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Friday 6 August 2010

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Vendredi 6 août 2010

Standing Committee on Finance and Economic Affairs

Open for Business Act, 2010

Comité permanent des finances et des affaires économiques

Loi de 2010 favorisant un Ontario propice aux affaires

Chair: Pat Hoy
Clerk: William Short

Président : Pat Hoy
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Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON FINANCE AND ECONOMIC AFFAIRS

COMITÉ PERMANENT DES FINANCES ET DES AFFAIRES ÉCONOMIQUES

Friday 6 August 2010

Vendredi 6 août 2010

The committee met at 0902 in room 151.

OPEN FOR BUSINESS ACT, 2010
LOI DE 2010 FAVORISANT UN ONTARIO PROPICE AUX AFFAIRES

Consideration of Bill 68, An Act to promote Ontario as open for business by amending or repealing certain Acts / Projet de loi 68, Loi favorisant un Ontario propice aux affaires en modifiant ou en abrogeant certaines lois.

The Chair (Mr. Pat Hoy): The Standing Committee on Finance and Economic Affairs will now come to order. We are here for clause-by-clause consideration of Bill 68.

I would ask if we could have unanimous consent to stand down sections 1, 2 and 3 until we get through the schedules. Do we have unanimous consent for that? Agreed.

I should mention that the packet at your desk is in order. In the one that was sent out, the numbering was wrong on one or two motions. The one that's on your desk today is the one we'll work with.

There are no amendments to schedule 1, sections 1 through 10. Shall they carry? Carried.

Shall schedule 1 carry? Carried.

Schedule 2, section 1, there are no amendments. Shall schedule 2, section 1, carry? Carried.

Now we're on schedule 2, section 2. There is a government motion, number 1 in your package. Mr. Sousa.

Mr. Charles Sousa: I'm going to need to ask the parliamentary assistant to the Ministry of the Attorney General to work on that section of the bill. Over to you.

The Chair (Mr. Pat Hoy): That's fine. I just need someone to read it in.

Mr. David Zimmer: I move that clause (b) of the definition of "improvement" in subsection 1(1) of the Construction Lien Act, as set out in subsection 2(2) of schedule 2 to the bill, be struck out and the following substituted:

"(b) any construction, erection or installation on the land, including the installation of industrial, mechanical, electrical or other equipment on the land or on any building, structure or works on the land that is essential to the normal or intended use of the land, building, structure or works, or"

The Chair (Mr. Pat Hoy): Any comment? Mr. Miller.

Mr. Norm Miller: If the parliamentary assistant could explain what the effect of this change is, it would be appreciated.

Mr. David Zimmer: We're responding to various stakeholder inputs to improve the clarity of the bill. If you want more technical detail I'll have someone from the ministry address that.

Mr. Norm Miller: Yes, please.

Mr. David Zimmer: If you'd come up and just identify yourself.

The Chair (Mr. Pat Hoy): Yes, we need your name before you begin.

Ms. Sheryl Cornish: Sheryl Cornish, counsel with justice policy development branch.

Ms. Andrea Strom: Andrea Strom, also counsel with the Ministry of the Attorney General.

The Chair (Mr. Pat Hoy): You can begin.

Ms. Sheryl Cornish: This motion would remove the part of the amended definition that refers to constructions that are reasonably likely to be sold together with the land, building, structure or works. It was just felt that this definition could potentially lead to confusion and perhaps litigation in terms of what that means in terms of "reasonably likely."

Mr. Norm Miller: So it's safe to say that it's clarifying and making more precise the language?

Ms. Sheryl Cornish: Right.

The Chair (Mr. Pat Hoy): Any other comment? I'll put the question. All in favour? Opposed? Carried.

Number 2 in your pack is an NDP motion. Mr. Marchese.

Mr. Rosario Marchese: I move that section 2 of schedule 2 to the bill be amended by adding the following subsection:

"(2.1) Section 26 of the act is amended by,

"(a) striking out 'Each payer upon the contract or a subcontract may' at the beginning and substituting 'Each payer upon the contract or a subcontract shall'; and

"(b) adding 'and the payment shall be made, without any set-off or other deduction, no later than 45 days after the day on which a copy of the certificate of substantial performance relating to the contract is published under subsection 32(1)'."

The Chair (Mr. Pat Hoy): I'll interrupt you there, Mr. Marchese. The motion is out of order. It amends a section of the act that isn't open.

Mr. Rosario Marchese: Can I make some arguments?

The Chair (Mr. Pat Hoy): No, you cannot. It's not debatable.

Mr. Rosario Marchese: I see.

The Chair (Mr. Pat Hoy): So we'll move to—

Mr. Rosario Marchese: Mr. Chair, the first motion was not out of order but the others are?

The Chair (Mr. Pat Hoy): Your motion is amending a section of the act that is not open.

Mr. Rosario Marchese: It surprises me because Mr. Zimmer was arguing that they're listening to the stakeholder input, and that improvement was one of the stakeholder suggestions that was made but they didn't respond to any of the other changes that I was about to read for the record.

The Chair (Mr. Pat Hoy): His section of the act was open, yours is not, so we'll move on. We'll go to page 3; NDP motion. Mr. Marchese.

Mr. Rosario Marchese: You want me to read it so that—I'll read it, and then you can rule it out of order. This is in response to the stakeholders that made a submission to this committee and to the government.

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

"(2.2) Clause 31(2)(a) of the act is amended by striking out 'the earlier of' in the portion before subclause (i) and substituting 'the later of'."

The Chair (Mr. Pat Hoy): I will rule this one out of order for the same reason as the previous motion.

Number 4.

0910

Mr. Rosario Marchese: This, too, is in response to COCA—Construction in Ontario, building and construction trades council of Ontario. This is one of the other amendments they were trying to get into the bill, which I thought would find favour with this government. Usually I've got another political member on the other side who works with me on these things, but I don't see him here today.

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

"(2.3) Subclause 31(2)(a)(ii) of the act is repealed and the following substituted:

"'(ii) the date the contract is completed, subject to its being abandoned by the contractor; and'"

The Chair (Mr. Pat Hoy): And I will also rule this motion out of order for the same reason as previously.

Mr. Rosario Marchese: The other motion deals with lien rights as well. It was intended to allow the contractors to be able to put a lien when they don't get the money that they deserve.

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

"(2.4) Clause 31(2)(b) of the act is repealed and the following substituted:

"'(b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of the substantial performance of the contract, expires 45 days after the day on which the contract is completed, subject to its being abandoned by a person supplying services or materials in respect of the contract.'"

The Chair (Mr. Pat Hoy): I would rule this motion out of order for the same reason as the previous motion.

Mr. Norm Miller: Chair? So for this to be in order, would the government have to have amended this section of the bill? Can you just explain why he's not able to amend any of these?

The Chair (Mr. Pat Hoy): The section that we just went through has not been opened under Bill 68. That section wasn't opened.

Mr. Norm Miller: When you say "opened," you mean that the government didn't amend any parts of that section? Is that what you mean by open?

The Chair (Mr. Pat Hoy): That's correct.

Mr. Norm Miller: Okay.

The Chair (Mr. Pat Hoy): I'll now move to number 6, which is one of your motions.

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

"(14) The act is amended by adding the following subsection:

"'Review of Open for Business Act, 2010 amendments

"'89. No later than the second anniversary of the day on which the Open for Business Act, 2010 receives royal assent, a committee of the Legislature shall,

"'(a) consider the concerns raised by the Council of Construction Associations before the Standing Committee on Finance and Economic Affairs with respect to the amendments made to this act by the Open for Business Act, 2010; and

"'(b) report to the assembly as to whether any or all of the concerns have been addressed, and if so, how.'"

The Chair (Mr. Pat Hoy): This motion is also out of order for the same reasons as I stated on Mr. Marchese's motions.

Mrs. Julia Munro: Could I just make a comment at this point?

The Chair (Mr. Pat Hoy): It's not debatable.

Mr. Rosario Marchese: Make the comment when you introduce the amendment. That's the debate.

Mrs. Julia Munro: I'm not debating it; I'm just making a comment. When the Council of Construction Associations came before the standing—

The Chair (Mr. Pat Hoy): No, we're not going to discuss a motion that isn't in order.

Mrs. Julia Munro: Okay.

The Chair (Mr. Pat Hoy): Now we'll move to page 7 and a government motion.

Mr. David Zimmer: Thank you, Chair—

The Chair (Mr. Pat Hoy): Oh, just one moment: We're finished with that, so everyone listen in—

Mr. Norm Miller: On a point of order, Mr. Chair: Is there some way that you can advise us in advance? Because legislative counsel did not advise us that this was out of order. Is there some way that the committee can provide direction as to—before we go through the process of listening to the stakeholders, making amendments and then finding they're out of order?

The Chair (Mr. Pat Hoy): In all cases, with Mr. Marchese and yourselves, you did put your motion on the record, but there isn't anything I can do except to rule that it is out of order.

Mr. Norm Miller: So you would suggest that we just take it upon ourselves to make sure we get legislative counsel to tell us if it's in order or not?

The Chair (Mr. Pat Hoy): That is up to you, yes.

Mr. Norm Miller: Thank you.

The Chair (Mr. Pat Hoy): Shall schedule 2, section 2, as amended, carry? Carried.

There are no amendments to schedule 2, sections 3 and 4. Shall those sections carry? Carried.

Now we're on number 7 in your packet: government motion, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 26(13) of the Professional Engineers Act, as set out in subsection 5(56) of schedule 2 to the bill, be amended by striking out "to the council, to the complaints committee and to the person complained against" at the end and substituting "to the council and to the complaints committee".

The Chair (Mr. Pat Hoy): Any comment? Hearing none, all in favour? Carried.

Page 8: government motion, Mr. Zimmer.

Mr. David Zimmer: I move that subsection 5(58) of schedule 2 to the bill be struck out and the following substituted:

"(58) Subsection 26(17) of the act is repealed and the following substituted:

"'Consideration of report by council

"'(17) The council shall consider every report, and any recommendations included in the report, that it receives from the complaints review councillor, and shall notify the complaints review councillor of any action it takes as a result.

"'Consideration of report by complaints committee

"'(18) The complaints committee shall consider every report, and any recommendations included in the report, that it receives from the complaints review councillor, and shall notify the complaints review councillor of any action it takes as a result.'"

The Chair (Mr. Pat Hoy): Any comment?

Mr. Norm Miller: If the parliamentary assistant could explain the nuances of this, it would be appreciated.

Mr. David Zimmer: The motion preserves the requirement in the current act that council will review every report of the complaints review councillor. The bill would then be adding the complaints committee rather than substituting the complaints committee. If you would like further explanation, there are people from the ministry here.

The Chair (Mr. Pat Hoy): Go ahead.

Ms. Sheryl Cornish: Currently in the act, every report of the complaints review councillor is considered by just the council. The Professional Engineers requested that the reports instead be considered by the complaints committee. They requested this further amendment to add "council" again, so reports would be considered by both council and the complaints committee.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, all in favour? Opposed? Carried.

Number 9 in your packet: Mr. Zimmer.

Mr. David Zimmer: I move that subsection 27(5) of the Professional Engineers Act, as set out in subsection 5(59) of schedule 2 to the bill, be struck out and the following substituted:

"Referral to panel

"(5) Within 90 days after a matter is referred to the discipline committee for hearing and determination, the chair may,

"(a) select a panel from among the members of the committee that includes at least one of each of the persons appointed under paragraphs 1, 2, 3 and 4 of subsection (1);

"(b) designate one of the members of the panel to chair it;

"(c) refer the matter to the panel for hearing and determination; and

"(d) set a date, time and place for the hearing."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 10, the official opposition.

Mrs. Julia Munro: I move that section 5 of schedule 2 to the bill be amended by adding the following subsection:

"(67) The act is amended by adding the following subsection:

"'Review of Open for Business Act, 2010 amendments

"'50. No later than the second anniversary of the day on which the Open for Business Act, 2010 receives royal assent, a committee of the Legislature shall,

"'(a) consider the concerns raised by the Ontario Professional Planners Institute before the Standing Committee on Finance and Economic Affairs with respect to the amendments made to this act by the Open for Business Act, 2010, and in particular concerns respecting whether the amendments in any way affect the ability of a person to practise professional planning without being the holder of a licence, temporary licence, provisional licence or limited licence under this act; and

"'(b) report to the assembly as to whether any or all of the concerns have been addressed, and if so, how.'"

0920

The Chair (Mr. Pat Hoy): This motion is also out of order. It deals with an amendment to a section of the act that isn't open.

Shall schedule 2, section 5, as amended, carry? Carried.

Government motion number 11: Mr. Zimmer.

Mr. David Zimmer: I move that subsection 6(1) of schedule 2 to the bill be amended by striking out "Subject to subsections (2) and (3)" at the beginning and substituting "Subject to subsection (2)".

The Chair (Mr. Pat Hoy): Any comment?

Mr. Norm Miller: Yes. An explanation, please.

Mr. David Zimmer: This motion, along with motions 13 and 14 that are following, will ensure that the amendment to repeal the industrial exception in the Professional Engineers Act comes into force on proclamation rather than five years after royal assent.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 12: Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 1 of subsection 6(2) of schedule 2 to the bill be amended by striking out "(10), (12)" and substituting "(10), (11), (12)".

The Chair (Mr. Pat Hoy): Any comment?

Mr. Norm Miller: Is this number 12 also connected with your—

Mr. David Zimmer: Yes. This ensures that all the related amendments to the Construction Lien Act come into force at the same time. It's a technical amendment.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 13: Mr. Zimmer.

Mr. David Zimmer: I move that paragraph 3 of subsection 6(2) of schedule 2 to the bill be amended by adding "(17)" after "(15)".

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 14: Mr. Zimmer.

Mr. David Zimmer: I move that subsection 6(3) of schedule 2 to the bill be struck out.

The Chair (Mr. Pat Hoy): Any comment? Hearing none, all in favour? Opposed? Carried.

Shall schedule 2, section 6, as amended, carry? Carried.

Shall schedule 2, as amended, carry? Carried.

There are no amendments to schedule 3, section 1. Shall schedule 3, section 1, carry? Carried.

Now we're on government motion number 15 in your packet. Mr. Zimmer?

Mr. David Zimmer: I move that subsection 2(1) of the Commercial Mediation Act, 2010, as set out in schedule 3 to the bill, be struck out and the following substituted:

"Application

"(1) Subject to subsections (1.1), (3) and (4), this act applies to a mediation of a commercial dispute if the mediation commences on or after the day this act comes into force.

"Agreement to opt out of or modify application of act

"(1.1) The parties to a mediation of a commercial dispute may,

"(a) agree not to have this act apply to the mediation; or

"(b) subject to subsections 4(4) and 7(5), apply this act with such modifications as the parties have agreed on."

The Chair (Mr. Pat Hoy): Any comment?

Mr. Norm Miller: Yes. I'd definitely like an explanation of this one, please.

Mr. David Zimmer: The motion really just improves the certainty in the bill and has been supported by all of the stakeholders. I have further detail here, if you would like.

Mr. Norm Miller: What stakeholders would that be?

Mr. David Zimmer: Madam?

The Chair (Mr. Pat Hoy): Identify yourself first, and then—

Ms. Judy Hayes: Hi. My name is Judy Hayes. I'm counsel at the Ministry of the Attorney General.

This section was brought in after discussions with both civil litigators and mediation practitioners. This provision is just to say that the bill only applies to mediations that begin after the bill comes into force. It's just to improve clarity.

The Chair (Mr. Pat Hoy): Any other comment? I'll put the question. All in favour? Opposed? Carried.

Shall schedule 3, section 2, as amended, carry? Carried.

We have no amendments to schedule 3, sections 3 through to 8. Shall those sections carry? Carried.

Schedule 3, section 9, number 16: Mr. Zimmer?

Mr. David Zimmer: I move that subsection 9(1) of the Commercial Mediation Act, 2010, as set out in schedule 3 to the bill, be amended by striking out "Subject to subsection (2)" at the beginning and substituting "Subject to subsections (2) and (3)".

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 17: Mr. Zimmer.

Mr. David Zimmer: I move that subsection 9(3) of the Commercial Mediation Act, 2010, as set out in schedule 3 to the bill, be struck out and the following substituted:

"Same, to determine costs

"(3) Information about the conduct of a party to the mediation or the conduct of the mediator may be disclosed after the final resolution of the dispute to which the mediation relates for the purpose of determining costs of the mediation or of proceedings taken because the mediation did not succeed."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

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

There are no amendments to schedule 3, sections 10 through 12. Shall they carry? Carried.

Now we are on number 18 in your packet. Mr. Zimmer?

Mr. David Zimmer: I move that clause 13(7)(b) of the Commercial Mediation Act, 2010, as set out in schedule 3 to the bill, be struck out and the following substituted:

"(b) the costs of and incidental to the registration of the settlement agreement and the application for registration are recoverable as if they were sums payable under a judgment."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, all in favour? Opposed? Carried.

Number 19: Mr. Zimmer.

Mr. David Zimmer: I move that section 13 of the Commercial Mediation Act, 2010, as set out in schedule 3 to the bill, be amended by adding the following subsection:

"Costs

"(8) The costs referred to in clause (7)(b) shall be in the amount,

"(a) that is prescribed by the regulations or determined by the registrar in accordance with the regulations; or

"(b) that is determined by the registrar, in his or her discretion, if no regulation under clause 15(a.1) is in force at the time the settlement agreement is filed with the registrar."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Shall schedule 3, section 13, carry, as amended? Carried.

There are no amendments to schedule 3, section 14. Shall it carry? Carried.

Number 20.

Mr. David Zimmer: I move that section 15 of the Commercial Mediation Act, 2010, as set out in schedule 3 to the bill, be amended by adding the following clause:

"(a.1) prescribing the amount of costs recoverable by a party under clause 13(7)(b) or principles to be applied by the registrar to determine the amount of those costs;"

The Chair (Mr. Pat Hoy): Any comment? I'll put the question. All in favour? Opposed? Carried.

Shall schedule 3, section 15, as amended, carry? Carried.

There are no amendments to schedule 3, sections 16 and 17. Shall they carry? Carried.

Shall schedule 3, as amended, carry? Carried.

There are no amendments to schedule 4, sections 1 through 31. Shall they all carry? Carried.

0930

Shall schedule 4 carry? Carried.

Schedule 5, there are no amendments. Schedule 5, sections 1 through 7: Shall those sections carry? Carried.

Shall schedule 5 carry? Carried.

Schedule 6, sections 1 through 4, inclusive, have no amendments. Shall they carry? Carrried.

Shall schedule 6 carry? Carried.

There are no amendments to schedule 7, section 1. Shall it carry? Carried.

Now, the NDP motion on page 21. Mr. Marchese.

Mr. Rosario Marchese: I just wanted to, for the record, say that a lot of the amendments we make come from the Canadian Institute for Environmental Law and Policy and Ecojustice. It was a very good brief and I enjoyed it very much.

I move that section 2 of schedule 7 to the bill be amended by adding the following subsection:

"(3.1) Section 4 of the act is amended by adding the following subsections:

"'Adverse effects on the environment

"'(4) The minister shall take all reasonable steps to ensure that cumulative adverse effects on the environment are prevented, mitigated or minimized whenever decisions that may directly or indirectly affect the environment are made within the ministry or by the director, including decisions,

"'(a) to propose laws in relation to environmental compliance approvals;

"'(b) to propose regulations in relation to environmental compliance approvals or the environmental activity and sector registry;

"'(c) to issue or amend orders or environmental compliance approvals; and

"'(d) to prepare or amend policies, guidelines, objectives or other guidance documents in relation to environmental compliance approvals or the environmental activity and sector registry.

"'Documentation

"'(5) The minister's duty described in subsection (4) includes an obligation to ensure that written explanations are prepared in relation to decisions listed in that subsection, setting out how the decision will prevent, mitigate or minimize cumulative adverse effects on the environment.'"

The Chair (Mr. Pat Hoy): I'll interrupt you there, Mr. Marchese. This amendment is out of order as it amends a section of the act that is not open.

Now we'll move to the government motion on page 22. Mr. Sousa.

Mr. Charles Sousa: I move that section 2 of schedule 7 to the bill be amended by adding the following subsections:

"(11.1) Subsections 19(9), (10) and (11) of the act are repealed.

"(11.2) Section 19 of the act is amended by adding the following subsections:

"'Minister to publish information

"'(12) The minister shall publish, by electronic or other means, the following information for the purpose of making it available to the public:

"'1. Information in respect of environmental compliance approvals issued after this subsection comes into force.

"'2. Other information that relates to any other instrument created or issued under this act or the Ontario Water Resources Act and that is specified in a regulation made by the minister.

"'No application of index record

"'(13) Subsections (9) to (11) do not apply in respect of an order, approval or certificate of property use if the minister has published information about the order, approval or certificate of property use under subsection (12).'

"(11.3) Subsection 19(13) of the act is repealed."

The Chair (Mr. Pat Hoy): Any comment?

Mr. Norm Miller: Yes, Mr. Chair. If the parliamentary assistant could explain why this amendment is required?

Mr. Charles Sousa: This amendment would provide the regulated community and the public with greater access to instruments made under the EPA and OWRA and would modernize the manner in which the ministry makes these instruments publicly available. Over time, the obligations under subsections 19(9) to 19(11) to maintain the index of names of persons to whom instruments are issued and the obligations to carry out searches of the index records would become obsolete.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question: All in favour? Opposed? Carried.

Number 23: Mr. Sousa.

Mr. Charles Sousa: I move that subsection 20.4(4) of the Environmental Protection Act, as set out in subsection 2(12) of schedule 7 to the bill, be amended by striking out "subsection (3)" and substituting "subsections (1) and (2)."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 24: Mr. Sousa.

Mr. Charles Sousa: I move that subsection 20.20(1) of the Environmental Protection Act, as set out in subsection 2(16) of schedule 7 to the bill, be amended by striking out "registry" and substituting "public registry."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 25: Mr. Sousa.

Mr. Charles Sousa: I move that paragraph 2 of subsection 20.20(2) of the Environmental Protection Act, as set out in subsection 2(16) of schedule 7 to the bill, be amended by striking out "facilitate" and substituting "provide."

The Chair (Mr. Pat Hoy): Any comment? Mr. Miller.

Mr. Norm Miller: If the parliamentary assistant could explain what this relates to?

Mr. Charles Sousa: This section of the act is striking out "registry" and substituting "public registry," and the amendment clarifies that the environmental activities and the sector registry will be a public registry, emphasizing the public nature of the information on the registry.

The Chair (Mr. Pat Hoy): Thank you. Any other comment? Hearing none, all in favour? Opposed? Carried.

Now it's an NDP motion. Mr. Marchese.

Mr. Rosario Marchese: My sense is that you might rule this one out of order. Why you ruled 21 out of order is beyond me, because I thought it was very much in order. But I'm going to, for the record.

The Chair (Mr. Pat Hoy): You should read it into the record and find out. Number 26.

Mr. Rosario Marchese: I move that section 20.20 of the Environmental Protection Act, as set out in subsection 2(16) of schedule 7 to the bill, be amended by adding the following subsections:

"Application of other act

"(6) A registration of an activity prescribed by the regulations for the purposes of subsection (1) shall be deemed to be an instrument as defined in the Environmental Bill of Rights, 1993.

"No immunity from liability

"(7) For greater certainty, the registration in the registry of an activity prescribed by the regulations for the purposes of subsection (1) does not relieve a person who engages in the activity of any liability to which the person would otherwise be subject."

The Chair (Mr. Pat Hoy): Any comment?

Mr. Rosario Marchese: Interesting.

We think that this is an amendment that many of the Liberal members would want to support. So in terms of "(6) A registration of an activity prescribed by the regulations for the purposes of subsection (1) shall be deemed to be an instrument as defined in the Environmental Bill of Rights," it says that it would require governments to provide public notice and a 30-day comment period for these instruments, and it also would provide for public right to appeal those instruments.

That's what the Environmental Bill of Rights does. We think that, as the government moves forward to deal with these 6,000 requests which they have to deal with every year for certification of approval, the public deserves to have a right, in this two-tier system that they're moving to, to get notice and to comment, because we believe it's for the public good. We believe that if the public believes there's a problem with respect to some company that wants to do something and registers it and/or has to apply for a certificate of approval, if they have the ability to comment, then it would all be for the greater good, for government and the public in general, to allow them to do that and to have the right to appeal.

I'm not quite sure why the government might not want to support this, but we believe it's a very useful thing to allow the public a right to comment on anything related to environmental issues that affects them in particular and generally.

0940

The Chair (Mr. Pat Hoy): Any other comment? Mr. Sousa.

Mr. Charles Sousa: The purpose of the modernization of approvals initiative is to provide a registration process for lower-risk, standard and well-understood, less complex activities. Development of the regulations will include extensive consultations on the

regulations and will explore options to increase public participation. The registrations will provide greater public transparency by providing detailed registration information on a public information website.

The addition of the subsections is unnecessary in that there's nothing in the bill that would suggest the registrants' liabilities are impacted by registration of an activity. Adding this subsection could create confusion in other legislation where such an express provision is not present.

The Chair (Mr. Pat Hoy): Any other comment? Mr. Marchese.

Mr. Rosario Marchese: I'm really not sure how it creates confusion. The parliamentary assistant says they're going to explore options for participation. I don't understand what that means. My amendment guarantees that there will be public comment and participation. It guarantees it. I don't understand how that could cause confusion. The government speaks about wanting, as its goal, to improve public transparency. This does it. This gives the public the transparency that they would presumably look for. "Exploring options for participation" doesn't mean anything to me. It means they could; it means they could not. It means that public participation may or may not happen. Exploration of it suggests to me that nothing is going to happen. So if the parliamentary assistant could alleviate my concern and suggest to me how this creates confusion, that would be helpful.

Secondly, he talks about lower-risk kinds of approvals. The way he presents it, lower risk sounds as if it's not a big deal. But lower risk, cumulatively, in a community that already has environmental problems, is an issue that needs to be addressed. Nothing is lower risk, and so it needs to be defined.

The Canadian Institute for Environmental Law and Policy makes very good arguments as to why we should have built into this approval process a public right to participate, to comment, and to have an appeal built into it. If you could explain that in terms of why this would create confusion, that would be helpful.

The Chair (Mr. Pat Hoy): Any other comment?

Mr. Charles Sousa: Again, the purpose of the registry is to simplify the process, streamline the process, and ensure the public have the right to see what's being registered immediately by putting it on the public record. Nothing prevents the public from appealing those situations as they proceed forward—on the high-risk situations. HVAC or some of the other simplified purposes for submissions is what's being provided here.

Mr. Rosario Marchese: I knew the explanation wouldn't be very helpful.

I know it will simplify it for a lot of individuals and corporations who will get an approvals process. I know that there are 6,000 requests a year for certification of approvals, and I understand you want to facilitate and make it easier for them to get those approvals, but I'm not sure this is going to be that easy and/or that this will simplify the process at all. I'm not clear that the public will get the notice and the 30-day comment, and it's not clear whether they will have the right to appeal, and I wanted to stress that as forcefully as I can.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? The motion is lost.

Number 27: government motion, Mr. Sousa.

Mr. Charles Sousa: I move that subsection 2(18) of schedule 7 to the bill be struck out and the following substituted:

"(18) Section 27 of the act is amended by adding the following subsection:

"'Exception, routine maintenance

"'(1.3) Subsection (1) does not apply to routine maintenance carried out on any waste management system or waste disposal site.'"

The Chair (Mr. Pat Hoy): Comment, if any? Mr. Miller.

Mr. Norm Miller: Explanation, please, from the parliamentary assistant.

Mr. Charles Sousa: It's an administrative change. The provision was put in the wrong subsection.

Mr. Norm Miller: Thanks.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, all in favour? Opposed? Carried.

Number 28: Mr. Sousa.

Mr. Charles Sousa: I move that section 2 of schedule 7 to the bill be amended by adding the following subsection:

"(34.1) Section 45 of the act is amended by adding the following subsection:

"'Exception

"'(1.2) Subsection (1.1) does not apply if the director removes the registration from the registry as a result of issuing an order under section 20.18, unless the director refuses to issue an environmental compliance approval in respect of the waste disposal site or waste management system.'"

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Carried.

Number 29: Mr. Sousa.

Mr. Charles Sousa: Thank you, Mr. Chair. I move that subsection 2(35) of schedule 7 to the bill be struck out and the following substituted:

"(35) Paragraph 1 of subsection 47.3(1) of the act is amended by striking out 'subsection 9(1) or (7) of this act would require a certificate of approval' at the end and substituting 'subsection 9(1) of this act would require an environmental compliance approval'."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 30: Mr. Sousa.

Mr. Charles Sousa: I move that subsection 2(37) of schedule 7 to the bill be struck out and the following substituted:

"(37) Paragraph 5 of subsection 47.3(1) of the act is amended by striking out 'subsection 53(1) or (5) of the Ontario Water Resources Act would require an approval'

at the end and substituting 'subsection 53(1) of the Ontario Water Resources Act would require an environmental compliance approval'."

The Chair (Mr. Pat Hoy): Any comment? I'll put the question. All in favour? Opposed? Carried.

Number 31: Mr. Sousa.

Mr. Charles Sousa: I move that section 2 of schedule 7 to the bill be amended by adding the following subsection:

"(37.1) Paragraph 1 of subsection 47.3 (2) of the act is repealed and the following substituted:

"'1. Subsection 9(1) of this act.'"

The Chair (Mr. Pat Hoy): Any comment?

Mr. Norm Miller: Mr. Chair, an explanation, please, from the parliamentary assistant?

Mr. Charles Sousa: Again, it's an administrative amendment. It removes a reference to a subsection that will be revoked.

Mr. Norm Miller: Thanks.

The Chair (Mr. Pat Hoy): Any other comment? I'll put the question. All in favour? Opposed? Carried.

Number 32: Mr. Sousa.

Mr. Charles Sousa: I move that subsection 2(63) of schedule 7 to the bill be struck out.

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Government motion 33: Mr. Sousa.

Mr. Charles Sousa: I move that section 2 of schedule 7 to the bill be amended by adding the following subsection:

"(64.1) Clause 175.1(1) of the act is amended by adding 'subject to subsection (5)' at the beginning."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, all in favour? Opposed? Carried.

Number 34: Mr. Sousa.

Mr. Charles Sousa: I move that section 175.1 of the Environmental Protection Act, as amended by subsection 2(65) of schedule 7 to the bill, be further amended by adding the following subsection:

"Minister's regulations

"(5) The minister may make regulations specifying anything that this act describes as being specified in a regulation made by the minister."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 35 is an NDP motion. Mr. Marchese?

Mr. Rosario Marchese: I move that section 177.1 of the Environmental Protection Act, as amended by subsection 2(73) of schedule 7 to the bill, be struck out.

The Chair (Mr. Pat Hoy): Any comment?

Mr. Rosario Marchese: Yes. It's important to point out that currently there is a crown immunity clause set out in this section of the Environmental Protection Act. What this means is that the regulatory negligence actions are precluded in relation to any matter arising out of the permit-by-rule system, such as the one set out in the proposed registry.

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We believe that in doing this we allow for civil remedies for adverse impacts caused by activities subject to the registration system, and it's for that reason that we are asking that this section be struck out.

The Chair (Mr. Pat Hoy): Any other comment? Mr. Sousa.

Mr. Charles Sousa: This section is about protecting the crown from liability where regulation exempts a person from having to get an approval, a licence or a permit. For example, there's a regulation that exempts composting facilities from having to get an approval. The crown is protected regardless of whether the person followed the regulation or not.

This section would not apply to the registry, as the exemption from an approval is made through the legislation and not a regulation. Also, removing this section has broader policy implications than just the modernization of approvals initiatives.

Mr. Rosario Marchese: And what are those broader policy implications?

Mr. Charles Sousa: Removal of this clause would have broader implication than just the modernization because it would impact on the crown's liability in relation to other existing and future regulations, and section 77.1 does not apply to regulations made with respect to the new registry system, as these do not provide the exemption from obtaining an approval. The act provides the exemption.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? The motion is lost.

Number 36 is an official opposition motion. Mr. Miller.

Mr. Norm Miller: Our critic has stepped out for a second. I'll deal with this one, then.

I move that subsection 182.3(2) to (6) of the Environmental Protection Act, as set out in subsection 2(78) of schedule 7 to the bill, be struck out and the following substituted:

"Order

"(2) The director may, subject to the regulations, issue an order requiring a person to pay an administrative penalty if the director is of the opinion that the person has contravened any of the requirements mentioned in paragraph 1 of subsection (1).

"Limitation

"(3) An order mentioned in subsection (2) shall be served not later than one year after the day on which evidence of the contravention first came to the attention of the director.

"Amount of penalty

"(4) The amount of the administrative penalty for each day or part of a day on which a contravention occurred or continues to occur shall be determined by the director in accordance with the regulations.

"Total penalty

"(5) The amount of the administrative penalty shall not exceed $100,000 for each contravention."

If I may explain that, I believe it came from the submission by the Canadian Manufacturers and Exporters, who were concerned that the administrative penalties were at the discretion of officers or directors. It was their recommendation that it be only a director, not an officer, and I believe that's what this amendment achieves.

The Chair (Mr. Pat Hoy): Any other comment?

Mr. Charles Sousa: The government will be proposing motions to more effectively address the stakeholder concerns relating to the administrative penalties while balancing the need to provide effective new compliance tools for the registry. The administrative nature of the violations subject to the administrative penalties and the need for the new compliance tools to address the contraventions lend themselves to the provincial officers issuing these penalties under specified circumstances.

Mr. Norm Miller: Through the Chair to the parliamentary assistant: Just for clarification, the amendments that you're proposing—you're still going to have officers administer these—

Mr. Charles Sousa: We'll be amending it to clarify. It's in the subsequent motion.

Mr. Norm Miller: Okay. Thank you.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, all in favour? Opposed? The motion is lost.

Number 37: government motion, Mr. Sousa.

Mr. Charles Sousa: I move that subsection 182.3(1) of the Environmental Protection Act, as set out in subsection 2(78) of schedule 7 to the bill, be struck out and the following substituted:

"Administrative penalties

"182.3(1) The purpose of an administrative penalty issued under this section is,

"(a) to ensure compliance with,

"(i) the requirement to apply for a review under subsection 20.4(2),

"(ii) the requirement to register an activity under subsection 20.21(1),

"(iii) the requirement to maintain and update a registration under subsection 20.22(2), or

"(iv) the requirement to carry out measures set out in a notice under section 157.4; or

"(b) to prevent a person or entity from deriving, directly or indirectly, any economic benefit as a result of contravening the requirements mentioned in clause (a)."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 38: Mr. Sousa.

Mr. Charles Sousa: I move that subsection 182.3(2) of the Environmental Protection Act, as set out in subsection 2(78) of schedule 7 to the bill, be struck out and the following substituted:

"Order by provincial officer

"(2) A provincial officer may, subject to the regulations, issue an order requiring a person to pay an administrative penalty if,

"(a) the provincial officer is of the opinion that the person has contravened any of the requirements mentioned in clause (1)(a); and

"(b) the regulations authorize the issue of the order by a provincial officer.

"Order by director

"(2.1) The director may, subject to the regulations, issue an order requiring a person to pay an administrative penalty if the director is of the opinion that the person has contravened any of the requirements mentioned in clause (1)(a)."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Number 39: Mr. Sousa.

Mr. Charles Sousa: I move that subsection 182.3(3) of the Environmental Protection Act, as set out in subsection 2(78) of schedule 7 to the bill, be amended by striking out "subsection (2)" and substituting "subsection (2) or (2.1)".

The Chair (Mr. Pat Hoy): Any comment? Hearing none, all in favour? Opposed? Carried.

Number 40: Mr. Sousa.

Mr. Charles Sousa: I move that section 182.3 of the Environmental Protection Act, as set out in subsection 2(78) of schedule 7 to the bill, be amended by adding the following subsection:

"Orders not to be issued to employees, officers, directors or agents

"(3.1) If a person who is required to comply with a requirement mentioned in subsection (1) is a corporation, an order under subsection (2) or (2.1) shall not be issued to an employee, officer, director or agent of the corporation."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Government motion number 41: Mr. Sousa.

Mr. Charles Sousa: I move that subsection 182.3(7) of the Environmental Protection Act, as set out in subsection 2(78) of schedule 7 to the bill, be amended by striking out "subsection (2)" in the portion before clause (a) and substituting "subsection (2) or (2.1)".

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Government motion on page 42: Mr. Sousa.

Mr. Charles Sousa: I move that clause 182.3(7)(d) of the Environmental Protection Act, as set out in subsection 2(78) of schedule 7 to the bill, be struck out and the following substituted:

"(d) provide information to the person as to the person's right to require,

"(i) a hearing under section 140, if the order is issued by the director, or

"(ii) a review under section 182.3.1, if the order is issued by a provincial officer."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, all in favour? Opposed? Carried.

Government motion number 43: Mr. Sousa.

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Mr. Charles Sousa: Mr. Chair, give me a moment; it's a long one.

I move that subsection 2(78) of schedule 7 to the bill be further amended by adding the following section to the Environmental Protection Act:

"Review of administrative penalty imposed by provincial officer

"182.3.1(1) A person who is required by an order issued by a provincial officer to pay an administrative penalty may, within seven days after being served with the order, request that the director review the order.

"Request for review

"(2) A request for a review shall be made in writing and shall include,

"(a) a statement of whether the review applies to the liability to pay the penalty, the amount of the penalty or both;

"(b) any submissions that the person requesting the review wishes the director to consider; and

"(c) for the purposes of subsection (7), an address for service by mail, fax or such other means of service as the regulations may prescribe.

"Stay

"(3) If a person requests a review, the requirement to pay the administrative penalty is stayed until the disposition of the matter.

"Decision of director

"(4) A director who receives a request for a review may,

"(a) revoke the order of the provincial officer; or

"(b) by order directed to the person who requested the review, confirm or alter the order of the provincial officer.

"Same

"(5) For the purposes of subsection (4), the director may substitute his or her opinion for that of the provincial officer.

"Amount of penalty

"(6) For greater certainty, if the review applies to the amount of the penalty, the regulations made under clause 182.3(11)(b) apply for the purposes of the review.

"Notice of decision

"(7) The director shall serve a person requesting a review with a copy of,

"(a) the director's decision or order under subsection (4); and

"(b) if the director issues an order under clause (4)(b), the reasons for the order.

"Automatic confirmation of order

"(8) If the director does not comply with subsection (7) within seven days after receiving a request for a review, the order in respect of which the review was requested shall be deemed to have been confirmed by order of the director.

"Same

"(9) For the purposes of section 140, a deemed confirmation by order of the director under subsection (8) shall be,

"(a) deemed to be directed to the person to whom the order of the provincial officer was directed; and

"(b) deemed to have been served on the person mentioned in clause (a) on the last day of the time period mentioned in subsection (8).

"Exception

"(10) Subsections (8) and (9) do not apply if, within seven days after receiving the request for a review, the director gives written notice to the person requesting the review stating that the director requires additional time to make a decision.

"Regulations

"(11) The Lieutenant Governor in Council may make regulations specifying the form and content of orders under this section."

The Chair (Mr. Pat Hoy): Any comment? Ms. Munro.

Mrs. Julia Munro: I'm just wondering if the parliamentary assistant could explain further the part with reference to the automatic confirmation of order.

Mr. Charles Sousa: I'd like to actually call on some of the individuals who could come up. As I read the amendment, it's to provide a right to make a written request, but there's a lot more in terms of the administrative penalties, and the director can revoke, confirm or alter some of those officer orders. But I'd rather they explain it more effectively than I.

Ms. Cynthia Brandon: Cynthia Brandon, with the legal services branch of the Ministry of the Environment. The automatic confirmation of an order is put in there so that if, in fact, the director has not done the review of the order within the seven days, then the order is deemed to be confirmed. What that would then trigger is a director's order, and then that would trigger the right of the person who received the order, under section 140, to further appeal that order to the ERT if they so desired.

Mrs. Julia Munro: Okay, it was just the last part of that. I needed the explanation of the fact that it is the provincial officers not meeting it. That's what it means, that it triggers the director involvement.

Ms. Cynthia Brandon: I'm sorry. I didn't catch that.

Mrs. Julia Munro: If I understand what you said, it's that if the provincial officer doesn't meet the seven days, then it automatically goes to the director.

Ms. Cynthia Brandon: The provincial officer would have made the order establishing the penalty and provided it to the individual. The individual would then have requested a review of that order by the director. If the director does not complete his review in seven days, then that order of the provincial officer is automatically confirmed, but it's confirmed as an order of the director. That's what will then trigger the rights of appeal under section 140.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? Carried.

Shall schedule 7, section 2, as amended, carry? Carried.

There are no amendments to schedule 7, sections 3, 4, 5, 6, 7 and 8. Shall those carry? Carried.

Now—

The Clerk of the Committee (Mr. William Short): Oh, wait. Yes, there was. There's an amendment in section 6—right here.

The Chair (Mr. Pat Hoy): We were wrong, then. We'll have to go back. There is a section that has an amendment.

Schedule 7, section 6, number 44: government motion, Mr. Sousa.

Mr. Charles Sousa: I move that section 6 of schedule 7 to the bill be struck out and the following substituted:

"6. The Waste Management Act, 1992 is repealed."

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Carried.

Shall schedule 7, section 6, as amended, carry? Carried.

Shall schedule 7, section 7, carry? Carried.

Shall schedule 7, section 8, carry? Carried.

Page 45: government motion, Mr. Sousa.

Mr. Charles Sousa: I move that paragraph 4 of subsection 9(2) of schedule 7 to the bill be struck out.

The Chair (Mr. Pat Hoy): Any comment? Hearing none, I'll put the question. All in favour? Carried.

Shall schedule 7, as amended, carry? Carried.

There are no amendments to schedule 8, sections 1, 2, 3, 4 and 5, inclusive. Shall schedule 8 carry? Carried.

Number 46: NDP motion, Mr. Marchese.

Mr. Rosario Marchese: First of all, I want to congratulate the Workers' Action Centre and Parkdale Community Legal Services for the submission they made. I found it very persuasive, and it's from their arguments that we have made some of these amendments.

I move that subsection 1(3) of schedule 9 to the bill be struck out.

What this would do is eliminate self-enforcement in temp help agencies.

There are 14,000 claims in backlog, so we know the government needs to deal with this matter. But I support the opinions put forth by the Workers' Action Centre and Parkdale Community Legal Services that the government's amendments will not deal with this backlog in an effective way. The strategies proposed will add burdens and barriers to the workers rather than alleviate those burdens, and we're asking workers to take on the enforcement of minimum standards.

We know that workers have been struggling for a long, long time—the last 25 years, and probably longer. They have to wait a year or more to have their complaints about unpaid wages investigated, and they wait up to two years to receive the wages they could have been paid in the first place. Sometimes, even after the investigation is over, we don't know whether they get the amount, for a variety of different reasons.

We believe that this proposal we've put forth is going to help the workers in a way that the government needs to hear.

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We should not require workers to provide information on claims before the claim will be accepted. They write, and I read it for the record: "Bill 68 would require workers to provide certain information about their employer and violations and state their case before the claim is even accepted. We believe that the information requirement will create barriers to workers, particularly those with language and literacy barriers. Rather than make this information a requirement, we believe the Ministry of Labour should provide assistance to workers making ESA claims to ensure that the information that is necessary for effective and efficient claims investigation is provided on the ESA claim form."

Just imagine, Mr. Chair, having to go to the employer again to confront them, as they often do, to be paid for the services that they have provided, for work that they have provided. Imagine the power imbalance between the worker—who probably is a recent immigrant, whose language skills are probably not that great—and going back to the employer and putting the case before you can make your claim. What is the employer going to do with that power imbalance? They're going to deny everything that the worker is suggesting that they get. They're going to threaten them, as they have for the last 20 years—and they will continue to do this.

So we're asking the worker to go and do self-enforcement in a way that puts the worker at risk again. His rights have been violated, and we're asking him to go in front of the employer and confront him with that issue again, requiring the skills that it takes to be able to put forward the case, requiring the confidence to be able to put the case and then hoping that the employer is going to listen, when we know from the past that they do not listen, and we know from the past that they get fired.

This mechanism doesn't help. It hurts the workers. It should be eliminated. Self-enforcement is not helpful.

The other point—it'll be the same argument I'll make for 47, but I'll read it and repeat some of the other arguments later. I'm hoping that the government members will have read this report, will have been persuaded by it and will support this amendment.

The Chair (Mr. Pat Hoy): Any other comment? Mr. Sousa.

Mr. Charles Sousa: Yes. If I understood, I just heard the member indicate that the employees are approaching the employers. I think you made that comment just now. As you mentioned, this amendment mirrors subsection 96.1, I guess your motion 48.

We don't support this amendment because it would be needed in the temporary help agency sector to provide better-quality information, to support the claims investigation process and to assist in eliminating—as you've mentioned—the claims backlog and reducing its

reoccurrence. Business and labour stakeholders agree that it's important to reduce the backlog and resolve employment standards issues as early as possible. The current proposed legislation would allow for the employee entitlements to be recovered more quickly and for employers to be given the opportunity to voluntarily correct the violation sooner.

You've just indicated that certain individuals would feel intimidated or that there are language barriers, and we're trying to accommodate that as well in this bill.

Mr. Rosario Marchese: I believe what the Workers' Action Centre is saying: This will not minimize the backlog.

He says, and we agree, that many of them approach the employer. They do, and we know it's not working. We're asking them to approach the employer again, but it doesn't work. It has never worked before. How does it facilitate it? Why not make your claim? Why not help these workers to make their claim and then deal with it and force the employer, because we know the violations have been happening?

The studies have clearly shown that. A study that was done 20 years ago: "In the late 1990s, a federal government labour standards evaluation surveyed employers and found that 25% of employers were in widespread violation of the Canada Labour Code and 50% were in partial violation. These findings were confirmed a decade later by Statistics Canada and the Workers' Action Centre."

We know these things are happening all of the time. If we know that is the case, how do we facilitate it so that the worker is able to put forth his case? How do you, as a government, help them to make that case and deal with these violations, as opposed to saying, "We know," and sending them back to the employer to state the case and somehow hoping and believing—maybe you believe—that somehow the employer is going to change his mind and start paying the workers and stop being in violation of the labour code? It's just not going to work. You know that.

Your explanation really doesn't solve it, and it's not going to reduce the backlog.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? The motion is lost.

Number 47: Mr. Marchese.

Mr. Rosario Marchese: I move that subsection 74.13.1(1) of the Employment Standards Act, 2000, as set out in subsection 1(7) of schedule 9 to the bill, be amended by striking out paragraph 3.

It's again the same argument. We want to eliminate self-enforcement. We should not be requiring workers to provide specific information on claims before the claims will be accepted.

"Bill 68 would require workers to provide certain information about their employer and violations and state their case before the claim is ... accepted." Given what we know about what happens, given that we know there are so many violations, we're asking them to confront and write down that specific information as opposed to helping them fill out the forms and taking the claim forward so that the violations can be dealt with. "We believe that the information requirement will create barriers to workers, particularly those with language and literacy barriers. Rather than make this information a requirement, we believe the Ministry of Labour should provide assistance to workers making ESA claims...." That's the argument that the Workers' Action Centre and Parkdale Community Legal Services made and we support it wholeheartedly.

The Chair (Mr. Pat Hoy): Any other comment? Mr. Sousa.

Mr. Charles Sousa: I understand the Ministry of Labour has been working diligently and collaboratively with the stakeholders, and that the employee rights are being protected and at all times they have that option to continue to work with the Ministry of Labour. Under those exceptions in the areas about which you've issued concerns, they too are being addressed in the process so as to enable those employees to deal more effectively and, again, to expedite things more quickly, to protect the employees.

Mr. Rosario Marchese: I just don't get it, Parliamentary Assistant. I'm not sure I understand it. Your minister has been working with the stakeholders, you say. The Workers' Action Centre and Parkdale Community Legal Services work with the workers who have had their rights violated. Are you working with the Workers' Action Centre? Are you working with Parkdale Community Legal Services and others who have made this case? If you are, you're not listening to them, because what they're saying is exactly the opposite of what you just said. So, first of all, the minister is not working with the stakeholders. Their rights are not being protected—I don't see how, based on the arguments they have made in relation to the two amendments that we are making—and I don't see how their issues have been addressed, based on what I am proposing. I don't see it, but I guess you do.

Mr. Charles Sousa: My understanding is that in fact they have been having consultations in numerous amounts over the period of time in development of these amendments and that the difference to some of the others, where it has been mandatory—the employees have options available to them to protect some of their issues where they have concerns around language, disabilities and intimidation matters. More importantly, the ministry then will act on those matters that have come before them and they will continue to do so with the employees.

Mr. Rosario Marchese: I think it's a huge disappointment, Parliamentary Assistant. What you say versus what people in the field are urging you to do is totally different. They are totally different. You're not listening. You and your government are not listening to what these people are saying.

Mr. Charles Sousa: I don't want to belabour the point, but if you go through—and you will—further

consultations in the development of those applicants and processes, you'll find that accommodations are being made.

Mr. Rosario Marchese: Anyway, I've already made the argument. I'm disappointed in the government in regard to these issues.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? The motion is lost.

Number 48: Mr. Marchese.

Mr. Rosario Marchese: I move that subsection 1(8) of schedule 9 to the bill be struck out.

It's eliminating self-enforcement once again. The arguments have been made.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? The motion is lost.

Number 49: Mr. Marchese.

Mr. Rosario Marchese: I move that subsection 1(9) of schedule 9 to the bill be struck out.

I'm going to read what the Workers' Action Centre and Parkdale Community Legal Services have said with respect to this. "Bill 68 provides new powers to enable ESOs to facilitate workers and employers to enter into a settlement (this would usually be at amounts less than worker has claimed)." I emphasize: "If a settlement is not reached, the same ESO would make a decision about the violation and amount of monies owing to the worker. Mediation is usually used to avoid lengthy and resource-intensive court proceedings. Facilitating settlements in the ESA claims process may not provide the time and resource savings that the government is seeking. Further"—and I agree with this strongly—"facilitated settlement institutionalizes the contracting out of minimum employment standards which could lead to a lowering of the floor of standards. We believe the current rules on settlement should be maintained—that is, where employers and workers can elect to enter into settlement without the ESO being involved in negotiating or promoting settlement."

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This facilitated settlement will institutionalize "the contracting out of minimum employment standards which could lead to a lowering of the floor of standards." I profoundly believe this. When you're negotiating what they owe you, what you're negotiating is a lowering of what you are owed. That's what you are institutionalizing. I find it terrible. I don't understand how this helps those workers who have been violated, mistreated and not been paid for the work that they have done. In the end, we're going to facilitate a mediated settlement, which means, generally, that they're going to get less than what they deserve, which is already low, as it is.

The Chair (Mr. Pat Hoy): Thank you. Mr. Sousa.

Mr. Charles Sousa: The current proposed legislation does respond to stakeholder concerns by ensuring that the facilitated settlements are entirely voluntary. Additionally, and as mentioned by you, these facilitated settlements are already common in the labour relations context. They do occur, and they're voluntary. But if employees feel they can make a settlement and get their money more quickly than waiting two years out—and then there's always the threat that the employers may vacate—it's up to them, but it's voluntary.

Mr. Rosario Marchese: Poor workers working in precarious employment, who have been violated, who are already earning minimum wage and are not getting the money they deserve—we leave them to these voluntary settlements. God bless.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? The motion is lost.

Number 50: Mr. Marchese.

Mr. Rosario Marchese: I move that subsection 1(11) of schedule 9 to the bill be struck out and the following substituted:

"(11) The act is amended by adding the following section:

"'Requiring evidence or submissions from employer

"'102.1(1) An employment standards officer may, in any of the following circumstances and after giving notice, require an employer to provide evidence or submissions to the officer within the time that he or she specifies in the notice:

"'1. The officer is investigating a complaint against an employer.

"'2. The officer, while inspecting a place under section 91 or 92, comes to have reasonable grounds to believe that an employer has contravened this act or the regulations with respect to an employee.

"'3. The officer acquires information that suggests to him or her the possibility that an employer may have contravened this act or the regulations with respect to an employee.

"'4. The officer wishes to determine whether the employer of an employee who resides in the employer's residence is complying with this act.

"'Service of notice

"'(2) The notice shall be served on the employer in accordance with section 95.

"'Determination if employer fails to respond

"'(3) If an employer served with a notice under this section fails to provide evidence or submissions as required by the notice, the officer may determine whether the employer has contravened or is contravening this act on the basis of the following factors:

"'1. Any evidence or submissions provided by or on behalf of the employer before the notice was served.

"'2. Any evidence or submissions provided by or on behalf of the employee, whether before or after the notice was served.

"'3. Any other factors that the officer considers relevant.'"

I'm going to read once again what the Workers' Action Centre and Parkdale Community Legal Services say about this. We're moving an amendment that would remove "complainants from time limits on submitting evidence and establish clear and transparent time limits

for employers. Rather than providing new powers to employment standards officers to set time limits for ... workers to provide information or require participation in decision-making, we believe the Ministry of Labour should set clear and transparent time limits for employers to respond to complaints of ESA contraventions. Where the employer does not respond, the employment standards officer shall render a decision on the basis of the complaint. This is the approach already taken in human rights cases and in Small Claims Court, and would better serve to reduce the backlog and expedite the claims process in employment standards." It's a good argument.

The Chair (Mr. Pat Hoy): Any other comment? Mr. Sousa.

Mr. Charles Sousa: I think we all agree that it's important for us to expedite these matters more quickly, protect employees' rights, and ensure that they have the ability to make their submissions and their claims in a prudent manner that protects them. In terms of getting information out there more quickly by employers and employees, we all agree to employment standards issues—to have them done as soon as possible. The current proposed legislation would allow for expedited claims resolution and for employee entitlements to be recovered more quickly. That's the purpose of putting it forward this way.

Mr. Rosario Marchese: You're disagreeing to my amendment because?

Mr. Charles Sousa: The motion is not supported because these sections would provide timely and better-quality information to support the claims investigation process. You're impeding the process which we're trying to expedite.

Mr. Rosario Marchese: It doesn't respond to it, but Workers' Action Centre made a good case. I support them 100%. I hope the workers who are affected by it read these submissions, these amendments, so they know that this government is not serving them very well.

The Chair (Mr. Pat Hoy): Any other comment?

Mr. Charles Sousa: One more thing: Just to clarify, the nature of the change would remove the requirement for employees to provide evidence for submissions, as requested by the officer, if served with a notice. We need to expedite these matters, and that's the purpose.

The Chair (Mr. Pat Hoy): Thank you. Any further comments? I'll put the question. All in favour? Opposed? The motion is lost.

Shall schedule 9, section 1, carry? Carried.

There are no amendments to schedule 9, sections 2 and 3. Shall they carry? Carried.

Shall schedule 9 carry? Carried.

Schedule 10, section 1, has no amendments. Shall it carry? Carried.

Now we're at 51 in your packet. Mr. Miller.

Mr. Norm Miller: I have a slight modification of the amendment, on advice from legislative counsel, so that it will in fact be in order. It's very minor, so I shall read it out.

I move that section 2 of schedule 10 to the bill be amended by adding the following subsection:

"(7) Section 69 of the act is amended by adding the following section:

"'Priority over Endangered Species Act, 2007

"'(4) If a forest management plan or the Forest Operations and Silviculture Manual conflicts with a provision of the Endangered Species Act, 2007, the forest management plan or the manual, as the case may be, prevails.'"

The Chair (Mr. Pat Hoy): Comment?

Mr. Norm Miller: Yes. If I may explain, as was made clear from the presentation of the Ontario Forest Industries Association, at the time that the Endangered Species Act passed in 2007—I happened to be the critic at the time—it was the understanding that the Crown Forest Sustainability Act and the current forest practices would be recognized so there wouldn't be another cumbersome and duplicative process for forest operations in the province of Ontario. I did support, on that understanding, the Endangered Species Act back in 2007. Not only that: It was made clear that the minister at the time—Mr. Ramsay—the Premier and officials in the government had communicated that in writing to the forestry sector. This amendment is about recognizing what the sector thought was the agreement with the government at the time.

Really, if this doesn't happen, what it means is there's a permitting system whereby anybody who's opposed to any forestry operations can create all kinds of unnecessary delays and costs for the forestry sector.

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As we know, in the last couple of years the forestry sector has been very hard hit and there have been thousands of jobs lost across northern Ontario. They need help from the government. This bill that we're debating is called Open for Business. It's about trying to improve the business environment in the province of Ontario. It's about trying to create jobs, so this amendment is about trying to support that objective.

The Chair (Mr. Pat Hoy): Thank you. Mr. Sousa?

Mr. Charles Sousa: The forestry industry is certainly a priority industry. Protecting it and continuing to enhance our degree of assistance and support to the industry is paramount. But the government's position is that the forestry industry, like all other industrial sectors, must conduct its business in accordance with the Endangered Species Act. Where a forest management plan is in conflict with the ESA, the onus is to ensure that the plan is either modified to come into compliance with ESA provisions or the ESA flexibility provisions; for example, that permitting agreements, instruments be pursued if appropriate.

The intent of our proposed amendment to the section is to eliminate potential duplication in the planning and consultation requirements of the ESA and the CFSA.

The Chair (Mr. Pat Hoy): Any other comment?

Mr. Norm Miller: I'd just like to reiterate that the Crown Forest Sustainability Act does not have a

permitting system, and it's a major change if you're going to require permitting for forestry operations. They go through all kinds of planning. They've had great success in improving the status of threatened species through the Crown Forest Sustainability Act.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the—

Mr. Norm Miller: Recorded vote. please.

The Chair (Mr. Pat Hoy): A recorded vote is requested.

Ayes

Norm Miller, Munro.

Nays

Arthurs, Johnson, Murray, Sousa, Zimmer.

The Chair (Mr. Pat Hoy): The motion is lost.

Shall schedule 10, section 2, carry? Carried.

Now we are at number 52, official opposition. Ms. Munro?

Mrs. Julia Munro: I move that subsection 3.1(2) and sections 3.2 and 3.3 of the Oil, Gas and Salt Resources Act, as set out in subsection 3(1) of schedule 10 to the bill, be struck out.

The Chair (Mr. Pat Hoy): Comment?

Mrs. Julia Munro: Yes, thank you. My comments stem from the discussion that we had here on Monday with the representatives from the Ontario Federation of Agriculture, who made very clear their concerns on what amounts to warrantless entry. Clearly, it's a departure from generations of common law in terms of the need for a warrant, but in their case there are some very significant biosecurity issues that they reflected in their presentation: not only the question of livestock and the care that's taken today maintaining the integrity and the health of individuals' livestock holdings, but also the question of crops. We know so much more about the manner in which we can unwittingly take seeds, bacteria or germs from one place to another. This, then, represents just another assault on that biosecurity.

The other thing I know was in the presentation was simply the safety of the individuals who might be exercising warrantless entry. I want to tell a story here, a personal one, where late one night, my husband and I discovered worm pickers in our barnyard. Well, unbeknownst to those people, there were 22 head of cattle in that field as well as a bull. There are very significant safety issues when you start going on to other people's property. In our particular case, everyone stayed sleeping and the worm pickers left, but it is a serious issue, and I think that we need to consider the implications of warrantless entry. That's why we put forward this amendment.

The Chair (Mr. Pat Hoy): Thank you. Any comment? Mr. Sousa.

Mr. Charles Sousa: The government side won't be supporting it. The reason is, situations may arise when it's necessary for an inspector to cross adjacent properties to access oil and gas wells in a timely manner. For example, in an emergency, it may be necessary to take the most direct route to the well site, which could involve crossing adjacent property. This provision would only be utilized in exceptional and urgent circumstances.

This provision would allow inspectors to stop and inspect vehicles suspected of illegally transporting oil field fluids, and it's standard legislative drafting practice to have these provisions supporting seizure and forfeiture of evidence.

The Chair (Mr. Pat Hoy): Any other comment? Mr. Miller.

Mr. Norm Miller: I would just add that the Ontario Federation of Agriculture in their presentation pointed out that these gas wells, in many cases, have been around for years, so a day or two of notice to the farmers involved wouldn't affect the situation and would protect the farm and the biosecurity issues that they also outlined.

Mrs. Julia Munro: And the people going across the field.

The Chair (Mr. Pat Hoy): Any other comment? Hearing none, I'll put the question. All in favour? Opposed? The motion is lost.

Shall schedule 10, section 3, carry? Carried.

There are no amendments to schedule 10, sections 4 through 5. Shall they carry? Carried.

Shall schedule 10 carry? Carried.

Schedule 11, sections 1 through 4 have no amendments. Shall they carry? Carried.

Shall schedule 11 carry? Carried.

Schedule 12, sections 1 through 4 have no amendments. Shall they carry? Carried.

Shall schedule 12 carry? Carried.

Shall sections 1, 2 and 3 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 68, as amended, carry? Carried.

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

We are adjourned. Thank you, committee.

The committee adjourned at 1038.

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Mr. David Zimmer (Willowdale L)

Also taking part / Autres participants et participantes
Ms. Cynthia Brandon, counsel, Ministry of the Environment
Ms. Sheryl Cornish, counsel, Ministry of the Attorney General
Ms. Judy Hayes, counsel, Ministry of the Attorney General
Ms. Andrea Strom, counsel, Ministry of the Attorney General

Clerk / Greffier
Mr. William Short

Staff / Personnel
Mr. Michael Wood, legislative counsel