chair (Mr. Shafiq Qaadri): Ms. Martins?

Mrs. Cristina Martins: I appreciate the comments, but I'm not sure where exactly the members of the official opposition were—maybe they were asleep—but we just actually heard seven and a half hours of testimony on the IESO's accounting in the Standing Committee on Estimates. Ms. Kim Marshall, IESO's CFO, testified about IESO's accounting practices at length. If the member of the opposition is so interested in hearing about IESO's accounting practices, then perhaps I can point him to the Hansard transcript of last week's Standing Committee on Estimates.

We heard numerous things in estimates last week. Namely, families in the province asked for real and immediate relief on their electricity bills, and that's what we delivered. We've made a policy choice to ensure that we continue to have a clean, reliable and affordable electricity system for the ratepayers of today and the ratepayers of tomorrow. The fair hydro plan keeps the cost of borrowing within the rate base, not the tax base, because that's the logical thing to do.

Electricity financing should remain within the electricity system, and, while the Auditor General is welcome to her opinion, our plan has been approved by her peers at some of Canada's top accounting firms, including Ernst and Young, KPMG and Deloitte.

In the development of the fair hydro plan, we also consulted with numerous third-party advisers in the application of accounting standards. IESO's management, IESO's audit committee, IESO's board of directors, IESO's external auditor and the Office of the Provincial Controller all support this accounting treatment.

At length, Kim Marshall testified on why the IESO changed to rate-regulated accounting. She also addressed why they changed—which, we all know, was to keep the cost of investment in the electricity sector on the rate base, not the tax base. How this accounting change increases transparency was addressed, and she also addressed how this change is in line with accounting practices followed by other independent system operators in North America and the steps they took to verify this

accounting change. We all know that this was approved by, once again, world-renowned auditing firms such as KPMG, Deloitte and Ernst and Young.

Our government remains committed to being open and transparent and continues to co-operate with the Office of the Auditor General when it comes to fair hydro accounting. As was already made clear many, many times by the Minister of Energy in committee and in question period, the Independent Electricity System Operator has provided 1,200 records to the Auditor General about fair-hydro-plan financing and continues to abide by all record-retention standards, just like any other government agency would. This is in addition to the over 30,000 records that the Ministry of Energy has released to the Auditor General's offices—30,126 records, to be precise.

As the IESO has already testified at length and continues to co-operate with the Auditor General on the accounting change, we see absolutely no merit to this motion.

The Chair (Mr. Shafiq Qaadri): Thank you, colleagues. That concludes the commentary. We'll now proceed directly to the vote.

Mr. Monte McNaughton: Can we have a recorded vote, Chair?

The Chair (Mr. Shafiq Qaadri): You are welcome to have a recorded vote. Again, this is, as you know, per standing order 126(c). Incidentally, I should also mention that, in order for this to pass, it needs to have at least two thirds of the committee, excluding myself, which means five members of the eight. We'll now proceed to the recorded vote.

Ayes

Fife, McNaughton, Romano.

Nays

Mangat, Martins, Potts, Vernile.

The Chair (Mr. Shafiq Qaadri): That motion falls. Is there any further business before the committee? Thank you, colleagues. Adjourned.

The committee adjourned at 1007.

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