

Legislative Assembly of Alberta

Title: **Monday, November 21, 2005**

8:00 p.m.

Date: 05/11/21

[Mr. Shariff in the chair]

The Acting Speaker: Please be seated.

head: **Motions Other than Government Motions**

Net Metering of Electricity

510. Mr. Marz moved:

Be it resolved that the Legislative Assembly urge the government to adopt net metering of electricity for producers of all sizes, thereby allowing them the opportunity to sell any excess electricity they produce back to the grid at the same rate as the purchase price.

The Acting Speaker: The hon. Member for Olds-Didsbury-Three Hills.

Mr. Marz: Thank you, Mr. Speaker. Good evening, colleagues. It's a pleasure to rise and introduce Motion 510, which calls on the government to adopt net metering as an option for small electricity producers, or microelectricity generators, to be more technically specific.

I think it's important that I take this opportunity to describe net metering and highlight some of the advantages it would provide for Albertans. Net metering is an electricity policy for consumers who are capable of generating electricity through smaller renewable energy sources such as biomass, wind, or solar power. Under net metering a system owner receives retail credit for at least a portion of the electricity they generate. Under ideal circumstances the consumer's existing electricity meter would be certified to spin backwards, effectively recording production and usage, resulting in a net meter reading which would be used in the billing process.

Throughout other jurisdictions the rules vary significantly by country, state, and province. Variations include the availability of net metering, if and how long banked credits can be kept and how much credits are worth, retail versus wholesale, and the like. The practice of net metering is increasing rapidly in North America, specifically in the United States, where a large majority of states have some form of net metering in place. In Canada there are a number of provinces instituting net metering policies and moving forward with initiatives which support that policy.

Currently, Mr. Speaker, there are two main roadblocks that are slowing the progression towards the net metering option in Alberta's electricity market. The first obstacle is the certification of residential electricity meters to flow in reverse. Basically, Measurement Canada has not approved the basic residential meter that the majority of Albertans use to measure backwards electricity flows as it does measure forward electricity flows. The solution to this problem is in the hands of the federal government and Measurement Canada. As I'm to understand, there is a current project under way to certify residential electricity meters to measure reverse flows; however, a completion date for that project has not yet been set. There are some optimistic results through preliminary tests which show that meters do measure correctly in the reverse direction with little or no miscalculation.

The second obstacle, Mr. Speaker, is that Alberta's electricity market is designed for large producers. The policies in place are geared towards corporations that have the resources and know-how to successfully participate in Alberta's electricity generation market

on a large scale. The issue is that small producers need to have a set of policies and guidelines that allow them the opportunity to effectively and affordably participate in Alberta's electricity market.

I'm pleased to hear that Alberta Energy is currently conducting a comprehensive consultative review of policy and practices respecting small-scale generation, including net metering. I look forward to the recommendations of the review. I'm confident that the support received for Motion 510 will help to encourage a policy change that is positive for net metering.

Mr. Speaker, once these obstacles are overcome and Albertans are provided with the opportunity to participate in net metering, the province's electricity market will become stronger and more diverse. This will be accomplished through an increase in the supply of electricity and with an increase in the use of renewable energy sources for electricity. Net metering programs serve as an important incentive for consumer investment in renewable energy generation. This incentive is achieved as net metering enables customers to use their own generation to offset their consumption over a billing period.

Mr. Speaker, net metering is a low-cost, easily administered method of encouraging customer investment in renewable energy technologies. Although Alberta is not currently experiencing shortage in the supply of electricity thanks in part to the deregulation of the electricity market – [interjections] I thought you'd like that – providers will also have the opportunity to benefit from net metering. This is because when customers are producing electricity during peak periods, the system load factor would be improved. I also think it's important to note that an increased supply of electricity would allow for an increase in the net export of electricity to other jurisdictions.

Mr. Speaker, there are numerous examples from jurisdictions in North America and Europe. I'm confident that some of those examples will be discussed this evening. Instead of talking of what has been done in other jurisdictions, I'd like to take the opportunity to discuss an area of limitless potential for net metering in Alberta. Recently the government has been promoting Alberta's rural development strategy. A recommendation of this strategy is to encourage economic growth in rural Alberta. What better way to encourage economic growth than through diversification? A rancher in rural Alberta has a better chance of sustaining a solid economic base if he or she has the opportunity to diversify and expand that base, which they're dependent on for their family's well-being.

Net metering speaks directly to that initiative. Providing the opportunity for rural Albertans to invest in renewable energy sources not only reduces operating costs through electricity bill reductions but increases revenues through the sale of electricity to the provincial grid, and that's precisely the economic growth incentive that the Alberta rural development strategy is alluding to. Imagine for a moment a rancher in southern Alberta with wind turbines or an acreage in central Alberta with a roof lined with solar panels or another ranch in northern Alberta which successfully operates a small-scale biomass facility. These are the types of investments that Albertans want to make. They want to diversify, and they want to take that next step toward a strong, diversified provincial electricity market.

The possibilities of net metering aren't limited to rural Alberta either. For example, there's a house in Edmonton which has a 2,000-watt solar power system mounted on a garden trellis that feeds the house. This system generates 1,850 kilowatts of electricity a year and exports 1,130 kilowatts per year, or 61 per cent. The export value at full retail price would amount to only \$102 per year. The owner of the operation has to pay about \$80 a month in various charges and costs to become a participant in Alberta's Electric

System Operator energy trading system and to have their meter read. These costs are not conducive to an investment in renewable energy. This is the main reason that a net metering policy that is reasonable and fair for microgenerating is needed here in the province of Alberta. The technology is affordable and becoming more affordable each day. The safety standards are already in place and work in numerous other jurisdictions without danger to maintenance personnel or consumers.

Mr. Speaker, I look forward to the debate surrounding Motion 510, and I look forward to the recommendations of Alberta Energy's review of policy and practices respecting small-scale generation. I encourage all members of the Assembly to support Motion 510 and, in doing so, support the idea of adopting net metering as a policy option that supports the development of renewable energy and the diversification of electrical generation.

Thank you.

The Acting Speaker: The hon. Member for Edmonton-Gold Bar.

Mr. MacDonald: Thank you very much, Mr. Speaker. It's a pleasure to get an opportunity this evening to participate in the debate on Motion 510 on the net metering of electricity, sponsored by the hon. Member for Olds-Didsbury-Three Hills. Certainly, that neighbourhood south of Red Deer is on the leading edge of a lot of developing technologies in this province, including east of highway 2, in that part of the constituency, the development of coal-bed methane.

This is certainly an idea that I'm pleased to see that we are again discussing in the Legislative Assembly. Net metering of electricity has been proposed by members on this side of the House on at least two occasions. I'm not going to certainly do an historical review of *Hansard* and cite as to why as short as three years ago it wasn't suitable. The government at that time was not interested, but I'm very pleased that the hon. member has brought this motion forward, and I certainly will be supporting this motion. It's a good idea. We will be joining the western Canadian provinces of British Columbia, Manitoba, Saskatchewan, and also Ontario, I believe, in initiating legislation that allows small power producers to easily connect to the grid.

8:10

Now, if we review the prices of power and electricity, if we had stayed to the regulated industry, perhaps it wouldn't be necessary for so many people to invest in alternate energy sources, but it is now because of the uncertainty over electricity deregulation. Prices have really gone through the roof, and many people want to invest in their own sources to generate electricity, and if they do have surplus, why not allow them to move it into the grid?

The questions I have always had and will continue to have – and hopefully the hon. member is correct. I know that the cost of the metering devices themselves has gone down, but it was still quite a cost here two years ago. Eventually, if we have a good look at this Motion 510 tonight and it is incorporated at some point in the near future into government policy, hopefully we would see not only in urban areas but certainly in rural areas many locations where there would be net metering used.

I have to say that there is a shortage of supply of electricity in this province. The amount of coal-fired generation has actually decreased. The base load coal-fired generation in this province has actually decreased in the last four years, Mr. Speaker. Coal-fired generation in some cases is less than 2 and a half cents all-in costs for electricity. We need to ensure that we have a steady growth in base load generation, and that hasn't happened because of the

uncertainties of deregulation. The price has gone up, and this is an ideal opportunity for people to come forward, generate their own electricity.

Let's use, for example, farmers. Farmers have three costs these days that they are very concerned about. The first one, of course, is fertilizer, the second one is fuel to run their machines, and the third is the cost of electricity. I'm always hearing concerns and fielding calls from farmers in southern Alberta, particularly irrigation farmers, who are quite upset not only about how the billing for electricity works but about the cost of the electricity itself, and many have expressed an interest, if this continues, in generating their own electricity, whether it's solar or whether it's with some of the turbine technology that's on the go these days. They would benefit from this. They would benefit from this idea presented by the hon. member.

There are other benefits to net metering as well, Mr. Speaker. I think it would have a direct impact on consumers' electricity bills, as I said. By producing a percentage of the energy that they consume, Albertans can decrease their reliance upon larger facilities on the grid, whether it is the hydro power, whether it is coal-fired power, whether it is the natural gas or the cogeneration or even the bit of wind power that we have. When you combine all this electricity, from the cheapest form of generation to the most expensive, unfortunately with the power-by-the-hour system that we now have at the Power Pool, we have very, very high costs for our electricity.

Now, when this power goes through the Power Pool, of course our ISO, or Alberta's Independent System Operator, monitors the electricity grid and is responsible for ensuring that the province's electricity demand is met. We have to be very careful starting out with net metering because demand and supply have to be in constant balance. That's what makes electricity an essential service, not a commodity. It's because suddenly you can't turn on a generating unit and put out 400 megawatts of electricity. It has to have somewhere to go. You can't store it once you produce it. So that's why we have to have this instantaneous balance between supply and demand. Certainly, a farmer or a homeowner or an acreage owner with a modest surplus, particularly at the peak times, whether it's early in the morning or between 5 and 7 o'clock in the evening when many people are returning to their homes from their work and our demand is just about 8,000 megawatts in the province – there would be a need at that time for this electricity.

I'm certain we can work this out, and the hon. member has an excellent idea. Many jurisdictions in America already have one form or another of net metering, and there don't seem to be many complaints. I'm sure that the hon. Member for Calgary-Mountain View has some thoughts on reducing our need for base load generation by not only encouraging conservation but encouraging more environmentally friendly ways to generate the power that every one of us consumes and every one of us enjoys because it certainly adds to our quality of life.

Before we get too hard on the coal-fired generators, I think eventually this Assembly and this province will see the use of CO₂ sequestration to enhance oil recovery, and a major source of this CO₂ will come from our coal-fired generators. I think it would be a win for the environment, it would be a win for our mature oil fields, and it would be a win for our electricity consumers as well. Certainly, that discussion is not part of Motion 510, Mr. Speaker.

In conclusion, I would urge all hon. members of the Assembly to take a good, close look at Motion 510 and please consider supporting it. It had merit before, it does now, and the hon. member is to be commended for bringing this forward. Thank you.

The Acting Speaker: The hon. Member for Highwood.

Mr. Groeneveld: Thank you, Mr. Speaker. It is a pleasure to rise and join the debate on Motion 510, focusing on the net metering of electricity. Alberta's electricity market is one that provides reliable and affordable energy across the province. Alberta's restructuring of the electricity supply industry in the mid-1990s has led to a number of companies developing new sources of power in our province. Since 1998 there has been an increase in electricity generation of 3,200 megawatts in Alberta. This increase amounts to 40 per cent of all new power capacity in Canada during this period. What this increase means for Alberta is that even though our province has experienced record levels of population growth, thereby increasing demand for electricity, we have experienced none of the power interruptions, brownouts and blackouts, that other jurisdictions have had to cope with.

Electrical generation in our province is provided from a variety of origins. The majority of power generation in Alberta is provided by coal and natural gas, but power is also supplied through renewable resources such as hydro, wind, and biomass. The diversity of generation is a strength of our electrical market and also for Albertans. Motion 510 urges us to consider removing barriers to another source of generation. Small, independent energy producers are what are referred to as microgenerators.

Mr. Speaker, I agree with the initiatives which are proposed, but I feel that the wording of the motion can be worded more clearly to clarify the intent of the motion. To that end, I have with me the appropriate number of copies of an amendment I would like to propose to this motion.

8:20

The Acting Speaker: Hon. member, you may proceed.

Mr. Groeneveld: Okay. Mr. Speaker, these amendments strike out "producers of all sizes" and substitute "microelectricity generators." In addition, they strike out the words "at the same rate as the purchase price."

The first amendment is being brought forward to clarify the intent of this motion to open up the market for microgenerators. At present Alberta's electricity market is very much geared towards large producers. By specifically highlighting microgenerators in the wording of the motion, we can be more specific as to the goals of the motion.

I am introducing the second amendment because I believe that the intent of this motion is to raise awareness of this issue and, hopefully, to show that the Legislative Assembly supports providing the option of net metering to Albertans. With the phrase "at the same rate as the purchase price" included in the original wording, this motion is too definite in how the government should address the issue of net metering. By removing this phrase, we do not restrict government in developing policies surrounding this issue.

Mr. Speaker, net metering is an initiative which has the potential to benefit all Albertans. If Motion 510 is passed by this Assembly, there would be substantial support for greater financial incentives for people to invest in the necessary equipment to generate their own power. They would be able to sell back to the grid energy which they do not use. This changes the cost of setting up a solar panel from being a prohibitive obstacle to a long-term investment. Currently the cost of instituting a system whereby a microgenerator can sell power back to the grid completely negates the revenue they receive from the sale. If we adopt a policy that reduces these financial barriers, more Albertans may choose to become microgenerators. This has the potential to reduce the current impact

on our environment by lowering the fiscal barriers to installing home solar panels, windmills, or other electrical generators which rely on renewable resources. If we reduce the barriers, which we are able to in our own province, we can bring this initiative one step closer to reality.

I fully support Motion 510 as amended, and I hope that my colleagues will support both the amendments and the amended version of 510. Thank you.

The Acting Speaker: This is debate on the amendment. I had indicated that I would recognize Edmonton-Calder earlier on. Would you like to speak to the amendment?

Mr. Eggen: Yes, please, Mr. Speaker.

The Acting Speaker: Okay. The hon. Member for Edmonton-Calder, followed by the hon. Member for Olds-Didsbury-Three Hills.

Mr. Eggen: Thank you, Mr. Speaker. I was certainly interested from the beginning to see where Motion 510 was going to go. I was very heartened that the Member for Olds-Didsbury-Three Hills had the vision to put something such as this forward, and the original motion I was certainly very excited to support.

Now, in regard to the amendments I think that there's some merit to what the hon. member was saying in regard to his amendment. However, let me put forward a couple of ideas here that might alert members to the situation of how we can maximize the use of net metering in this province not just with microelectricity generators but with larger sized generation capability as well.

The means by which individuals or businesses would contribute to this net metering accumulation of power back into the grid, so to speak, would be through solar energy, through wind generation, or through cogeneration techniques. At the end of the day, really, cogeneration might represent the most substantive source of energy that we have yet to tap into in any large way in Alberta. I know that there are many projects that are being put forward as we speak to make better use of our cogeneration capability here in this province.

I'm questioning – and perhaps you can provide some more illumination on this for me – why we would exclude larger producers in regard to net metering because, really, even when we're talking about wind power, people need to have a fairly substantial wind farm or wind operation to make it worth while. While an individual on a farm or a ranch might set up a small windmill – you can buy windmills that aren't much wider than six or eight feet across, and they can provide the needs for your own home. You know, I would venture to say that we should try to encourage small- or medium-sized wind farms on farms and ranches. I'm just hoping that this definition of micro will not exclude those people from producing electricity in that way.

We see cogeneration across the country now and, indeed, across North America, but not a lot of people are signing up for the offer at this juncture. I see that Nova Scotia has a very ambitious plan to try to encourage 10 megawatts of electricity from customers, but the last that I was able to find out is that they've only signed up a few dozen people to in fact participate in the net metering project. Again, in British Columbia, which has a net metering program, there's only a handful of people that have actually signed up to do so.

I would suggest that we could encourage more people to take advantage of this offer, which I think is the key to the future, part of the basket of solutions that we can produce here to meet our energy needs in Alberta, by being more flexible in how and who can actually participate in net metering endeavours. I know that other

countries certainly have more liberal views on this, where the factories or, let's say, the oil sand projects – these people will produce large amounts of cogeneration electricity. You know, I don't want to exclude the possibility of having larger operators participate in such a net metering proposal.

What I would look for is some clarification, particularly in the second amendment: "at the same rate as the purchase price." Are you suggesting some sort of subsidy, then, for people where they are actually getting more back if they do participate in a net metering operation, or is that amendment there for another purpose? I would seek clarification on that. Like I say, I certainly enjoyed the motion as it was originally stated, and I do have a problem with the first amendment for Motion 510.

Thank you, Mr. Speaker.

The Acting Speaker: The hon. Member for Olds-Didsbury-Three Hills, followed by Edmonton-Gold Bar.

Mr. Marz: Thank you, Mr. Speaker. I'd like to thank the hon. Member for Highwood for bringing forward the amendment. I believe it's a friendly amendment, and I would agree with it. Basically, the original wording includes all producers and alludes to specific pricing regulations.

8:30

The amended wording allows Motion 510 to speak to and support small producers or microgenerators. The change in the wording also takes out specific regulations, leaving details up to the regulators while supporting the need to look at net metering as a viable option for Albertans. I believe that the current policies that we have are already adequate for large generators in Alberta, and that is pretty much borne out by the increased generation over the past few years that was spoken to by the hon. Member for Highwood and, I believe, by myself.

So Motion 510 is about bringing attention to the issue and showing that there is significant support for the concept of net metering. As I mentioned in my original remarks, Alberta Energy is currently undertaking a comprehensive consultative review of policies and practices respecting small-scale generation, including net metering, which I understand will be completed in 2006. I believe the amendments that are proposed will allow this motion to support that review. I believe that the support for 510 as amended will speak volumes as part of that whole process while at the same time bringing much needed attention to the policy idea, whose time has come.

I encourage all members to support the amendment.

The Acting Speaker: The hon. Member for Edmonton-Gold Bar, followed by the hon. Member for Drayton Valley-Calmar.

Mr. MacDonald: Thank you very much, Mr. Speaker. This amendment to Motion 510 as proposed by the hon. Member for Highwood is interesting. I think we are taking a good idea and we are making it worse, significantly worse. But perhaps I would change my opinion if another hon. member of the Assembly could answer these questions for me.

When we are talking about microelectricity generators, what are the limits of electricity that these generators could or would produce and be able to sell into the grid? I'm not satisfied that these limits are necessary. The fact that you are buying power for X number of cents per kilowatt, in some cases 9 cents, 10 cents, in some cases 11 cents and going a lot higher, and you wait – you wait – until we get the full effect of the flow-through pricing. Who knows what the

price is going to be? [interjection] The hon. minister of agriculture is talking about that, but the full effects of flow-through pricing are going to occur for some consumers starting as soon as July 2006, and it's going to be hold on to your hat then, Mr. Speaker.

Anyway, specific to this amendment to Motion 510, if we adopt this amendment and get rid of this idea of having the same rate as the purchase price, we are once again allowing the big generators complete dominance, complete control. I don't know how this would work when we have this power-by-the-hour set-up that this government initiated with electricity deregulation. How would this work? Who would determine the price? Certainly, if the market is going to determine the price for one source of electricity, why is it not doing the same thing at the Power Pool. When you have the highest cost electricity generation setting the price for all the electricity that is generated, this amendment simply doesn't make any sense.

I think we're taking a good idea here from the hon. Member for Olds-Didsbury-Three Hills, and we are ruining it. Thank you.

The Acting Speaker: The hon. Member for Drayton Valley-Calmar, followed by Whitecourt-Ste. Anne.

Rev. Abbott: Well, thank you, Mr. Speaker. I would like to thank the hon. members for Olds-Didsbury-Three Hills and Highwood for bringing forward the motion and the amendment. I believe that the amendments proposed for Motion 510 tighten up the wording and make it even more appropriate for the purpose of a motion other than a government motion. By changing the wording to reflect small producers, or microelectricity generators, the motion speaks more to the process of net metering as the practice of net metering is a utility resource usage and payment scheme in which a customer who generates their own power is compensated monetarily. It is apparent that it pertains to consumers, not to large generators, and the wording change provides that necessary clarification.

Mr. Speaker, net metering originated with electric companies as a way to encourage consumers to invest in renewable energy sources such as solar or wind power. In a net metering program the electric company allows a customer's meter to actually run backwards if the electricity the customer generates is more than they are consuming. At the end of the billing period the customer only pays for their net consumption, the amount of resources consumed minus the amount of resources generated. Again, it is clear that the practice of net metering is based on small consumer production and even small business production but clearly does not pertain to large producers, which currently provide Albertans with electricity. I believe this change is necessary and appropriate.

The removal of the phrase "at the same rate as the purchase price" is just as necessary and appropriate. The purpose of a private member's motion is to bring light to possible policy initiatives that members believe would be beneficial to government. However, I believe that by alluding to specifics of that policy within the motion wording, the motion may be overstepping its boundaries, and debate may therefore be concentrated on the specifics of the policy rather than the proposed idea brought forth, as we are seeing currently. Removing any suggestion toward specifics of a net metering policy other than saying that the government should take a close look at net metering is essential to a productive and supportive debate this evening. Therefore, I believe that the removal of the phrase "at the same rate as the purchase price" is also necessary and appropriate, and I support that amendment as well.

While we are discussing the necessity and appropriateness of all things net metering, I believe it is a good time to bring attention to work presently taking place in other jurisdictions. Mr. Speaker,

ultimately I would prefer a made-in-Alberta approach because that will be the best approach to net metering and believe that that is what we will get. However, I also think it's important to look at what other jurisdictions are doing and see if their policy may complement our work.

For instance, in October the Ontario government passed a regulation that permits net metering, which allows homes, farms, and businesses to generate their own power from renewable sources such as wind and solar power and send any excess electricity back to the grid for credit. According to the Ontario government this regulation will make it more attractive for small generators such as farmers to produce green power by allowing them to receive credit for the excess electricity they produce. The government believes it's time to reward those who want to increase the supply of clean green energy for the province.

With net metering customers use their own renewable generation to offset their consumption over a billing period. When customers generate electricity in excess of their demand, they can send the surplus back to the grid for credit on their next bill. At the end of the billing period the customer gets a credit for the excess power that was put into the grid, and the customer will pay only for the net amount of power consumed.

Mr. Speaker, the Ontario government believes that this expanded approach to net metering could provide farmers with the opportunity to substantially cut their power bills while providing Ontario with another valuable sustainable green product. Until now in Ontario net metering had been available only at the discretion of the local energy distribution companies and usually only up to 50 kilowatts. The new regulation eliminates this inconsistency and requires that the distributors permit net metering for all eligible projects that produce up to 500 kilowatts. Projects that produce electricity from clean sources such as water, wind, solar power, and farm biomass are all eligible.

Mr. Speaker, Ontario is the first jurisdiction in Canada to implement net metering on this scale. California has used net metering for years to promote the use of solar and wind power. It is time to bring net metering to Alberta and allow consumers the opportunity to become microelectricity generators. I believe the limits could be applied by regulation, and they could vary by jurisdiction. Again, we need a made-in-Alberta approach. Certainly, a review should help us establish the amount of electricity that you would want to generate.

Mr. Speaker, as I mentioned earlier, the proposed amendment is both appropriate and necessary to ensure a productive debate on the idea of bringing net metering to Albertans as a general concept. As I feel that this is an important issue that needs to have as much debate time as possible, I think it's necessary that we spend our time debating the main motion rather than these amendments. For this reason I would like to call for the question on the amendment.

Thank you.

8:40

The Acting Speaker: The hon. Member for Whitecourt-St. Anne, followed by Calgary-Mountain View.

Mr. VanderBurg: Thank you, Mr. Speaker. You know, Motion 510 as presented I didn't really have a lot of issues with, and I thought it was very progressive. We have opportunities across this province, whether they be large or small, to help strengthen our grid and to bring new players into the market.

When I look at Motion 510, part (a) may be limiting, and it may limit some farm operations. I'm concerned about some of the people that might feel left out of this discussion if we want to just talk about

the microelectricity generators. I have absolutely no problem supporting part (b), striking out "the same rate as the purchase price." Quite frankly, Mr. Speaker, I think this should be separated into two parts, and we could vote on (a), and we could vote on (b). I think that might be a good way to make this thing move on.

Thank you.

The Acting Speaker: The hon. Member for Calgary-Mountain View, followed by the Minister for Agriculture, Food and Rural Development.

Dr. Swann: Thank you, Mr. Speaker. I am also very encouraged by this motion. I would support the recent suggestion by the member across that we separate the two suggested amendments. It's not clear to me where microelectricity stops and starts. If we're going to restrict to one particular type of generator, it's not clear who would define this and how and why you'd restrict people from this. It's an important innovation, the amendment in itself, and I think this would worsen the motion.

Thank you.

The Acting Speaker: The hon. Minister of Agriculture, Food and Rural Development.

Mr. Horner: Well, thank you, Mr. Speaker. I guess that I'm going to echo some of the more recent comments on the amendment to Motion 510. We are on the cusp of bearing the fruit of our deregulation exercise. We are creating energy from a variety of different sources all over the province. Certainly, in agriculture creating value on the farm has a direct relationship to creating energy on the farm or regionally on farms. I feel that by substituting "all sizes" with "microelectricity generators" it may limit us in terms of how big a regional agricultural energy biofuel facility might be that creates electricity: certainly, waste energy, as the hon. Member for Whitecourt-St. Anne has mentioned.

I, too, believe that this amendment (a) I cannot agree to, but (b) I would actually support, Mr. Speaker. It would be wonderful if we could separate the two of them.

Thank you, Mr. Speaker.

The Acting Speaker: The hon. Member for Calgary-Bow.

Ms DeLong: Thank you very much, Mr. Speaker. I think this actually speaks to how the grid actually operates. In other words, if you are a small microproducer, you can get onto that grid, and you can sort of use that grid to transmit a small amount of electricity without actually impacting how the grid is operating whereas if you are a large producer, then there is a need for you to be a part of what is called the balancing pool, which is for the large producers and which is part of what is already available to anybody who wants to sell into the grid right now. Generally it just has to do with the technicalities of how the grid operates that it is important that we look in terms of micro versus macro. We've already looked after the macro side, and this is how we would look after the micro side.

Thank you.

The Acting Speaker: Hon. members, I've been advised that because of the desire to vote separately on the two parts, we will entertain that. So we will first vote on the amendment (a) portion, and then we'll vote on the (b) portion.

[Motion on (a) lost]

[Motion on (b) carried]

The Acting Speaker: Anybody else on the motion itself?

Mr. MacDonald: Mr. Speaker, a point of clarification, please, in regard to the Speaker's ruling.

The Acting Speaker: Yes, go ahead.

**Point of Order
Clarification**

Mr. MacDonald: Could you clarify for this member and all other members the procedure for the splitting of that amendment on a motion into two votes?

Thank you.

The Acting Speaker: Very well. Hon. member, the chair has been advised that there is precedence; we have done this in the past. It is possible for us to divide the amendments into different portions. Is that okay?

Mr. MacDonald: For now, thank you.

Debate Continued

The Acting Speaker: On the motion itself, the hon. Minister of Energy.

Mr. Melchin: Thank you, Mr. Speaker. I'd just like to add a few comments to the discussion. I do compliment the hon. Member for Olds-Didsbury-Three Hills for bringing forward this motion. Certainly he has been working on this for some time.

I concur that this is the right approach as to how we ought to consider the development of our electricity industry. I certainly do support that we would look at allowing all people to bring electricity in whatever form and whatever innovative way onto the grid. It would be beneficial that we constantly look at how to best use, how to best conserve, and how to best incent people into accomplishing just that.

The hon. member did refer to our department conducting a comprehensive review of all the policies that may affect microgeneration, including net metering. On October 4 a stakeholder discussion paper was released, and consultation on the topic covered in this paper is ongoing. We do expect to gather information from that consultation and over the next number of months bring that back for further discussion.

There are very technical aspects of this that have to be considered, so I'm pleased to see that even with things like striking out "at the same rate as the purchase price," we allow some of that detail to be fleshed out when we work through the mechanics of how it would best be accomplished.

In principle we're very supportive of the motion.

The Acting Speaker: The hon. Member for Edmonton-Calder.

Mr. Eggen: Thank you, Mr. Speaker. I'm happy to be back on the original motion. I think we're quite clever in looking at some of those amendments but not all of them.

This net metering concept – and I know that this is just a motion – does encourage the development of policy, and I know that there are some plans in the works to expand the capacity for us to net meter and, certainly, to look at different sources of energy to meet the needs of Albertans. So this is an important step as part of a basket of ways by which we can approach our energy challenges in the future. It just makes natural sense that we should encourage

people to produce energy at the source where it's being used as much as possible within the constraints of environmental reasonableness and also, you know, in regard to other laws and statutes and best practices towards your neighbours as well.

Certainly there is a great interest in generating electricity, as I said, from either solar or wind power or making use of cogeneration capacity from other industries that are producing energy. This is just a great way to encourage those individuals and companies, to say that this provincial government is interested in assisting them in any way possible. I'm glad that we took out the larger producers from this motion. Certainly, there has to be regulation in regard to who might be considered to be a producer to do net metering. Certainly, TransAlta might, you know, not be included in that scenario or the people who are traditionally producing electricity because they are the ones who are running the grid in the first place.

8:50

A couple of questions or items that I wanted to just put forward here. One is the question of the cost of the meters themselves. Net meter systems are more expensive, Mr. Speaker. Certainly, in British Columbia, probably here in Alberta as well, I think a standard residential meter is running maybe \$40 or \$45, while a net meter, bidirectional meter, is running more like \$250. So B.C. Hydro I know has picked up the cost of this, while the individual or the company has to pay for the application and installation. I think, you know, that we can look for small ways like this to help encourage people to sign onto such a program as this in the future and make it more affordable.

As I said before, in other jurisdictions – Ontario, Nova Scotia, and British Columbia – there is a problem with the number of people who are signing onto these programs. You must have a sustained way by which to encourage and give people the knowledge that they will be part of a program that is here to stay. I know that in Ontario the enthusiasm for net metering was severely curtailed when the market was deregulated, and fewer than 10 people signed up for the program. By contrast, in Washington state a very highly publicized system called Whatcom 1000 solar rooftop project – I love that name – had more than 2,000 people sign up within the first couple of years. California, the state that has the most success and encourages net metering the most, has more than 5,000 net metering installations across the state. But, you know, let's keep everything in perspective. That's producing less than one-half of 1 per cent of the state's peak electrical requirements.

So, as I said before, Mr. Speaker, this is part of a basket of solutions that we must put out there to change the way by which we produce and consume electricity and all forms of power in this province. We simply cannot continue to be so reliant on one single production system. Particularly, coal burning generation is not only limiting us in the way by which we produce electricity, but it also is a very polluting way of producing electricity. I know that it's necessary because of the history of the system that we have built up here, but let's try to break that pattern to some extent. This net metering proposal is probably a step in the right direction.

So, Mr. Speaker, certainly, representing the NDP caucus, I would be in support of this motion, and I look forward to seeing great things in the future in regard to other means by which we use our imagination and sense of ingenuity to produce electricity here in Alberta.

Thank you.

The Acting Speaker: The hon. Member for Calgary-Mountain View.

Dr. Swann: Thank you, Mr. Speaker. Again I rise enthusiastically supporting the motion on net metering of electricity. This is a long overdue motion, and I hope that we won't wait as long for the bill to follow, that this will help to stimulate significantly the important distributed generation of electricity, decentralization, and renewable clean energy, which Canadians have been waiting so long for. This will promote local innovation, clean renewable energy, and conservation initiatives. This is clearly a win-win-win for the environment, for health, and for the economy, including the climate change challenges that we now face.

I think that the challenge for us as government is to move quickly forward on this and to recognize that two fundamental principles need to operate in the formation of a bill: one, in which the incentives for clean, renewable energy are clearly apparent and, secondly, where we stop incenting the fossil fuel industry, which hasn't been able to produce the same level of win-win-win for health, the environment, and the economy.

The fossil fuel industry has made tremendous contributions to Alberta, and it's time now to begin phasing away from that source of energy. I think that for many Albertans the next steps, where there are incentives for clean renewables and stopping the incentives for the nonrenewable fossil fuel industry, can't come too soon.

So I very much support this initiative and hope to move forward towards a bill. Thank you.

The Acting Speaker: Anybody else on the motion? The hon. Member for Calgary-Bow.

Ms DeLong: Okay. Could I have a question? I don't know whether I can speak past 9 o'clock.

The Acting Speaker: No, you cannot.

Ms DeLong: If I stop before 9 o'clock, will there be a vote?

The Acting Speaker: Hon. member, what will happen is that at 9 o'clock the Speaker will rise and interrupt you, and then the hon. Member for Olds-Didsbury-Three Hills will have five minutes to close debate. So you have a few minutes if you'd like to speak to it.

Ms DeLong: Thank you very much, Mr. Speaker. I'm very pleased to have the opportunity to speak to this motion as I believe that net metering is a good opportunity to encourage the use of green power, something that will undoubtedly be important to us as a province and as a country.

The technology that allows Albertans to take part in an electricity generation system is here, and it is affordable. I know this, Mr. Speaker, because I have had the opportunity to view net metering at work. I visited a business in my constituency around four years ago. At that time the equipment was installed, and the company was both consuming and producing electricity. Not only was the company able to produce electricity, but they were able to do so safely and easily.

To expand, Mr. Speaker, the argument will be made by the federal government that resident meters won't run backwards as they are not certified to do so. Well, they're wrong. Not only do they run backwards; they do so seamlessly and accurately. I have seen them myself.

Others may argue that having consumers send electricity back to the grid would put electrical repairmen or current electrical infrastructure at risk. This assumption is false as well. I know this for two reasons, Mr. Speaker. The first is because I know of at least one location in Alberta that has successfully been net metering for four

years safely. The second reason is that there are numerous jurisdictions across Europe and North America that actively participate in net metering with no increased danger placed on employees of the electrical grid or of infrastructure.

Net metering is not a new concept. I feel that it's important to stress that there are several cases where it's already working well in jurisdictions that have chosen to put it in place. California is one example where net metering legislation has been passed and where it is working to the benefit of Californians. In this state any residential or small commercial electricity consumer who generates some of their own electricity with solar panels, wind turbines, fuel cells, biomass, or a hybrid system of these and whose system capacity is no greater than one megawatt is eligible for net metering.

Net metering customers can carry excess electricity generated for up to 12 months. At the end of the 12 months the excess generation is granted into the utility. Customers can however sell excess electricity generated back to the system. This means that when a customer consumes power . . .

The Acting Speaker: I hesitate to interrupt the hon. Member for Calgary-Bow, but under Standing Order 8(4), which provides for up to five minutes for the sponsor of a motion other than a government motion to close debate, I would invite the hon. Member for Olds-Didsbury-Three Hills to close debate on Motion 510.

9:00

Mr. Marz: Well, thank you, Mr. Speaker, and I'd like to take this opportunity to thank all those enthusiastic colleagues who stood up in support of this motion. I've often said that when you think you're ahead, perhaps you should be quiet and sit down, but it's never been my style.

There have been a couple of questions that were asked, and I think they were answered. Edmonton-Calder was wondering why we'd exclude large-scale producers, and I guess that was subsequently answered by the passing of the amended motion. I did make a comment earlier that I think large-scale producers have adequately been addressed in the current policies of the government, but it seems that with the amendment, it will be also included in this motion.

Edmonton-Gold Bar asked about the cost of these different microgenerating systems. I don't have specific costs for each one because they change and vary by type and size, whether it's biomass, whether it's solar, whether it's wind generation, and how much electricity you actually want to generate.

You also asked about the limits that could be allowed to go on the grid. Again, that varies in various jurisdictions across North America from 50 kilowatts up to California, that allows for a thousand kilowatt hours of electricity. I really feel that the review that's being undertaken by the Department of Energy will provide us with information to more adequately address what would be a good fit for Alberta at that time, so I specifically didn't put a limit on in this particular motion.

So with that, Mr. Speaker, again thanks to all that participated in the debate, and I would ask that you all support this motion.

The Acting Speaker: Hon. members, before I call the question, since the amendment that was before us had two parts to it – the first part was rejected; the second part was accepted – the motion as we will vote on it will read as follows:

Be it resolved that the Legislative Assembly urge the government to adopt net metering of electricity for producers of all sizes, thereby allowing them the opportunity to sell any excess electricity they produce back to the grid.

[Motion Other than Government Motion 510 as amended carried]

head:

**Government Bills and Orders
Second Reading**

**Bill 49
Police Amendment Act, 2005 (No. 2)**

The Acting Speaker: The hon. Solicitor General and Minister of Public Security.

Mr. Cernaiko: Thank you very much, Mr. Speaker. I'm pleased to move second reading of Bill 49, the Police Amendment Act, 2005 (No. 2).

The main purpose of the proposed legislation is to streamline and enhance the Law Enforcement Review Board's effectiveness in how complaints are handled by police and how the police disciplinary process works. Specifically, it's proposed that the chair of the LERB be given the authority to appoint one board member to deal with preliminary or procedural matters. The amendment also gives the board the authority to establish subpanels with the same powers of the full board which would sit simultaneously in different regions of the province.

An amendment of this bill that will directly benefit Albertans concerns the change to the rules of evidence. Currently when Albertans complain to the LERB, they must follow the rules of evidence used in judicial proceedings. These rules are too stringent and unnecessary. The amendment would see the board use the principles of natural justice, which follow an approach based on common sense. This change will help Albertans understand the process without having to obtain legal counsel.

The proposed amendments also clarify the role and powers of the board to assess costs and pay expenses.

Mr. Speaker, the Police Amendment Act also covers the minister's responsibility for policing standards. This amendment is a minor wording change to clarify that standards for policing include police commissions and committees, not just police services.

I encourage all members to support these amendments. With that, Mr. Speaker, I'll now call the question. [interjections]

The Acting Speaker: The hon. Member for Edmonton-Glenora.

Dr. B. Miller: Thank you, Mr. Speaker. I rise to respond to that brief introduction by the hon. Solicitor General on Bill 49.

Of course, we need standards for policing, and the act begins by amending the Police Act to mention not just policing in general but police services, police commissions, and policing committees. In our open, democratic societies the capacity to arrest, detain, search, and otherwise restrict an individual's freedom represents a formidable expression of power. The police are authorized to intervene but, of course, always within the constraints of the rule of law and in accordance with standards and protocols. This emphasis on standards is extremely important.

For example, on the recent tragic death of a police officer which involved the police deciding to ram the truck of a mentally disturbed man who was backing up in his driveway, I'm not going to judge the rightness or wrongness of the action taken but just point out that there are certain standards and protocols that the police are always involved with. In this particular case the subsequent internal inquiry of the police led to many recommendations which will lead to changes in standards and protocols.

Standards are necessary to guide the actions of police and also to hold the police accountable to society. It is important that such standards be uniform because in the province of Alberta we have different police forces: municipal police forces in Calgary and

Edmonton and, I believe, in Lacombe and Taber but also the RCMP in rural areas. So in order to attain and maintain uniform standards throughout the province, that is where the Solicitor General comes in. It is the province which under the Canadian Constitution is responsible for the administration of justice, which includes providing policing services.

This is a good amendment to the Police Act to emphasize standards. They especially mention the police commissions as well as police services. Having standards for the police commissions obviously is important, especially given recent problems with the police commission in this city, so it's of the utmost importance that we have proper training of people that belong to police commissions.

It's also important to distinguish political influence from the carrying out of the responsibilities of police commissions. It's important that police commissions be free from undue political influence, whether that comes from the municipal government or from provincial government, that they be able to freely carry out their responsibilities with respect to the police force.

Given that importance of their independence, I just want to say that I think it's important that we do not proceed in the direction of having a provincial representative on police commissions and committees, as I think the Solicitor General suggested. Perhaps he's had second thoughts and withdrew that suggestion. To have a representative of the provincial government on the police commission I think would be in the direction of too much political influence.

I'm not going to say anymore about this aspect of this act. I think that it's proper and something that I would support.

Now, as for the Law Enforcement Review Board, that's an elaborate process when a citizen objects, has a complaint about police, or sometimes police have objections and complaints also.

9:10

I'll just take a concrete example. If a citizen is intoxicated and finds himself during arrest lying on the ground handcuffed and while he is being restrained, the police officer tases him a couple of times, then that person may have reason to complain. There is a process. The person can complain about what has happened to him to the police chief, and there is an internal police investigation with a report to the aggrieved citizen, but if the citizen is not satisfied with this report, then he can appeal to the Law Enforcement Review Board. He has 30 days after he gets the report from the police to give written notice that he wants to appeal to the Law Enforcement Review Board, and he has to state his reasons why he is dissatisfied with the police report.

Then the citizen appears before the board and gives evidence, and he is entitled to be represented by a lawyer or have a lawyer or someone else go with him. The police service can also give evidence. As the Police Act says, all testimony offered at hearings is given under oath, is subject to cross examination, and is electronically recorded.

In the carrying out of this process the amendment is suggesting a change. The act up until now required that "the rules of evidence applicable to judicial proceedings apply." I mean, essentially it's creating another court, so I can understand what the Solicitor General is saying, that it may speed up the process if they don't have to follow the rules of evidence but can just follow the principles of natural justice. The principles of natural justice simply require that a person has the right to be heard and that a person has the right to be judged by someone who is unbiased. There are all kinds of procedures involved in terms of natural justice: that the person who is bringing the complaint and the person who is accused should be present at the same time. In other words, justice should be done and be seen to be done.

I have no problems with that, but at the same time I'm a bit concerned that the rules of evidence are there to safeguard certain problems. But I don't see that there's a difficulty here. Other boards have the same statement. For example, the Alberta Energy and Utilities Board Act says that the AEUB "is not bound in the conduct of its hearings by the rules of law concerning evidence that are applicable to judicial proceedings." I think the Legal Profession Act has the same kind of statement, that the rules of law concerning evidence do not need to be followed. So I don't think there's any problem with this aspect too.

Now, just one other comment, and that is that towards the end of this amendment act is a reference to frivolous and vexatious matters that are brought before the board. There are some changes, amendments here to deal with such frivolous and vexatious matters that apply to the party involved but also to the counsel of the party. I find that a bit curious, and perhaps the Solicitor General might explain to us, maybe before the Committee of the Whole, what has prompted this change. Is it somehow the attack of criminal trial lawyers? Are they being a nuisance and bringing all kinds of issues before the Law Enforcement Review Board that are trivial and do not need to be dealt with? I'm not sure where this is coming from and why there is the need for this amendment.

Mr. Speaker, those are all my comments. I would be prepared to support this bill, but I would be open to hearing other people comment on it.

The Acting Speaker: The hon. Member for Edmonton-Calder.

Mr. Eggen: Thank you, Mr. Speaker. I'm happy to rise and speak to Bill 49. My understanding is that much of this bill does seem fairly innocuous, and when we spoke to the original version of this in the spring, I did outline some of my concerns in regard to this bill.

There are still perhaps a couple of questions that I would like to ask the minister, just to explain more about these changes, particularly under section 5. In particular, why are these panels necessary? I would like to hear more elaboration on that.

Subsection (3) appears to give the chair direct decision-making over preliminary and procedural matters. This is a very important set of decisions to be made, in my view. It's more than just making sort of an innocuous change. You're setting up important parameters for an appeal, for an inquiry, or for a review. I would just like to know why those changes or the panels are necessary. As well, is it appropriate, then, to allow the chair to designate himself or herself as a panel of one to make those decisions in the first place? Again, it's just, perhaps, good practice to have other means by which those things are determined.

It's likely good that the board will have a broader capacity to receive evidence that it considers to be important as per section 6, which is amending section 20, and section 9, which I think goes back to section 47 of the original act. The broader capacity to receive evidence certainly seems like a reasonable change.

However, the same criticism can still be made of this bill as I had made in the spring sitting. You know, there seems to be some tinkering about the edges, but the fundamental concerns about policing in this province seem to remain, and I don't see that these changes through Bill 36 are going to address that as directly as I would like to see.

Certainly, I'm not disparaging in any way the hard-working women and men who are in our law enforcement business here in Alberta, but, you know, there are some very real questions being raised at this juncture, particularly in Edmonton, about the police investigating themselves. We are all party to and I believe it's coming up to the one-year anniversary of perhaps the most famous

case of this problem here in Edmonton, and we would like to put it behind us, certainly. This legislation I think does not do much to reassure Albertans that the Law Enforcement Review Board has both the capacity and the will to thoroughly police the police. What I believe and our party as well believes and many Albertans believe is that we need a provincial civilian commission to oversee police activities such as they have in Ontario. They've got the Ontario Civilian Commission on Police Services, and indeed it does have some lasting merit and value.

So, Mr. Speaker, I do put forward these concerns although I wouldn't preclude the possibility of supporting this bill with perhaps some changes. Thank you.

The Acting Speaker: Standing Order 29(2)(a) kicks in. Any questions or comments for the hon. member?

Does anybody else wish to participate in the debate?

Hon. Solicitor General, this is your opportunity to now close debate and call the question.

9:20

Mr. Cernaiko: Thank you very much, Mr. Speaker. I knew the opportunity was going to come.

Actually, I'll be very brief before I close debate on second reading. I did want to just respond to the hon. members' concerns from across the floor. Really, when this legislation was drafted – and, again, additional consultation occurred throughout the summer and the fall – we wanted to ensure that the process was fair to members of the public when they were going before a quasi-judicial board. To ensure that that would take place, we wanted to ensure that the legislation was easy for them to understand but, as well, that the process was easy for them to understand, yet ensure that the rights of both a member of the public and the rights of a police officer remained intact.

The issue of providing that for them was one of the reasons behind it as well as the number of appeals that we have in place right now because the present process has created a backlog of a number of appeals. It's those issues that we wanted to deal with. Some of the backlog issues deal with the fact that our Law Enforcement Review Board contains members from across Alberta. Presently, in order to have a board get together, they have to have two or three members. Dealing with preliminary or procedural matters will allow the opportunity for one board member or chair to look at the procedural issue and possibly set dates for the future versus gathering three members together, which may be difficult to do at times. One member could do that, set the dates up for the future.

The other comment I wanted to make, Mr. Speaker, with regard to that was the fact that in section 20 we're striking out "that a party" and substituting "that a party or counsel to a party" could be in fact awarded costs. This really is to ensure that the lawyers for either the city representing the officer or the union representing the officer or a lawyer representing a member of the public is there and doing their due diligence in representing that member and due diligence in the fact that this is a Law Enforcement Review Board hearing – it's a disciplinary hearing, not a court case – ensuring that the process moves along smoothly and in a timely, consistent manner.

So that's why these changes have come in. They will be there to provide less intimidation for a member of the public but, as well, expedite the whole process of the appeals that go before them.

Now, Mr. Speaker, I'd like to call the question on Bill 49.

[Motion carried; Bill 49 read a second time]

The Acting Speaker: Hon. members, before I recognize the next speaker, may we briefly revert to Introduction of Guests?

[Unanimous consent granted]

head: **Introduction of Guests**

The Acting Speaker: The hon. Member for Peace River.

Mr. Oberle: Thank you, Mr. Speaker. It's my pleasure to rise tonight and introduce to you and through you to all members to this House Ms Rosanna Saccomani, who is the counsel for the Rewega family. Of course, the Rewega family are constituents of mine and were instrumental forces behind the public legislation and, of course, Bill Pr. 4. Many members in this House have their constituents attend on occasion to watch them in the House. Apparently, mine send their lawyers, and I don't know what to make of that. I would ask Ms Saccomani to rise and receive the warm welcome of this House.

head: **Government Bills and Orders**
Second Reading
(continued)

Bill 45
Maternal Tort Liability Act

[Adjourned debate November 16: Mr. Flaherty]

The Acting Speaker: Hon. Member for St. Albert, did you want to finish your time?

Mr. Flaherty: To the tort bill here, Mr. Speaker?

The Acting Speaker: You were speaking the last time, and there is still some time left for you if you need to speak to it.

Mr. Flaherty: Well, there's one matter I'd like to speak to if I could. Basically I support the bill, but I struggle with a bill that deflects the issue of the two insurance companies. That bothers me terribly. It also begs the question: how much are we talking about in this particular bill? I was looking for it today. I think it's around \$250,000.

In light of what has happened today with the \$20 million that the Premier has announced for across Canada, I think it's important, maybe, that we relook at this bill in light that the government of the day should demonstrate a social conscience and provide a special fund for incidents of this nature. I was thinking – and I don't know much about this, Mr. Speaker, but maybe someone could clarify – there could be amendments to the risk management fund to take into consideration in this particular portion the government providing funds of their own for this matter.

The other thing then. I would suggest that maybe there could be amendments made that there be a special fund set up for incidents of this type for people that have this difficulty.

So with that, I support the legislation. I think it's a good move, but I struggle with the particular aspect of it going to insurance, and I would hope that the government would consider looking at an alternative for this particular matter.

Thank you.

The Acting Speaker: Standing Order 29(2)(a). Any questions? Comments?

There being none, the Minister of Justice and Attorney General.

Mr. Stevens: Thank you, Mr. Speaker. I'd like to start by thanking the interest of the hon. members in this legislation. While it is short, only being two pages in length, it has an interesting history, and it

certainly is unique in Canada from a public policy perspective. I appreciate the interest and attention that they've been paying to it.

There have been two private bills with respect to Brooklynn Rewega, one last year, in 2004, which ultimately did not get considered because there was no fall session as a result of the election. Then there is Bill Pr. 4, which was brought into the Private Bills Committee earlier this year and, I believe, has received first reading and is under consideration by the committee or has been under consideration by the committee.

As Justice minister and Attorney General I said earlier this year that I thought it was appropriate that the government consider the policy issue that is raised in that private bill. As a general proposition, Mr. Speaker, private bills are not to affect public policy in a material way, and the reality is that Bill Pr. 4 would, without consideration by the government, affect public policy in a material way.

Essentially, the situation in Canada as we speak, Mr. Speaker, is that there is a maternal tort immunity. Specifically, there is immunity for a mother "at common law from actions in tort by her child for injuries suffered by the child on or after birth as a result of the mother's actions prior to the child's birth." Bill Pr. 4 purports to create an exception to that particular rule, and that is what is addressed in Bill 45. The exception that is created in Bill 45 reflects what is raised in the private bill.

So it is being proposed that

a mother may be liable to her child for injuries suffered by her child on or after birth that were caused by the mother's use or operation of an automobile during her pregnancy if, at the time of that use or operation, the mother was insured under a contract of automobile insurance evidenced by a motor vehicle liability policy.

That is the essence of Bill 45.

Then there is a limitation in the bill so that the mother's liability is limited to the amount of the insurance monies payable under contracts of automobile insurance indemnifying the mother.

9:30

The importance of what we have done here, Mr. Speaker, is this. There was a public policy issue addressed in the private bill. That was, in my view, not an appropriate place to deal with the matter. Rather, it was important for the government to consider whether or not the principle should be reflected as government policy, that is reflected in Bill 45, so that with the support of government caucus and, hopefully, members opposite there will be an exception in the province of Alberta with respect to maternal tort liability, as specifically outlined in the bill. It is very express to a very unique situation. It is a situation that was dealt with by the Supreme Court of Canada in a case called *Dobson* in 1999. I can tell the hon. members that this exception that we are talking about in legislation here is the same exception that has been put into place in the U.K., has been in place for some time and has been operating very well there without incident.

What we are doing here essentially, Mr. Speaker, is this. We are providing an opportunity for an action to be commenced on behalf of Brooklynn Rewega against her mother for alleged injuries arising out of a motor vehicle accident that occurred while Mrs. Rewega was pregnant. If, in fact, this bill becomes law and if, in fact, the private bill comes forward and is passed, that opportunity will occur. But the fact is that if the unfortunate situation of Brooklynn Rewega had occurred as a result of someone else driving, anyone else driving, Brooklynn Rewega would have a cause of action that could be advanced on her behalf, and that claim would allow her to either prove or not prove her case, as the case may be. What we are doing through this legislation is ultimately establishing the principle that a child in that situation will be like all other children in that situation

in being able to advance a case against the person who caused the injury. So all we're doing, really, is providing that opportunity. We are limiting it to the amount of insurance that's available because that was a specific comment and direction by the Supreme Court.

Let me tell you this about motor vehicle accidents, and I have some experience with respect to this because when I was practising law, I did a fair amount of it. Firstly, as a matter of policy, insurance is one of the best things that society has created. What it does is it allows for people to put into a pool and ultimately spread the risk among all of us. So insurance is a social good.

Secondly, in our province and I believe probably in all provinces in Canada automobile insurance is mandatory if you are going to be the owner and operator of a motor vehicle. So we know that if people are obeying the law, there is automobile insurance associated with the use and operation of the automobile.

Thirdly, we have a well-defined duty of care and a well-defined standard of care with respect to the use and operation of automobiles. There are, unfortunately, too many motor vehicle accidents. We have a long history of litigation with respect to automobiles, and establishing the duty of care and the standard of care is a commonplace occurrence in our society. It is not something that is one-off. It is not something that is unique. It is common. So we are familiar with this.

The situation that we are dealing with is a familiar situation where the law is, generally speaking, well known. We can argue about the facts of a particular case, but the law itself is relatively well known. We know that as a general proposition people will have insurance because people are required to have insurance. What we have is a minimum amount of insurance that people must carry, and people may carry more than that.

Now, when an action is commenced against somebody, yes, the action is going to be commenced for the full amount of the claim, and it can be more than the amount of the insurance that is available. So the comments that people have made with respect to an arbitrary cap based on the amount of insurance appearing at first blush unfair have a point. But in practice I may say this: people who have assets typically have automobile coverage that protects their assets. If I actually have something, I buy more than the minimum amount of insurance. In fact, I might even get excess insurance, and you can get excess insurance, and many people have that.

My experience, once again having done a fair amount of this over the years, is that generally speaking claims are settled within the amount of insurance that is available, and if they are not settled within the amount of insurance available, more often than not the claim is settled for the maximum amount of insurance and little or no more because typically the defendant is prepared to take that and not advance a claim against the individual for an amount that would come out of the individual's pocket. But there is that possibility.

In this particular situation, one, it is a comment and direction, if you will, from the Supreme Court that has provided for that cap on the amount of the claim because the Supreme Court said that it is not appropriate that a mother in these circumstances be personally exposed, and I think that that is a reasonable position to take.

Essentially what we are doing is filling a gap which currently exists in the ability of a child in this situation to advance a claim for insurance. There is absolutely no intention to make this as a substitute for whatever public programs are currently available. The fact of the matter is that there are going to be more children like Brooklynn Rewega that can advance claims today, because I imagine statistically there are more situations where that type of claim has arisen as a result of someone other than the pregnant mother driving. These situations occur today, hopefully not too often, but social programs continue to be available. The health care

system continues to be available. So this is in no fashion a substitute for social programs which currently exist.

I found the comments of the hon. Member for Edmonton-Calder to be quite ingenuous to be concerned on behalf of the insurance industry with respect to this particular claim and then suggest that a solution would be no-fault insurance. I think he listened to the insurance industry – they're maybe concerned – but didn't bother running the solution past them. But I may be wrong. Perhaps they've changed their mind as a result of this legislation.

I noticed that the hon. member in his comments said that lawyers would have a field day and would be issuing lots of lawsuits. Well, the fact of the matter is that, as I indicated, lawsuits like this do occur already. The legal issues surrounding this kind of lawsuit are not new. They exist today. All we are doing by this legislation is allowing for a party who is born after the accident to sue the mother where the mother is the one who may well have been responsible for the accident and who may well have caused the injuries. Those are points yet to be proven in a lawsuit. It's not a *fait accompli*. It is simply giving the opportunity to advance the claim.

I don't think that there's anything novel about it other than the fact that we are giving the cause of action in that very situation. This will not be a field day for litigation lawyers. This is a very narrow exception to the rule, and there will not be a flood of lawsuits because the legislation is very express as to what is covered.

9:40

I guess with respect to the issue of whether or not it's the kind of system that we want, where we limit the amount of the claim to the amount of coverage, depends on how you see it. Personally, I would rather give an opportunity to a Brooklynn Rewega to have an opportunity to sue and recover damages if the claim can be established for the amount of the insurance available than not to have a claim at all. So you ask yourself: which is the better situation or which is the worst situation? And I say in fairness, on balance: you have to go with allowing the opportunity for a Brooklynn Rewega to commence a claim and if proven have a right to the amount of insurance that is available. That is better than saying: no, you can't.

So there is judgment involved in this without doubt. There is judgment in what we do. Exercising judgment is what being responsible is all about. But I can tell the hon. members that this particular bill is narrowly crafted. Read the words. It specifically says that there is maternal tort liability immunity and then creates a very narrow exception, and we can discuss the words more expressly during Committee of the Whole. I can tell the hon. members that this is a bill that arose as a result of the private member matter being before us on two subsequent years and the need for this Assembly to establish public policy.

Thank you.

The Acting Speaker: Standing Order 29(2)(a). Any questions or comments for the minister? The hon. Member for Edmonton-Meadowlark.

Mr. Tougas: Yes. Thank you, Mr. Speaker. In regard to your statements I just want to clarify the matter. Tomorrow is a meeting of the committee. If this bill becomes law, is it retroactive to the Rewega matter, or is it something that we have to deal with tomorrow? I'm wondering if you could maybe clarify that for me.

The Acting Speaker: The hon. minister.

Mr. Stevens: Yes. Thank you. The public bill, Bill 45, has no retroactivity. The intention of this bill is to bring it forward for discussion in this House and ultimately, hopefully, passage of the bill so it becomes the law, goes forward in Alberta. That allows the

Private Bills Committee and then, hopefully, subsequently this Assembly to review the private bill and say that we have established as a matter of public policy in Alberta that this kind of claim is appropriate, and therefore we can address this one-off situation which has retroactivity now at its heart, which really is the only issue that one has to deal with at that point in time. So we're establishing public policy in Bill 45 going forward, and the issue with respect to Rewega will be the retroactive nature of it.

The Acting Speaker: Any other questions or comments? The hon. Member for Calgary-Mountain View.

Dr. Swann: Thank you, Mr. Speaker. This is a very interesting and challenging bill indeed. It strikes me that – and this may have been discussed before . . .

The Acting Speaker: Hon. member, are you rising on questions or comments, or did you want to speak?

Dr. Swann: I wanted to ask a question.

The Acting Speaker: Go ahead.

Dr. Swann: The question I have is whether or not the same capacity to insure oneself could extend beyond automobiles? I mean, are we now going to deal in the next session with a woman who decides to insure herself in case she does something that harms her child? I know that this is very specific to automobile injury, but why would we reject a woman who makes application for similar insurance coverage in relation to, say, some indiscretion that she followed during an early pregnancy?

Mr. Stevens: Let me start out by saying that there's absolutely no intention to go down that particular road. The bill was brought forward in response to the private bill, as I have indicated. There is no intention of changing this. Now, you say: well, you can have that debate. You're quite correct about having that. I would say this. First of all, the situation of motor vehicle accidents is commonplace. There is mandatory insurance. It is a very specific situation. Other insurance is optional. The circumstances surrounding other situations are less well known and less common, and candidly it probably is problematic to find, as you put it, insurance to cover indiscretions that someone might indulge in which might give rise to damage to a fetus and, hence, a child upon birth.

So if you take a look at the Supreme Court decision, they make a distinct point of saying that this is a unique type of situation; that is, the motor vehicle accident and the mandatory insurance. I can tell you that in the UK it's now been in place for many years, and they have maintained the very narrow exception without difficulty. That is the intention with this bill.

The Acting Speaker: Hon. Minister for Health and Wellness, are you rising on a question?

Ms Evans: A comment, really. I have never heard such a fine and eloquent dissertation about why we should support a bill, and I thank the hon. member for that. It was exceptional.

I would also ask, because he has presented such a positive view and I intend to support it, if there was anything that he saw as, perhaps, a precedent or a downside to this in the future of insurance and Albertans.

The Acting Speaker: The hon. minister, in less than 40 seconds.

Mr. Stevens: The situation already exists today for every situation but for the mother who was pregnant at the time of the accident. So to the extent that there is a history, it is out there to find. I don't know what it is. The insurance industry indicated that there may be some modest increase in premiums as a result of potential additional claims. Candidly, from where I sit, that is the only so-called downside. But, as I said, insurance is a social good. It spreads the risk and allows for recovery in appropriate circumstances.

The Acting Speaker: The hon. Member for Edmonton-Ellerslie.

Mr. Agnihotri: Thank you, Mr. Speaker. It's my great honour to rise and speak to Bill 45, Maternal Tort Liability Act. As the hon. minister mentioned, the purpose of this proposed bill is to provide compensation for a child born with injuries from a motor vehicle accident occurring prior to birth as a result of negligent driving of his or her mother. When and if the child is born with injuries, the cause of action can be commenced, and the claim for damages can be made. Liabilities would be limited to the extent of the insurance coverage within the narrow sphere of motor vehicle accidents. He just mentioned this. How limited insurance coverage is this? I don't know, but I would like to know. How narrow is this?

The bill has its origin from Bill Pr. 4. I'm a member of the Private Bills Committee, and we had a few meetings. We've discussed this case. This Rewega case is a very, very sensitive and touchy one. This arose from the vehicle accident that occurred when a mother of a child was in a single vehicle accident on December 31, 2000, near the town of High Level. Four months following the accident, a girl was born with cerebral palsy. The father and legal guardian of the girl then presented a petition to the government requesting a bill to be passed to allow her through her legal guardian the right to bring or maintain a civil action in the courts against her mother for compensation for the injuries that arose resulting from the accident.

Under the present federal law an unborn child is not a person and, therefore, not the subject of rights and duties. A pregnant woman and her unborn child are considered to be one entity. This has since been called the born alive rule. The fetus has no status; consequently, a pregnant woman cannot owe a duty of care to her fetus any more than she can owe a duty of care to herself. Now the government is trying to open up the debate on the legal standing of a fetus. How can an unborn child have standing to sue in one instance but not in another one?

9:50

It is logical to assume that this bill could easily be challenged under section 15, Equality Rights, of the Canadian Charter of Rights and Freedoms. Even with the specific exceptions to allow this type of duty of care to apply only to motor vehicle accidents, it is still subject to the provisions of the Charter, and the argument can then be made that placing this burden of care upon pregnant women that is not applied to women who are not pregnant or to men infringes upon the equality rights of women.

It is the responsibility of the government to care for the children who are born with disabilities. Is the government shifting responsibilities to the auto insurance industry? The legislation is not clear about who should be responsible for the damages. What about other children who are born with disabilities? Can they turn around and sue their mothers as well in order to get more funding for their own care? The government has a responsibility to ensure that all children born with congenital disabilities are cared for and that there is no undue hardship placed upon the families. These families should have access to services that will enable them to provide for the care of their children no matter what their degree of disability. If the government had an adequate system in place to support children and families who have to care for the children with disabilities, then

there would be no need to sue insurance companies to have the funds available to care for their children. This government should be providing the funding for the care of children who are born with any congenital disability. They should not be relying on tort law and insurance companies to pay the bills.

I'm not supporting this bill because if the legislation is passed, the child will not be suing his or her mother personally but the mother's third party. The views of the general population who will be forced to pay higher premiums must be taken. Some people support this case saying that similar legislation exists in the UK and that similar legislation would also work in our province. They should provide sufficient evidence to prove that. The government fails to recognize that the issue is very complex, and even with clear and precise language the legislation may lead to many, many lawsuits. The government has neglected to pursue women's rights, which may open doors to other forms of litigation against women for lifestyle choices made during pregnancy such as drinking, smoking, or playing sports.

This bill has not taken into consideration the possibility of uninsured women or about some women who are not aware of their pregnancy when they are involved in the accident. Moreover, this legislation is not even clear about how they would monitor such accidents. What about the disabilities that are not visible; that is, ADD? Would children sue their mothers in the event that they discover they have a learning or mental disability?

This legislation is not fair for the general population as one type of negligence is to be open for litigation while others will not. The law should have equal status for all fetuses regardless of the action of the mother.

I think that this legislation is not about children suing their mothers. It is about who is responsible to pay the health care costs when a fetus is injured in its mother's womb. A woman who allows her child to sue her is clearly in desperate need of financial resources to care for her disabled child.

That is all I have to say. Thank you very much.

The Acting Speaker: Standing Order 29(2)(a). Any questions or comments for the member.

Anybody else wish to participate in the debate?

The hon. Member for Peace River to close debate.

Mr. Oberle: Thank you, Mr. Speaker. I appreciate this opportunity to rise and respond in part to the comments. There are quite a few, and we'll cover some of them in more detail later.

I need to comment immediately on the remarks of the hon. Member for Edmonton-Ellerslie, whose reading of the federal law that an unborn child is not a person is in my understanding correct. He's also correct to say that an unborn child has no right to sue, which is specifically why this legislation is crafted around if and when the child is born. This is a born live child with a handicap not an unborn child, Mr. Speaker.

I'm a little surprised as a member of the Private Bills Committee that the member doesn't appear to have read the Dobson case very thoroughly because it's crystal clear why it's restricted to car accidents and why it's limited to the amount of car insurance: specifically, to avoid infringement on the mother's rights, which is what this bill is all about.

Mr. Speaker, that member and a couple others have spoken about their concern of limiting the child's compensation to the amount of insurance and also spoke of their concern that there are other areas of negligence not addressed by this bill. These concerns were perhaps most forcefully, I suppose, addressed by the hon. Member for Vermilion-Lloydminster. The hon. Member for Vermilion-Lloydminster forcefully asserted that this wasn't fair, and I suppose

at one level I'd have to agree with him that limiting the amount of compensation to the amount of insurance carried by the mother is in one sense unfair. The expenses for care for a handicapped child might well exceed the amount of insurance available, and the member even spoke of his concern that we are creating classes of citizens based upon how much insurance they carry.

Mr. Speaker, this bill is not designed to address all the potential ill effects of how mothers behave during pregnancy. The Supreme Court has been crystal clear. The only shortcoming or loophole that can be addressed without infringing on the mother's rights are those relating to car accidents caused by the negligent driving of the mother. The room available for legislators relates only to car accidents, where the standard of care is clear, and the coverage is limited to the amount of insurance available to prevent infringement upon the mother's rights and to prevent damage to the mother/child relationship. Now, this is indeed a very narrow area of occurrence out of a very wide range of possibilities, and I suppose in that sense it's unfair. But the Supreme Court was clear. This is the only place that the Legislatures could venture.

Now, I would ask my hon. colleague the Member for Vermilion-Lloydminster to perhaps view this from the other side, the side of the child. Children in this situation currently receive nothing. They are handicapped as a result of negligence yet cannot receive compensation purely because of who it was that acted negligently. Is that somehow more fair?

This area of law is delicate, Mr. Speaker – I agree with my hon. colleague – because there is a conflict between the woman's rights and the rights of the child. We have an opportunity, however narrow, to strengthen the rights of the born child without infringing upon the rights of the mother. I would suggest that it's prudent for us to do so.

I also believe it was my hon. colleague who referred to the idea that this is law based on emotion. I agree wholeheartedly that law based on emotion is likely bad law, ill considered and hastily crafted. Indeed, we sat on the Private Bills Committee, and we saw a severely handicapped child in an emotion-filled presentation, but that does not mean that this law is based on an emotional reaction. It is based on a very clear Supreme Court ruling, on the 29-year existence of a smoothly functioning law in the United Kingdom, and upon our ability to move to protect the rights of children without infringing upon the rights of the mother.

10:00

I believe we are focusing on the larger societal implications of this law, Mr. Speaker, not on the emotions generated when meeting one particular family. I believe that this well-considered, very carefully crafted bill does exactly what the Supreme Court invited us to do: strengthen the rights of the child without infringing upon the rights of the mother.

Mr. Speaker, just one additional comment. The Member for Edmonton-Calder spoke in tentative support for this bill but expressed his concern that the bill entailed an expansion of fetal rights. Again, same as the comment to the Member for Edmonton-Ellerslie, I would strongly suggest that this bill has no such effect. It contemplates no rights whatsoever save those of a born child.

So with that, Mr. Speaker, I'll call the question and close debate.

[Motion carried; Bill 45 read a second time]

The Acting Speaker: The hon. Government House Leader.

Mr. Hancock: Thank you, Mr. Speaker. Given the hour I would move that we adjourn until 1:30 p.m. tomorrow.

[Motion carried; at 10:02 p.m. the Assembly adjourned to Tuesday at 1:30 p.m.]

