Province of Alberta

The 28th Legislature
First Session

Alberta Hansard

Wednesday evening, November 7, 2012

Issue 17e

The Honourable Gene Zwozdesky, Speaker

Legislative Assembly of Alberta
The 28th Legislature
First Session

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Legislative Assembly of Alberta

7:30 p.m. Wednesday, November 7, 2012

[Mr. Rogers in the chair]

Government Bills and Orders
Committee of the Whole

The Chair: Hon. members, we will call the Committee of the Whole to order.

Bill 2
Responsible Energy Development Act

The Chair: When we recessed, the hon. Member for Lac La Biche-St. Paul-Two Hills was speaking. Please proceed, hon. Member for Lac La Biche-St. Paul-Two Hills, on amendment A1C.

Mr. Saskiw: Thank you, Mr. Chair. Previous to the break we were talking about section 31 in the proposed amendment, to put the word "public" in front of "notice of the application." Some of the issues that are outlined in that is the fact that the section reads: The regulator shall on receiving an application ensure that, if the word is inserted, "public" notice of the application is provided in accordance with the rules.

Later on in the act it's section 60 that sets out which regulations the Lieutenant Governor in Council will make. Then section 61 provides that the regulator may make rules, and it delineates roughly 20 different grounds upon which the regulator can make rules. It's section 61(a) that says that the regulator may make rules "respecting the contents of notices of application" and a bunch of other different issues.

I guess the concern that we would have is that if the rules are going to provide for substantive notice to a landowner on a proposed project, would it not be better to specifically outline what notice has to be provided right in section 31? There are obviously the traditional principles of natural justice that should be incorporated or codified into section 31 so that landowners clearly know what rules will be put forward by the regulator, or at least there should be some parameters so that it's not an all-encompassing power that the regulator has under section 61 and so that the rules that are created are held accountable here in the Legislature rather than giving an unfettered power to the regulator.

Of course, second to that is that the minister has power under this act to essentially override any single rule that's created by the regulator. That relates to this amendment as it deals with notice that should be provided under the rules. It's just my submission that the rules themselves should delineate exactly how notice will be provided. On such an important issue we shouldn't leave that to a regulator. We shouldn't leave that to a cabinet minister in the future. We should put it right into the piece of legislation.

Thank you, Mr. Chair.

The Chair: Did you care to respond, hon. minister?

Mr. Hughes: Sure. Thank you, Mr. Chair. I appreciate the comments of the member opposite. I think the intent of his comments is completely consistent with the intent of the legislation in other parts, which is to specifically say that people who are directly and adversely affected must be given notice, and then you have the public notice over and above that as, let's call it, additional insurance to ensure that there's a full and complete engagement at the front end of the regulatory process. But I appreciate the sensitivity.

I think it's difficult, perhaps unwise, to put into legislation today all means of communication. After all, five, 10 years ago who communicated by tweeting? The technology evolves, and the use of it and how it's taken up by people in society changes and evolves over time. What we want to do, though, is to have the intent reflected here fully. It's got to be appropriate to achieve the objective of ensuring that all directly and adversely affected parties, or those who believe they are directly and adversely affected, have the opportunity to engage at the front end of the regulatory process.

The Chair: Thank you.

The hon. Member for Innisfail-Sylvan Lake.

Mrs. Towle: Thank you, Mr. Chair. There was one part of the question that I asked you before that I didn't get an answer to, so I'd just like to pose the question to you again really quickly. When you talked about the rules and the public notice going back to notice of application, I had asked how we're going to verify that and who's going to determine those rules, and you had answered very well that we would all be working together and those regulators would be working together. The question I had, though, is: would there be stakeholder contact and stakeholder consultation as to what rules would be in place and what would constitute public notice? Would they be consulted as we go through this process?

Mr. Hughes: In short the answer is yes, in fact, because what we're creating is a mechanism for the engagement of a wide range of stakeholders at the policy level, the policy level being the Department of Energy, the Department of Environment and SRD. There's a policy management office. It's a new organization that we're creating, and their role is to engage with stakeholders, make sure that any evolution in policy – let's call it that – takes place in an open process. I expect there to be quite a bit of activity around the policy management office. I expect not-for-profit organizations and interested parties and others to be quite engaged around this on specific issues until we get to a comfort level with how the new regulator is functioning. But the first opportunity will be for the regulator to get it right right off the bat and go to best practices right off the bat, and then it would be unlikely to have a lot of people coming and speaking to the policy management office about public engagement policy.

The Chair: The hon. Member for Innisfail-Sylvan Lake.

Mrs. Towle: Thank you very much because that actually does answer most of my question. I just have one quick other clarification on the policy management office. I'm just curious. Will there be a tender? Clearly, we don't want every single person coming to you. That's overly burdensome on what we're trying to achieve. Will the policy management office do a call-out or have terms of reference that would say: "Okay. These are what we're looking for. These are the kinds of stakeholders we're looking for." Those people could then have an application process of some sort and would be notified that they could come on certain days. There might even be public notice to those groups that we're looking for input on X, Y, and Z. Is that process in place, or is that going to come afterwards once we pass the legislation?

Mr. Hughes: Yeah. The process itself would come after we've got through the legislation process and this has been passed. Then we'd start to build the machinery of the operation to make sure that we have a wholesome engagement with stakeholders.

The Chair: Any other comments on amendment A1C? I recognize the Member for Rimbey-Rocky Mountain House-Sundre.

Mr. Anglin: Thank you, Mr. Chair. Hearing the other members that I had an opportunity to listen to, I have a lot of concerns with the narrowness or the vagueness of the whole issue of public notice. This is an opportunity, I think, to maybe make this – I don't want to use the word "broad" – more definitive.

Let me give you an example. There are numerous cases now in Alberta where the public was not notified, and I'll give you a prime example. Section 34(1), 35, and 36 of the Electric Utilities Act would be one example where the public is supposed to be notified. You go back to the old EUB. There were instances when the public was supposed to be notified, and they weren't notified. There are court cases that have resulted from the fact that notification wasn't given.

I'm going to read something that I'll table tomorrow, but this is pertinent to this whole issue that we're dealing with. It comes from my riding, the James River area, and it's the public meeting that was scheduled for November 14. What the notice says – and I'll actually pass one to the hon. minister here if I could. It says:

> Unfortunately Alberta Surface Rights Group is going to cancel the public meeting at the James River Hall, scheduled for Nov. 14/12.
>
> We were really looking forward to this meeting as we planned to use a totally new format. Instead of bringing in a guest speaker . . . on a specific topic, we were going to run this meeting as an information [session] . . . an information meeting for our group, to find out what the concerns were within the area. It was going to be an open mike, where people could share their concerns, their problems, maybe their successes!
>
> We knew the area had been subject to a major pipeline spill and a concentrated shale play.
>
> Hopefully we will be able to hold this meeting at a later date.

7:40

> The reason we had to cancel was the recent introduction of "the Responsible Energy Development Act" (Bill 2) in the Alberta Legislature, late last week.
>
> Quite frankly it caught us by surprize! This is really bad legislation . . . really bad. This legislation takes away most of the tools in your negotiating tool box. It almost completely destroys your right to an independent and fair hearing on whatever you might find unacceptable. The inclusion of water for energy development under the regulator puts all of our water at risk. Perhaps the very worst thing is it denies you due process of the law . . . it takes away your right to the rule of law . . . fundamental to any democracy!
>
> The spin the government is trying to put on this one surpasses all the lies they told us before about the land theft bills (19, 24, 36, 50). Several lawyers have contacted us telling us just how bad this one is!
>
> We feel this is the "hill to die on"? If the Redford government succeeds with this evil legislation . . . we truly don't believe there is much point in having a landowners rights group . . . because quite simply . . . we won't have any rights!
>
> We need to fight this bill with all our might and all our resources.
>
> Please keep your eye out for future public meetings we will be holding. Please support your opposition MLAs! If you have a PC MLA please send him/her a message that you expect them to stand up for your rights and freedoms . . . and not the oil companies profits!
>
> Truly if there was ever a time to stand up and do your part . . . It might be your last chance.

You don't like that, and I understand that.

Some Hon. Members: Who wrote that?

Mr. Anglin: I'll find the author. I pretty much know who the author is. But you've got the group name. It's the Alberta Surface Rights Group. [interjections]

But let's talk about it.

An Hon. Member: Did Joe Anglin write that?

Mr. Anglin: No, Joe Anglin did not write that. Joe Anglin just read it into the record, ladies and gentlemen. [interjections] So let's take a look at how it affects this amendment.

The Chair: Please. The hon. Member for Rimbey-Rocky Mountain House-Sundre has the floor.

Mr. Anglin: It's interesting. I know you don't like it, but the reality is that it is a concern with the public. I'll give you an example about that concern. Granted, the letter I read would be considered by many in this room objectionable. I understand that. But what you're not understanding is where it came from. That's the point I'm trying to bring to you.

I'm going to give you an example from right here in the House. The hon. member the other day read during question period a statement. I have to get the right . . .

The Chair: Hon. member, keep your comments to the particular amendment. I would really appreciate that.

Mr. Anglin: I am. I'm talking about the public interest.

The Chair: Please try.

Mr. Anglin: Okay. Basically, what I want to say is that the hon. Member for Fort Saskatchewan-Vegreville – I wanted to make sure I've got the right riding – read a question that is pertinent to this whole issue of public interest. This is what concerns these people. She was reading section 26(2) of the ERCB. It says: "It goes on to quote section 26(2) of the existing Energy Resources Conservation Act, which says . . ." Then she read the act. Then she goes on to say: "We must look at the act and how it relates to the other sections. In this case the author has looked at section 26(2), which I read, and not looked at section 26(1)." Then she goes on to read 26(1).

Now, the people who drafted that letter picked up, very simply, that section 26(2) makes a comment right at the very beginning. You could look it up. It says, "Notwithstanding subsection (1)." Now, these people understand the law. The reason they understand the law is that they go to these board hearings. They have input even in the board process. What they're having a difficult time doing is following this government's thought processes as it creates this new bill, as it creates this new regulatory body.

I want to make a comment in that regard. The people who do protect the public interest are good people for the most part. The lawyer that was mentioned in that question period was a lawyer by the name of Keith Wilson. He is one of the leading experts on landowner rights. If you don't like it when you run up against a capricious government decision, you will hire somebody like Keith Wilson. But he's not alone. There's another person by the name of Fitch, other persons by the name of Carter, Niven, Secord, Bur, Henry Loots, Johanna Price, Luke Kurata, and Scott Stenbeck. These are the lawyers that practise law in a very, very small field in this province, and they are the experts in landowner rights. They are the experts in the public interest when it comes to oil and gas development. Those are the lawyers that represent the public interest. Now, you may know this, but most law firms in

this province are in a conflict of interest with oil and gas because that's where they make most of their money. That pool of lawyers that represent landowners is a very small pool, and two of the names I read for you came from out of this province. It is a small pool of law that is practised.

I will tell you – you can shake your head – that I have actually participated in a number of these board processes, and there are always the same lawyers there, always arguing 26(2), always arguing the definition of the public interest, always arguing notice. That's what we're talking about here with this amendment. You can shake your head, but the people on the outside are shaking their heads, and if you don't want to listen, then this is going nowhere.

I want to point out – you can mock what was just read, and I will table it tomorrow – that these people are talking about: this is where they want to plant the flag. This is the hill they want to die on. This is where they plan on standing up and fighting. It will not serve the oil and gas industry. It will not serve our development. This is important. It will create chaos if you don't make these people somehow believe that what you're trying to do is going to work for both sides. Here we are right here, dealing with this issue of public interest, which is a very broad term in law, and rightfully so in many ways, but it can be narrowed in scope in the parameters of: how are we going to give public notice, and what exactly is public notice? There's a difference between the public and the individuals that are adversely and directly affected, and this one right now is all encompassing. It just says "public."

What people are worried about is when they are notified in the newspaper in the typical advertisement. By the way, in most of your local newspapers – pick any one out as an example – there are probably five or six notices today, all looking pretty much the same unless you look at that map. You may or may not have a chance to read it because you're that typical person that doesn't pick up your weekly newspaper until four or five days later, or you may not even see that week's newspaper. You get that public notice out there, so-called in the public interest, but the people who need to be notified aren't exactly given the proper notice. That's what creates the problem.

I said this once before in this Assembly, and I'll say it again. It's never been the money in settling the issues with oil and gas development. It's not. It's always been about respect, and it's always been about the fact that either they don't get notice, or even when they get notice, they don't get standing. That is all about the public interest.

I understand what you're trying to do, but I don't see the meat in the matter here. I don't see where the public is protected by this idea of: okay; we're just going to put out a public notice. As an example – and it may have been given today – somebody wakes up, and there's equipment 75 feet from their home working, and they never had any idea. They just find out that it's actually on somebody else's property over the fence, and they weren't told. Again, that was a failure not just of public notice, but that was a failure of the individual who was adversely and directly affected, and it was a failure of the system. So it starts a problem right there.

Let's be honest: most reputable oil and gas developers don't run into this problem. They generally go above board. They raise the bar, and they do amazing things. In my riding we have an organization called SPOG – it's Sundre Petroleum Operators Group – and they function really well working with the industry. [interjection] You can mock me, but I've got one of your members agreeing. They're a good group. They set a bar. They work with industry, and they feel frustrated right now by this bill. They're the ones that actually sent me a copy of that letter. They said: did you see this?

7:50

Here we have a group that wants to work. Here we have a group that understands what the public interest is in their jurisdiction or their geography of where they operate. They do an outstanding job, and they feel slighted by what's going on here. What I'm trying to tell the hon. minister, as I'm looking at your amendments, as I look at each one of these amendments – I've read the bill – is that I'm looking for the amendments to actually do something. What I'm seeing here is just a little play on words. I'm not saying that you're intending to do that, but what it's not doing is putting some teeth into the various sections.

On the issue of notification what I would prefer to see in the legislation is that mandatory: they will be notified. And not just that, but it has to go to those who are adversely or directly affected. When we leave it up to the rules, the rules have sometimes failed us. The rules sometimes change.

We are right now dealing with an issue of emergency procedures. You may know this. It's in your department. There's a draft memorandum going around, and it has to do with sour gas. That issue dealing with notice is going to be a contentious issue, and we're dealing with a directive. I think it's directive 051, but I may stand corrected. It might be 057. You might have to double-check my number on that; 056 is the notification one.

That's what I think is frustrating people. SPOG is one of these groups. They have channelled that one emergency directive around to their members to take a look at. They are working on that. They're hoping the government will respond. What they're worried about is that the whole issue of public interest and public notification is getting washed, and they're concerned. So as we bring this amendment forward, while we insert a word, we don't give it any great depth or any great meaning. To the hon. minister: I'd like to hear your comments concerning that.

With regard to the letter I just passed you, that I will table tomorrow, in good faith, I just received that tonight. Aside from heckling a little bit, I didn't write it. I know who wrote it, and I know the group, but there are lots of groups like them. What I'm looking for is: how do we answer these groups? That's really important. But saying that lawyers are fearmongering is not really going to help the situation. Working together, coming up with a solution, is something that we can do to calm fears, to give confidence, and to give trust to the public. That's my goal here, working with you, trying to get some amendments and some depth to these amendments.

To the hon. minister: I was hoping you'd comment on my submission.

The Chair: Thank you, hon. member.

The hon. minister.

Mr. Hughes: Well, thank you very much, Mr. Chairman. It's hard to know where to start, but let me take two or three pieces. I'm sure I won't address all of those aspects, but I'll do my best to hit the salient ones.

First of all, how do we respond? How should the hon. member, how should members of this House respond to inquiries such as that which he's received? My counsel is to tell them the truth. The truth is, Mr. Chair, that under the existing system, the ERCB system today, notification to directly and adversely affected landowners is not mandatory. Under the new rules that we're creating here, under the new legislation that we're putting in place here under Bill 2, it is mandatory. So we are improving the notifi-

cation process, not in this one small section that we're debating here but in other parts of the bill.

I appreciate that there's a lot of meat to this bill and that there's a lot of substance to it. The hon. member may not have noticed it in his review through it, but there are aspects here which clearly spell out that the regulator must give notice to people that it has determined are directly and adversely affected. If they get it wrong, people can self-identify and bring it to the attention of the regulator. "Hey, I think I might have been affected. I might be directly and adversely affected here. Here are my views, and here are my concerns." The regulator has to take that into consideration at the front end of the process.

So I think that's an important aspect of this. I would note that what we're talking about here is public notice, not public interest. We can have the debate about the public interest aspect of this in a relevant clause, but that actually doesn't speak to this clause.

Thank you, Mr. Chair.

The Chair: Other comments? The hon. Minister of Environment and Sustainable Resource Development.

Mrs. McQueen: Thank you, Mr. Chairman. I just want to add to the comments that the hon. minister has made with regard to the hon. member from Rocky Mountain House-Rimbey-Sundre. Sorry, hon. member. We're going to get this right.

With regard to the public notice when we did the consultation for two years with a variety of groups, if you look at the regulatory enhancement review Enhancing Assurance, it lists in there who all the stakeholders were, so I'm not going to talk on that piece.

But what was really important that we heard from the landowners' groups was this. The landowners' groups brought this forward to us, and when you see that we talk about this, making sure that notice must be given, under the current regulator, the ERCB, they choose whether or not notice will be given. What we heard from landowners that they thought would be very, very important is that we would take it back and that notice shall be given. So when you see that in there, that's what the current piece of legislation reads, that notice shall be given. The hon. minister is strengthening that to say that public notice must be given, in hearing some of the discussion that we've heard. I think that really clarifies. Landowners currently may be notified. Now they shall be notified, and I think that's very important because that was one of the fundamental things of many that the landowners gave us and that we put into the legislation.

The other fundamental piece that the landowners gave us – and I had the opportunity to speak in Red Deer a week ago to the Synergy Alberta group. SPOG is one of the members of that group, and I would agree with the hon. member that SPOG is known for the good work and collaboration that they do in the province. They are a good synergy group. When I spoke about the single regulator and the regulatory enhancement project amongst other things of integrated resource management, the question that came from the landowners was: when can we start registering on the registry? So people are really engaged to do this. This was key for the landowners, and one of the first things I brought to industry when we were bringing this forward is: this is what the landowners want.

As the hon. member has mentioned, the majority of the industry companies are very good and honour their agreements, but when a landowner decides not to take a company to a hearing and they come up with agreements, the landowners, on occasions when you've got a company that won't fulfill those agreements, really wanted to make sure that there was a place that it could be enforced. Now under this new regulator that the hon. Minister of Energy is bringing forward, the landowners will have an opportunity to register that if they choose. That's the key part that landowners want.

Some want to be able to register, and others want to make sure that they don't have to register. We've made it very clear. First of all, this has been brought forward by the landowners, and the opportunity to choose to register is certainly something that they have brought forward and certainly something where we listened very closely to what the landowners said would be important to them.

The other piece that the hon. member mentioned that I'll raise – we'll talk about it later on in the evening and in the coming times that we'll have a chance to talk about it, but because it was raised in the discussion, I'd like to address it for a couple of minutes – is with regard to water and water issues and how people will make sure that they can still have an appeal mechanism. When the legislation was drafted, we looked at appeals being more clear so that we would have a regulatory review and that appeals would mean to the courts. We've heard what people have said with regard to that, that it's not entirely clear, so the hon. member has done a very good job in saying that we'll move from an amendment, from a regulatory review, to a regulatory appeal.

The policies and legislation regulations that apply today in the department of ESRD will apply tomorrow with the new regulator. I think what people are thinking of and maybe forgetting about is the fact that they're thinking that this new regulator is ERCB enhanced. Well, it's not. It's a new regulator made up of Environment and SRD, ERCB, all coming together and holistically, in a one-window approach, having an application come before them for oil, gas, oil sands, or coal and that they will all look at it together instead of how we currently do it, in three different formats and not holistically.

So people have to come to grips with what this new regulator is. It's not just the ERCB taking over water issues. What it is is a new regulator regulating under all of the regulation, policies, legislation that we have.

8:00

The important piece of this is that government will make policy. That is the job of government, to work with Albertans and to create policy. The policy will then be given to the regulator to implement. So whether it's under the Water Act, the Public Lands Act, or 10 of the acts of Energy, the regulator will be implementing under those.

If, indeed, the regulator, the government, or Albertans identify a policy gap, that will then come to the policy management office. The policy management office will then have the opportunity as crossministries to, once again, holistically look at the policy gap, have the opportunity as Energy and ESRD and any other ministry that it may affect to come together, look at that policy, consult with Albertans on that, and then be able to give that policy to the regulator to implement.

We will not see the cases that have happened before where the regulator under the ERCB once in a while – and people were busy – created directives which were in fact policy, which was the role of government. This will be the role of government, to ensure that we develop the policies, and the new regulator will implement under those policies.

These are the things that we spent two years talking about individually with landowner groups, with all different sectors that we talked to, and then brought back collectively. I think it's very, very important. When we look at the piece about notice, that came directly from landowners. The piece about the registry came

directly from landowners. The piece about the policy management office actually was an idea from the environmental groups and landowners with regard to: we don't have the time to have the discussion at every particular well application, but we want a policy management office so that we can talk broadly about policy in a big fashion, whether it be water, land, whatever the policy happens to be, and we don't have to do it at every well application.

We had great input from so many Albertans with regard to this over two years. What's excellent about this and what I think what was very good at the Synergy group was when the landowners stood up and said to me: how soon can we register our agreements? That, to me, said that we've taken what they've said, we've listened to what landowners have said, and they are asking: when can we turn this on so that we can do it?

Thank you, Mr. Chairman.

The Chair: Other comments? The hon. Member for Edmonton-Calder on the amendment.

Mr. Eggen: Yes. On the amendment. That's right. I missed the beginning of the amendment process, I think, this afternoon. I apologize.

The Chair: We're dealing with this, hon. member, in individual pieces, A, B, C. We've voted on A and B. We're now dealing with C.

Mr. Eggen: Yes. That's right. I've got you.

The Chair: Please proceed.

Mr. Eggen: I'm good. Thank you. I know where I am. I was out shovelling snow, so I apologize for missing the first parts.

An Hon. Member: It's better than shovelling something else.

Mr. Eggen: Yeah, well, that's true.

I appreciate us having some time to go back on this amendment. It's very substantive – well, at least at first impression I thought it was quite substantive, but in fact when we go through it, there's mostly just superficial changes to language. While it took us a while to figure out where it was going, I think we only really found a couple of areas where we wanted to make specific comments on this amendment, so I'll do it in just a couple of different parts.

We all worked to build individual amendments that could be studied separately, you know, to ensure that the substantive issues of this bill could be separated into different amendments. This larger amendment that we see here today doesn't follow that practice. It seems to lump together changes which go across the entirety of the new legislation. It made it a bit difficult. We had to go back to the bill to look through our amendments and then look for correspondence through that. All of this duplication of effort is necessary now by us and by the other opposition members, and really what we see is nothing very substantive.

I guess the section that is before us now here in terms of adding "public" before "notice" is useful, but again we could've maybe seen this change earlier. Part of what I think I see with this amendment sort of coming out – it took me a few hours to kind of figure out what was happening. On first blush it seems to me it's a reflection of this bill not being fully formed before it came to us here in the House. I find that a bit disturbing because it's not a superficial bill by any means. For the level of change in language that I see here – like for section 31, C here, for example – it just gives me this feeling that: has this whole thing, in fact, been tested and formed the way that it should, commensurate with the gravity of the issue?

I guess, as we go through this, I don't want to make a great deal of comments, but I just did want to express that concern. I don't think a lot of people have seen this particular process happen like it did yesterday. Again, that gives my constructive critical eye a sharper focus, which I am continuing to use now as we move through this.

Thanks.

The Chair: Any further comments?

Seeing none, I'll call the question on amendment A1C.

[Motion on amendment A1C carried]

The Chair: We'll now move on to D. Any comments? The hon. Member for Little Bow – no. Strathmore-Brooks.

Mr. Hale: Thank you, Mr. Chair. I think by the end of tonight you'll probably get that figured out.

The Chair: Absolutely.

Mr. Hale: In this amendment here they are adding "believes that the person." So the way it'll read after is:

> 32. A person who believes that the person may be directly and adversely affected by an application may file a statement of concern with the Regulator in accordance with the rules.

It's just a little confusing with the grammar. A person who believes that the person: to me, that doesn't make sense. Should it maybe be: the regulator who believes that the person? Like, it doesn't sound right: "a person who believes that the person." That's a little bit I have, a little question or not. I'm not sure about the grammar.

Also, throughout this act there's nowhere in there that has a definition which defines "directly or adversely affected." Now, I know that, you know, we're taking the ERCB, the Environment and SRD, and putting everything together, but in this act nothing defines that. So when someone who has an issue with a project – and by all means if I didn't see it in here, please point it out. But we've looked and can't seem to find it.

People will have different views of how they are directly or adversely affected. I think one thing that we want to accomplish with this bill is so that we don't see the same instances in the Northern Gateway where, when people believe that they are to be affected by it, they have thousands and thousands of people applying to the regulator. We agree that we want to streamline this. We want to make it more efficient for the oil companies and the gas companies. So a definition of "adversely affected" may be needed. We can kind of put something definite in there so we don't get a group of individuals that feel that, you know, if they have their heart set on saving some forest somewhere, that may be part of a project where they feel that they're going to be affected. They might not live close to it or they might not have much to do with it, but in their mind they think that they're going to be affected by it.

8:10

You know, I've got many neighbours at home that are affected by different things. Their view of how they're affected is different than my view. I've had oil companies come on my land and drill shallow gas wells. A big snow storm blows in one spring, and they couldn't get down their access. I said: "Drive across the field. You know, point A to point B. Go straight. Don't worry about the access." They were actually pretty surprised because the neigh-

bour down the road is going to fine them for every tire track that's off access, and then they come onto my place, and they can drive wherever they want. To me, that didn't affect me. I drive on it; they can drive on it. That doesn't affect me, but it affects my neighbour. So I think there could be some confusion there about who's adversely affected.

Now, I want to talk a little bit more about the rules. It says you can "file a statement of concern with the Regulator" according to the rules. When we go look at the rules, again, a rule means:

> . . . a rule made
>
> (i) by or on behalf of the Regulator under this Act or by the Regulator under an energy resource enactment.

Okay. Fine. You know, the regulator is going to come up with some new rules. But in the other section below it:

> (ii) by the Lieutenant Governor in Council pursuant to section 68.

If you go to section 68, it says that

> The Lieutenant Governor in Council may make rules in respect of any matter for which the Regulator may make rules under this act or . . . enactment.

The way I read that is that the regulator can make the rules. They can make the rules for how these issues are dealt with, but then the Lieutenant Governor in Council, so the cabinet, can come at any time and change those rules. That doesn't give industry or landowners any sort of specific guidelines, knowing that those rules could be changed at any time. If the rules get changed, the people who believe that they're adversely affected is going to change.

I would like to see somewhere in that, you know, that there's a definite set of rules that cannot be changed on the whim of cabinet at any time. We do have quite a few reservations about this section, so we do have a subamendment and the required number of copies.

The Chair: Okay. Hon. members, this will be a subamendment to D, so this will be referred to as A1D-SA1.

Proceed, hon. member.

Mr. Hale: Thank you, Mr. Chair. The amendment we're proposing is that section 32 is struck out and the following is substituted.

> Notification and hearings
>
> 32(1) If it appears to the Regulator that its decision on an application may directly and adversely affect the rights of a person, the Regulator shall give the person
>
> (a) notice of the application,
>
> (b) a reasonable opportunity of learning the facts bearing on the application and presented to the Regulator by the applicant and other parties to the application,
>
> (c) a reasonable opportunity, after filing a statement of concern in accordance with the rules, to furnish evidence relevant to the application or in contradiction or explanation of the facts or allegations in the application,
>
> (d) if the person will not have a fair opportunity to contradict or explain the facts or allegations in the application without cross-examination of the person presenting the application, an opportunity of cross-examination in the presence of the Regulator, and
>
> (e) an adequate opportunity of making representations by way of argument to the Regulator.
>
> (2) When by subsection (1) a person is entitled to make representations to the Regulator, the Regulator is not by subsection (1) required to afford an opportunity to the person
>
> (a) to make oral representations, or
>
> (b) to be represented by counsel,
>
> if the Regulator affords the person an opportunity to make representations adequately in writing, unless the statutory provision authorizing the Regulator's decision requires that a hearing be held.

Section 33(1) is amended by adding "section 32 or" before "section 34."

What this would accomplish for us and, hopefully, you is that this actually specifies what these people are going to receive, the people that are going to be affected. They will get a notice of application. We talked about public notice. This says that they will get a notice of application. They will have an opportunity to learn the facts. This will ensure that for the people that are being affected, all their questions will be answered from the start. That's what this bill is trying to accomplish: have everything run smoothly, have the energy companies not have any backlash when they get halfway started in a project.

I mentioned this the other day. If those energy companies know the questions that they have to answer before they start and if the landowners that are being affected have that opportunity to approach the regulator before anything starts, everything can be solved. This will not slow down the process. I think this will actually speed up the process because then during the middle of the process you're not going to have any issues. Everybody can start on the same page when these projects are put forward by the regulator.

I'm hoping that you guys will look at this. I know the hon. Energy minister has received a copy before. We feel that this would answer some substantial questions to landowners plus provide the energy companies some satisfaction in knowing that they're working with the landowners, that they're going to be able to solve the problems before they start and just get to work.

The Chair: The hon. Minister of Energy to respond.

Mr. Hughes: Thank you, Mr. Chair. I must say that I think I see a consistent pattern here of trying to create work for lawyers. I'm not in the business of trying to create work for lawyers of any kind, and I'm not about to promote them or do anything of the sort in this House.

I do appreciate the intent of the subamendment put forward by the hon. member, but really the unfortunate unintended consequence of his motion is that it would actually not contemplate what we have proposed in this section of this amendment, and that is to ensure that landowners, if they believe that they are directly and adversely affected, can self-identify. That's a critical factor. We're trying to widen the ability for landowners to engage at the front end of the process. That's an important principle we're establishing here.

What I think it is unwise to do is to try to prescribe rules of practice and administrative practices of an organization that has to remain nimble, that has to remain responsive, and that over time may need to change those practices to respond to getting that right balance between landowners and energy developers and the environmental concerns that people have as well.

Mr. Chair, I would not support this subamendment.

The Chair: The Member for Innisfail-Sylvan Lake.

Mrs. Towle: Thank you, Mr. Chair. I appreciate the hon. member's comments. You mentioned that you thought that this was more work for lawyers, but it would seem to me that if we're talking about the statement of concern, I believe that currently section 32 reads, "A person who may be directly and adversely affected by an application may file a statement of concern with the Regulator in accordance with the rules." I believe that your

amendment says: a person who believes that the person may be directly and adversely affected by an application may file a statement of concern with the regulator in accordance with the rules.

8:20

I'm not a lawyer, clearly, but that whole statement just sort of seems a bit roundabout. It doesn't really say who is affected. It says that a person who believes somebody may believe that somebody believes that somebody could be affected. So then they now have standing. It would seem that we need to drill that down and make it much more clear as to who the person is and who the person is that believes that the other person could be adversely affected because, really, what this does is open up the door for anyone – literally, anyone – to come in and say: well, I believe that Mr. So-and-so is adversely affected, so I now have standing at the hearing. That wouldn't necessarily give the landowner standing. The clause that you've suggested that would make the amendment isn't clear. I would suggest that that in itself would make more work for lawyers.

More importantly, when you go to the hon. Member for Strathmore-Brooks' amendment, what's important about that is that it's saying specifically, "What is the notification, and what are the hearings?" in comparison to the amendment that the hon. member across the way has provided, which just says: a person who believes that a person might be adversely affected. I understand and I appreciate that the hon. member has been very good so far about wanting to be clear and consistent. You answered very good questions with regard to public notice and who the stakeholders are and how that process would happen. But then we get to statement of concern, and it sort of just gets mumbled and jumbled together and doesn't seem to make a lot of sense.

Notification and hearings, section 32, which the hon. Member for Strathmore-Brooks has presented here, would really allow for the rights concerning notification and hearings for landowners to follow what we had in section 26 under the Energy Resources Conservation Act, which was passed by this fine House, and everybody was okay with it at that point in time. What we have to really understand here is that energy companies with subsurface leases have the right to enter people's land. Short of the oil sands lease, really you're a guest of my land and every other Alberta family's land.

It doesn't matter if it's a farm, a ranch, an acreage, a recreational or an investment property. Why wouldn't we be very clear what the notification process is, what the hearing process is? Why would we just leave it open to somebody who believes that the person may be directly and adversely affected? I would think that the government on that side would want to set out the rules very clearly because we're trying to create a single regulator which we want to streamline the process, but the amendment from across the way really allows for any member in Alberta to say: well, I think he's adversely affected, so I'm going to join in. That person could be in Fort McMurray talking about a property in Strathmore-Brooks, or it could be any group. An aboriginal group could easily come in and have a say, as rightly they may need to.

At least with the notification and hearing section that this hon. member has proposed, it is clearly laid out. It says that you need a notice of application, that you should give the person "notice of the application." That seems reasonable to me. You should give the person "a reasonable opportunity of learning the facts bearing on the application and presented to the Regulator by the applicant." I can't imagine that the regulator wouldn't want that, a reasonable statement of facts.

The regulator shall give "a reasonable opportunity, after filing a statement of concern in accordance with the rules," which you told me would be written a little bit later, to explain the facts or why he's bringing it forward. I would think that that would lessen the workload on the regulator, which is ultimately the goal here, and allow for the person presenting the application to do so without cross-examination initially and an opportunity of cross-examination in the presence of the regulator. I would think the regulator wouldn't mind that either. It allows for a back-and-forth.

Furthermore, 32(2) of the amendment says that

> a person is entitled to make representations to the Regulator [and] the Regulator is not by subsection (1) required to afford an opportunity to the person
>
> (a) to make oral representations, or
>
> (b) to be represented by counsel.

Now, like I said, I'm not a lawyer, but it seems that that's a pretty clear layout. I don't know. I can't imagine that anybody in this House would actually disagree, but if I'm actually being told that somebody is coming onto my land, I should get a notice of application. I don't know why that would be so disagreeable. I should have an opportunity to learn about the application and have a discussion with the regulator. It would seem to me that's reasonable. And after filing, if I have a disagreement with why that application is coming forward, I would have a reasonable opportunity to make my case to the regulator.

These are all things that we ask for every day. If our employer asks for us to be disciplined or something like that, we ask for an opportunity to state our side of the story and give the facts and then make a decision. In a court of law we say every day that we make an application to the court and the court offers an opportunity for us to be heard, and we take that opportunity. Now, in the end if they rule against us, then we'll deal with that.

It seems to me that to take this section outright and not even give it any value is doing a huge disservice to what you're trying to achieve. I think what you're trying to achieve is very honourable and that it's the right way to go, but it seems to me that we're going to make a vague statement, saying that a person who believes that the person may be directly or adversely affected, when we can clearly drill it down and say that it is only fair that I get a notice, that I'm allowed to talk to that notice, and that I get an opportunity to make my argument to the regulator. There just might be a time when it's actually valid that you maybe don't need to come onto my land or that maybe there's a better route, and if you just had that conversation with me, you might see that there's a better route. By offering the opportunity, then this legislation provides landowners to know, whatever is happening on their land, that every opportunity of appeal or discussion was given to them.

What I heard from this House so many times this last two weeks is that we want to be fair, we want to be open, we want to be transparent. If that's the goal, to do all of those things, it would seem clear to me that we would want to err on the side of being overly cautious to allow the landowner to have a say on what goes across his land.

I don't know if we've all forgotten in here, but I paid for my land. I don't know. I mean, I make the payments to the bank. I own it. I don't know if that's a shocker to anybody who owns property, but each one of you owns land. What this is saying to you right now is that if somebody comes onto your land, you don't get a say. Whether you're rural or urban, this should cause you to stand up and just take a look. Are we really asking for too much if we ask for notice of application? Are we really asking too much if we say: I'd like to be heard on what's going across my land? I guarantee that you would if it was a pig farm coming in beside

you. You'd want a notice. You'd want a hearing. Absolutely you would want all those things. Just because it's an energy company now, are we going to throw all of those normal things that we do every other day out the window?

Literally, people, we need to take a look at the bigger picture. I mean, it all looks good to just sort of shove it into section 32 here, but what we're really doing is taking away a landowner's ability to receive notice, a landowner's ability to speak – to speak – to that, a reasonable opportunity to learn the facts. This is something you already had. You had it under section 26 of the ERCA, the Energy Resources Conservation Act. I'm sure the minister of environment, who keeps shaking her head at me and mouthing whatever she's mouthing – I have no idea; I can't hear her. You are the minister of environment, and you are the Minister of Energy. You agreed with these under the Energy Resources Conservation Act. Are you saying that this section 26 is so egregious and so insulting that you would have it in those acts but you wouldn't consider protecting landowners under the Responsible Energy Development Act? It's just kind of mind boggling how under one act it's perfectly okay and it's perfectly reasonable, but under the Responsible Energy Development Act this is just unheard of. It's like: what are you asking for?

8:30

Literally, you're standing over there or sitting over there, you know, and you're just mind boggled that we're even asking for a clearer definition of notification and hearings, yet we already do this. We already say this is a landowner right. We incorporate it in other acts. It's a standard part of the act. I'm not asking for anything that's not – we're not re-creating the wheel here. It already exists. Why wouldn't you?

I'm actually surprised the hon. Member for Lesser Slave Lake doesn't support this given how many of her people it's literally going to have implications for if this comes across their land. So that's interesting to me.

It's something that literally is already covered, so there's no reason why it cannot be applied to this act very clearly. There should be no reason why any member wouldn't support the opportunity to receive notice of application. That's what this is asking for. It's not asking for the world. It already exists. It can easily be done. Remember that, rural or urban, this affects you. [interjections] You can cackle at me all you want. I've been cackled at by worse people. It's not a big deal.

The important part here is that we're talking about landowners. We're talking about people who own any parts of land. That includes every landowner. It includes our aboriginal people. It includes urban. It includes rural. Everybody should have the right to have this notice. Everybody should have an opportunity to learn the facts. Everybody should have a reasonable opportunity to stand up and defend their own property. This is fundamental to Canada. This is fundamental to Albertans.

The reality is that if you don't take this seriously, what you're going to have are landowners who come up and are going to revolt. They're already revolting. They're telling you that there are parts of this bill that are key to them, and this is one of them. Offering them notification when we offer them notification under several other legislations doesn't seem unreasonable.

I think the Minister of Energy has done a fantastic job – you've done a fantastic job, a hundred per cent – I absolutely do. My understanding is the Minister of Energy and our critic have worked together to work through some of these amendments, and I think even the Minister of Energy has acknowledged that they have been working together. I think you're doing a great job. What comes down is: let's not stop there. Let's continue to do a great job and make sure that we're protecting landowners and creating a simpler system for energy and for industry. That's the goal here.

Allowing landowners the right to speak to things that are on their land is not really that big of a burden. But telling landowners that it's anybody, any person that believes the person may be adversely affected by an application, is going to be a nightmare. It's going to be a nightmare for the regulator, an absolute nightmare. So let's solve the problem. Let's sort it out and work on the subamendment and see if we can't come to an agreement. That's what we're here for. That's what we're here to do.

Thank you.

The Chair: Other comments? The hon. Member for Rimbey-Rocky Mountain House-Sundre.

Mr. Anglin: Thank you, Mr. Chair. I passed that letter to the hon. minister earlier because it's really about this section right here. This is it. This is what the landowners are trying to tell you, but it's not just landowners; it's what property owners are trying to tell you. Because when you have a conflict with a small oil and gas developer with another oil and gas developer that comes onto the same quarter section, there are conflicts and issues that have to be resolved.

Now, keep in mind that the issues that are generally resolved are almost always resolved, 90 per cent, without any problem whatsoever. Of the 10 per cent that remain, 90 per cent of those get resolved without a board hearing process. So we're talking about 1 per cent here. Realistically, what they're looking for is respect for due process of law.

Now, it's interesting that there was some cackling going on about this because the reality is that it's in the Alberta Utilities Commission Act. It was in Bill 46 back in 2007, and it was all there prior to that, but it's missing in the Responsible Energy Development Act. What we're trying to do is to give that respect back to landowners so that they have some sort of right to say: "I've got to have my concern heard. My concern can be resolved." I'm not going to tell you we're going to have to guarantee to them that they're going to be satisfied. What I'm saying is that there has to be due process for them because it is that 1 per cent that can take down the system. It is that 1 per cent that starts getting everyone else upset. It's also the ability to abuse property owners, to abuse landowners, that causes the problem. When companies – I won't say companies but landmen – are not reputable and abuse the language or the situation, they cause tremendous problems throughout our community.

I'm going to share a story with you about a number of landowners who showed up at a hearing really looking for respect. There were three board members assigned to this hearing process, and all they had asked was for one of the board members to have some agricultural experience. Now, interestingly enough, the board chair agreed, so they dismissed one board member and brought another board member on. But he didn't have any agricultural experience. We got into this little discussion, and the only agricultural experience he had was that he was arrested for a grow op back in the 1960s. Well, the argument was that at least he had a cash crop going. But the reality is that it made a mockery of the whole process for those property owners that were dealing with the board. That disrespect, not only to the people attending that board hearing, tarnished the reputation of the board. The more that happens, the system starts breaking down.

We're in a situation that you're dealing with right now, that this amendment can address, which is – you saw the letter that came from the Pine Lake Surface Rights Group. That's where it really

came from. Those were the authors under that. [interjection] Yeah, but they're the largest group in central Alberta by far. They've got close to a thousand members, and they attend meetings well. You don't have to agree with them, but you need to know they're there. They are a significant group, and they do affect the dealings with oil and gas companies in that whole central Alberta region.

I will tell you that the Pembina Surface Rights Group, right up in the hon. Environment and SRD minister's riding, is right in there also. They're in agreement with that.

So when you look at that letter that I gave you and then you look at this amendment, this is the cure. This is the treatment. It can mitigate some of these concerns. You need to think about this point by point by point because it's not asking for a whole lot. It's saying that they've got to get notice, that they have a reasonable opportunity to learn the facts. They need to be heard. It's so important that whoever comes in front of regulator is given respect and dignity and that they are heard. Again, we're not looking to create legislation that guarantees them a remedy. What we're looking at is to guarantee them a process, a process where they can have fairness and they can have basic justice.

I will tell you that nowhere in this bill does it say that these people, whether it's a company or whether it's a landowner, have to be treated fair or get justice. It is a word that is missed a lot of times in our legislation. This section right here, that we are proposing, is already in other legislation. It has just been removed from this new bill. I don't know why it's been removed. It's a valid question because what caused much of the rumblings out in the rural areas right now was when they saw this language removed. They want to be able to have an opportunity.

Oh, by the way, I had to compromise in my own constituency to agree to this because this section 2(b) is one of the ones that I've always had a problem with. I always think it's a right for somebody to be represented by counsel. There are situations where there are people who don't read very well, that have a very difficult time, and when they come in front of this type of board process, it's new to them. It's not something they're used to. It's a first-time event. They're scared. They're intimidated. They're told they can't make an oral representation; they have to make a written representation. That's extremely difficult for somebody who doesn't write very well.

8:40

There are people in my riding who are illiterate, as there probably are in some of yours. You may or may not know them. But I know a few. We have a retired postmaster who actually is illiterate. He is an amazing man, and he's a good man. But he actually never quite learned to read. It was quite fascinating how he could deliver the mail. It's a great story. The fact is that he would never be able to go in front of a board and provide a written representation.

So I compromised with my own caucus because this is the way it was: the only thing I'm really concerned about is losing ground for the rights of those who are directly and adversely affected. They have a necessity to have a right. What this bill is doing is taking that away, and what this amendment is doing is trying to put that back. It's trying to restore something that they once had. If you cannot look at this with an open mind, then just as that letter said: they're going to plant the flag on this hill to die on. This is where they're going to fight for their rights. If you don't believe that, then I don't know where you've been for the last four years because that's what's happened out in the rural areas.

I have to tell you that there's a situation brewing right now up in Peace River that is on the verge of exploding into violence. I know some of the members over there know about it. I've been contacted about it. It's a situation that is extremely tense right at the moment. It has to do, again, with respect. It has to do, again, with process. If we give that respect, if we allow the process to work, we can stop violence where in these situations it builds. I say this with all sincerity. We've had a couple of people already in the last decade, the last 20 years get killed out there. The reason violence broke out was the frustration of: "I don't get heard. I don't get the respect. There are no teeth in the regulations."

Property owners, landowners, businesses all want the same thing. They want to set clear-cut, concise rules and regulations that they can follow. We can streamline this. But you can't streamline this by taking away people's rights. That's not going to work. There'll be push-back out there. And when there's push-back, what you will do is hold up energy development. You will cause a lot of problems where there should not be problems. It will end up doing just the opposite of what you want to do.

We have the ability to have our cake and eat it, too. We have the ability to streamline the process, to get rid of some regulation that is unnecessary, particularly the red tape that companies go through. We want companies to be able to apply, to be able to look at the rules and know exactly what those rules are so that they can get their permits, they can get their licence, and they can get the job done. We want in the same process exactly what's in this amendment so that the property owner, whether it's a company or whether it's a farmer, has the ability to look at the application, has the ability to learn the facts of the matter, has the ability to take those concerns forward and be heard. That is so critical to this process. If you don't accept this in one form or another, then it's absent from the whole process.

I will tell you that this is an important gear to make this work. This is fundamental to the new regulation, the new legislation that the hon. minister is proposing. It is so paramount that those who are directly and adversely affected understand that they can count on this if it is something that they require.

I'm going to share – because there are problems with all of the boards. There have been problems developing over a period of time. I don't think the boards see it. But time and time again people have come forward. Some companies have come forward, and I'm going to share one. It was the group dealing with the MATL line south of Lethbridge. They had concerns. They had concerns about their property – some of them were potato farms – and mostly with irrigation.

What happened was that the Energy and Utilities Board, even though this applied because this was part of it at the time, told them to take their concerns to the NEB because this was an export line, so they had to go to the NEB. They took their concerns to the NEB. The NEB, the National Energy Board, said: "No, no. You don't take your concerns to us. That's a provincial matter." When this goes back to the provincial hearing process – "You take this concern to the provincial hearing process" – they got to the provincial hearing, and the energy regulator in this province told them: "Sorry. It's too late. You should have taken that to the NEB."

These people never got justice. They never got a chance to be heard. Their concerns were never addressed. That issue ended up going to the courts, in my mind unnecessarily. What was ruled in the courts was that those property owners had no rights. They voted Wildrose in the last election as a result.

So here you have it. This isn't something that's designed to tie anything up with lawyers. As a matter of fact, it says that they don't even have to be represented by counsel, so we can't be taking that kind of criticism, although I still think they should have the right to counsel. But this is designed to give the board, the regulator, the guidance on how they're going to treat these

people when they come forward so that we know that when they're going to be developing oil and gas or any other resource extraction, there is a path to follow to make sure that people's rights are protected. That's what this amendment is all about.

Thank you very much, Mr. Chairman.

The Chair: The hon. Member for Little – Calgary-Shaw.

Mr. Wilson: Thank you, Mr. Chair. These late nights are getting to all of us, I'm sure.

I just wanted to make a comment about section 26 of the ERCA. My understanding of it – and maybe the minister can comment on this – and I will promise to be brief, sir, is that it's been thoroughly interpreted by the courts. What you're presenting here in Bill 2 under section 32 is inherently vague and will just open yourself up to further court challenges, which is counterintuitive to why you're rejecting this subamendment that the hon. Member for Strathmore-Brooks has put forward.

It does not create work for lawyers. Section 26 has been well established, and the ERCB understands and respects it. It has a history of striking a balance, which again is the intent of this bill, and I guess what we've been hearing from the other side is that we're striking a balance to ensure that everyone who is truly affected – and not just frivolous complaints. That's not what this is about, introducing frivolous complaints. It's to give them their chance for a hearing. These hearings are not court. They are simply a chance to have your say. Mr. Minister, if you have a moment, I would like to hear your thoughts again on that, please.

The Chair: Other speakers? The hon. minister.

Mr. Hughes: Yeah. Mr. Chair, I'll just respond to that one aspect. You know, there's much being made of section 26 under the old ERCB legislation. It's really important to note that under the current act the granting of notice of hearings is actually at the sole discretion of the board. What we're proposing in this new legislation actually opens that up considerably.

First of all, they absolutely must give notice to landowners who are directly and adversely affected. Over and above that, we're creating a public mechanism, an aspect we addressed earlier. We're making sure that there's public notice as well, which is not a requirement historically. Thirdly, we are ensuring that if somebody believes that they are directly and adversely affected, which is actually the subject of the amendment that this subamendment we're discussing is related to, they can self-identify, and they can make sure that their input is in at the front end of the process, which is what we really want, really robust, all the information together at the right place at the front end of the regulatory process.

I'm not worried about creating work for the regulator. I think the process will settle out just fine over time. You know what? For a regulator to have to read an extra letter or two or three on any given hearing is not going to slow things down, but what it will do is ensure that it's fair to the landowner and it's fair to all who are directly or potentially directly adversely affected. I think that's in the public interest, very much so. That's the subject of that.

8:50

The subamendment that we're addressing here right now, Mr. Chair, has the potential to create a very time-consuming set of processes. There are 40,000 applications that go through the ERCB today, plus or minus. There's a lot of stuff that goes through the regulator, and then you look at the environmental side as well. The last thing you want to do is create an exceedingly onerous process that ties up the economic activity that pays the bills for our whole province in a lot of ways as well.

Thank you.

The Chair: The hon. Member for Livingstone-Macleod.

Mr. Stier: Thank you, Mr. Chairman. I appreciate the opportunity to speak to this bill this evening, to the minister particularly, whom I've met and talked to on numerous occasions.

Mr. Chairman, I have a background in oil and gas. It was in the seismic world, but certainly I was exposed to many of the things that went on in downtown Calgary for 25 to 30 years. I also have a background in municipal government. I spent a lot of years working with development appeals, subdivision appeals, and assessment appeals, and I even had the opportunity to go down to speak to the Municipal Government Board on many occasions on behalf of our municipality and, often as not, sometimes later on against our municipality. So I have some of that background.

I look at this amendment that we have presented here and this subamendment, and I feel that this one has a lot of merit. I wonder if it isn't something we should take a moment to review a little bit in the sense that when you look at section 78(f) of the new bill, it talks about how regulations could be brought through by the Lieutenant Governor in Council at some later time. I'm just wondering if it's the case where we're going to see, as we do in some of other acts, regulations come through later on regarding this appeal process that would perhaps change things somewhat and make this more of a favourable amendment to consider in that light.

I say that because in the Municipal Government Act they describe different kinds of developments and development appeal processes. They also talk about subdivision, but when they went about looking at appeal processes in subdivision, they also produce a set of regulations later on. Those regulations are fairly specific about how appeals can be conducted and how proper notice is given and to whom the appeal goes. When I look at the Surface Rights Act, the Surface Rights Act mentions a little bit about appeals, but they also in the regulations have more definite clauses regarding those topics.

I'm just wondering, then, to the minister: is it not the case that perhaps as a consideration these kinds of appeal clauses might be coming up in regulations, or is it perhaps better that we deal with this at this time?

Thank you.

The Chair: The hon. minister.

Mr. Hughes: Thank you very much. I appreciate the intervention by the hon. member opposite, very thoughtful and, clearly, out of your many years of experience. Yes, there will be regulations that will be developed as a result of this legislation. In fact, that will form an important part of the structure that governs how the new regulator will function, just as is the case today with the ERCB and the other regulatory processes in ESRD. It's an important point to make, that there will be greater clarity. In fact, the greater flexibility comes about if you can create some of the processes in regulation as opposed to in legislation because then you can be more flexible and ensure that the regulator is able to respond to changing dynamics.

This industry, the oil and gas industry in particular, is particularly nimble and is evolving fast, with different technologies being used in different ways. The regulator really has to be on its game. What we want to do is create a regulator that actually is able to respond to evolving situations because there are potentials for conflict in the future, I'm sure, as there have been in the past

between landowners or environmental objectives or development objectives simply because of the fact that the technology has changed, and that technology creates a new kind of conflict or a new kind of dynamic in the relationship with the landowner. You need to be able to respond to that. It's probably way better to ensure that that is embodied in regulation rather than trying to predict how we're going to run all the process in legislation at this time.

I appreciate the member's comments.

The Chair: Other comments? The hon. Member for Rimbey-Rocky Mountain House-Sundre.

Mr. Anglin: Thank you, Mr. Chair. To the hon. minister. You just mentioned something that I think is paramount, not just to this amendment but to the entire scope of the legislation. We don't want to create anything that's onerous and would hold up the development of our natural resource extractions, that is unnecessary in many ways, basically. You didn't describe it that way, but you mentioned that the whole idea is to streamline the process.

Now, if I heard you correctly, and I need you to clarify this: is anyone actually saying that giving a person a right to notice of the application would be holding up the process? Is anyone actually saying that giving a person a fundamental right to a reasonable opportunity for learning the facts of the application is holding up the process? Is anyone here saying that when you get that information and you have an opportunity to learn the facts, that having a right – you don't have the right to cross-examine, but if you're not given the right to cross-examine, at least you have the right to cross-examine the evidence so you can present your facts and the counterfacts, I guess you would describe it, so the regulator can make a decision. In other words, that's a fair opportunity to be heard. I don't think anyone here is saying that that's going to hold up the whole process. It's really important.

When the regulator agrees that you're entitled to make a representation, I don't think anyone here is saying that being able to make a written representation is holding up the process. That's really what's going on here. If the idea is that what you're not accepting, what you're not bringing forward into the legislation, are those sections of the former legislation, those sections of the former regulations that, in your opinion, hold up the process, this section right here is the fundamental rights of many farmers, many landowners, many property owners for whom their property is their small business. That is paramount to their survival in many ways, to their economic activity.

Remember, when we talk about property rights, a lot of times many people in this Assembly are thinking rural people, farmers. But property rights are many of those small businesses. Many of those are located in the cities, that come out into our areas, and they work and they do business out there because they are oil field service companies. They have property, and there are conflicts between developments on their property. It's really important that we always settle these conflicts. All this amendment does is provide them with a right in legislation, and that's all we're asking for. So I would ask the minister to clarify: is there any portion here that he says is holding up any type of development of our resources?

The Chair: The hon. minister.

Mr. Hughes: Thank you, and to the hon. member through you, Mr. Chair. You know, the fundamental right that is being prescribed here for landowners is the right, as any of us would expect, to engage in a process if they are going to be directly or adversely affected and to be engaged at the front end of it. We're widening the ability for people to do that by this new legislation. We're widening the opportunity to participate. We're making it mandatory for the regulator to notify people, and we're making it mandatory for the regulator to make it public notice, and we're creating an opportunity, if people feel that somehow they've been missed in the process, that they can self-identify into that process.

The appropriate thing here is to ensure that we have all of the input at the front end so that the regulator can make a complete, fully informed decision on doing the right thing in each circumstance.

9:00

The Chair: The hon. member.

Mr. Anglin: Thank you, Mr. Chair. I understand what you mean when you say that you're widening it. I understand that process. But this language is more prescriptive, and what it does is that it becomes definitive. It is in more plain English for people to see exactly where their rights are. When you say that you have a right in these broader terms, I have to ask you, looking at the legislation: where's my right? This amendment says it in clear, concise, plain English; here it is.

Once the regulator makes that decision – now, remember, it's based on the regulator making the decision – that on application you may be directly and adversely affected, so they've made that decision, you have a right to a notice of application. You have a reasonable opportunity to learn the facts. That's being a little bit more prescriptive, and it's more definitive in plain English so that people know the rules. They can rely upon that. When you say broad, there's nothing very prescriptive in your broad language. It's just that we have this umbrella. I have to tell you that the experience of many people having to deal with these board processes has not been fair in many ways.

I want to explain that. I don't mean it's unfair because it's uncharacteristically designed to be unfair. What's happened that's unfair is that these people come forward, and they're not legal minds. They really don't want to hire lawyers. What they want to do is present their case. If you have it broad like you say, then definitely some of these farmers have to get lawyers. I will tell you that a lot of people – and I've represented them myself, and I told them: "This is how you go. You prepare it. You go in front of the board. You tell the board your concern." I think the board likes that.

These rules help those people. It is definitive in that nature. I have seen the boards, whether it's the ERCB or whether it was the EUB or whether it's the AUC, not respect individual concerns. I would suggest to you that it's much like this Chamber. When people get tired, they tend to want to get things on faster. I don't think the board is any different than that. If you've ever sat through a long, boring board hearing at the end of the day on a Thursday or a Friday, when they're thinking of going home, that is an awkward time to have a 75-year-old grandmother come in front of the board to present her concerns, which are valid concerns, and get dismissed because she is not given these prescriptive rights.

I don't believe that holds up the process. I don't. I think that helps the process. I think that the energy company can look at this and say that when they're dealing with Mrs. So-and-so, they know they have to give her the information because it says so. They know that if she has a concern, if they don't deal with that concern and the board agrees she has a concern, she has a right to learn the facts and a right to make her evidence and, you know, check their evidence.

If they come to the board and say, "Here's what we're going to do to your land," and she says, "No, no, no; that doesn't happen

on my land because this is what happens on my land," she has a chance to challenge their evidence because it's in writing. What you're proposing is not in writing. It's just a broad umbrella. The board can misinterpret that late on a Friday afternoon. The regulator can. I've watched them do it. They can dismiss people because it's not prescriptive.

I'm saying that that will not hold up the process at all, and I'll tell you why. If it's in writing, the energy companies know it's in writing. They can deal with it long before it ever gets to the board. This is where regulation sometimes actually assists companies to make sure that they take care of these matters. You all know it. The good, reputable companies don't end up in front of the board. They get out there. They talk to the people. They hear their concerns long before the board ever hears their concern, or it may never hear their concern. The energy company itself addresses those concerns. The lease agreement is signed, the lease is constructed, and business is taken care of.

Properly written legislation with guidance for the regulator: the industry itself will look at these rules. These are the rules that they go by. They know the rules that are going to apply to these landowners, property owners, and these other small businesses they may run into. They will take care of business because they know how to do that. That's all I'm saying. I don't think any one of these holds anything up. It actually smoothes the way to get things done by providing certain rights.

Thank you, Mr. Chairman.

The Chair: The hon. Member for Lac La Biche-St. Paul-Two Hills.

Mr. Saskiw: Thanks, Mr. Chair. I'll be very brief. I think this subamendment really gets to the bottom of the issue. In these types of situations it's the last resort that a landowner has when their land is being affected. We have to remember that these projects don't happen just on Crown land or the land of energy companies. It's their land. It's farmland and ranches. It's quite significantly different, our subamendment, compared to what the Energy minister has come up with. It reads very clearly:

> If it appears to the Regulator that its decision on an application may directly or adversely affect the rights of a person, the Regulator shall give that person
>
> (a) notice of the application,

Shall give them:

> (b) a reasonable opportunity of learning the facts,

Shall give them:

> (d) an opportunity of a cross-examination.

All of these rights are here. If you're a rural MLA and have landowners that are going to be affected by energy projects or by these applications, I think you should read this subamendment because this is what we're going to be debating two years from now, when there's an uproar across the prairies just like with bills 19, 36, and 50. We're going to be coming back here, and we're going to be debating a similar type of amendment because the public pressure is going to be huge if you don't accept this.

I just implore the members opposite to take a look at this and know that these are very reasonable provisions. They were in section 26 of the RCA. They've been litigated for years. There's a well-established jurisprudence. Everybody knows what the rules are. It's not going to delay energy projects. Please take a look at this, and I hope that you consider this amendment.

The Chair: Further comments?

Seeing none, I'll call the question on subamendment SA1.

[Motion on subamendment A1D-SA1 lost]

The Chair: We'll move on to amendment A1D. The hon. Member for Strathmore-Brooks.

Mr. Hale: Yes. Thank you, Chair. Back to the original amendment that the hon. Energy minister put forward, I would like some clarification on the wording: a person who "believes that the person." Is that any person? What person? We need clarification on that.

> 32 . . . may be directly and adversely affected by an application may file a statement of concern with the Regulator in accordance with the rules.

We go back to the rules that the regulator is going to make.

You go down to:

> 33(1) Where a statement of concern is filed in respect of an application, the Regulator shall decide in accordance with the rules [that the regulator makes] and subject to section 34 . . .

Section 34 says:

> (1) Subject to subsection (2), the Regulator may make a decision on application with or without conducting a hearing.

The rights of all the landowners are gone. The regulator makes the rules. The regulator decides whether the landowner gets to have an appeal. The regulator decides on the appeal. Everything is directed at the regulator.

Now, we all agree – everybody agrees – that we want the energy industry to be streamlined. That's a given. Everybody agrees to that. We want to get rid of the red tape, help out. It's all about making it easy on the oil companies. This is not going to make it easy on the oil companies. There's going to be such a huge backlash of landowners. It's actually going to be detrimental to the oil industry. They're not going to have any favour with the property rights owners. What would make for a better industry is if the oil company, the landowners, the regulator, everybody, get along. They're happy to see you coming. It's not going to happen.

9:10

> 33(2) If the Regulator makes a decision on an application without conducting a hearing, the Regulator shall publish or otherwise make publicly available the Regulator's decision in accordance with the rules.

It's very vague. Are they going to put it in the paper?

This strips the rights of everybody. You know, it's not going to be received very well, and I'm fearful that the oil companies are going to take the brunt of it because we're allowing the regulator to make all the rules. As I've said before, when you go to the rules, the cabinet can change those rules which the regulator is going to have to adhere by. That gives so much indecision to the oil companies because they don't know if the rules that they're following are going to be changed. The oil companies are trying to do things right and by the rules, and all of a sudden one day the rules get changed. They don't know where they stand. We need to have some substantial information that these oil companies and landowners can go by so that they can make the proper decisions.

Thank you.

The Chair: Are there further speakers on amendment A1D?

Seeing none, I'll call the question.

[Motion on amendment A1D carried]

The Chair: We'll move to amendment A1E. The Member for Strathmore-Brooks.

Mr. Hale: Well, I'm just going to talk a little bit more about the regulator and the decisions that they can make. Section 34 states:

> (1) Subject to subsection (2) . . .

where the regulator makes a decision,

. . . the Regulator may make a decision on an application with or without conducting a hearing.

It's up to the regulator to decide whether he wants to make a hearing or not.

(2) The Regulator shall conduct a hearing on an application
(a) where the Regulator is required to conduct a hearing pursuant to an energy resource enactment,
(b) when required to do so under the rules . . .

The rules, again, that the regulator makes.

(c) under the circumstances prescribed by the regulations.

Well, the regulations are what the regulator makes. Everything is based around the regulator.

Then they want to add:

(2.1) If the Regulator conducts a hearing on an application, a person who may be directly and adversely affected by the application is entitled to be heard at the hearing.

But if the regulator decides there's not going to be a hearing, what good is (2.1)? They don't have any justification as to whether they receive a hearing. Only the regulator, who makes the rules, who enforces the rules, says if they can have a hearing or not. This is very, very, very empty. It doesn't specify any rights, any privileges.

Again, it's going to affect the oil companies. They're going to receive backlash because if people don't feel they have had due process in a decision, they're not going to be happy. If they can go through the proper steps, if they get to plead their case and then they get turned down, then: "You know what? I tried. Not much else I can do about it." But if they don't even get that process of where they're heard, they're not going to be happy. It's going to make it tougher on the oil companies, and the process we're trying to streamline is actually going to get worse.

I'm not convinced that this is the best legislation out there for the oil companies or the property rights owners.

The Chair: Are there other speakers on the amendment? We are on A1E.

The hon. Member for Edmonton-Calder.

Mr. Eggen: Thank you, Mr. Chair. Section E of the government's proposed amendment says that it's necessary to say that hearings which are held for consultative purposes will be used only for consultative purposes. You know, that just seems a bit redundant to me. The amendment says specifically, "If the Regulator conducts a hearing on an application, a person who may be directly and adversely affected by the application is entitled to be heard at the hearing." My question is: shouldn't this entitlement already have been included in the original? What's the point of holding a consultative hearing if you don't allow those affected to participate?

This amendment, you know, it seems to me, is a demonstration again, as we've heard from the Wildrose, that this government is missing the mark on the public interest in regard to this bill and using this amendment as some sort of Band-Aid for an otherwise much larger gaping hole in this bill.

As well, this amendment really doesn't, in my mind, do the necessary work to ensure that those who may be affected will be, in fact, personally notified. The old section 26 of the Energy Resources Conservation Act ensured that if the board thought people might be damaged by a decision, the board would personally notify them. Not only that but the board would give people a reasonable amount of time to put their case together and could provide them a platform for their case to be heard. All this amendment does is that it says that individuals will be allowed to come to the hearings and speak. You know, that just doesn't seem sufficient, in my mind.

Finally, this particular change I don't think really does much to ensure that a hearing takes place when it comes to a major project that will seriously affect people as a result. I notice that this amendment begins with "if." A big fat if. If a hearing takes place. That means that individuals can be heard only if there is a hearing called by the regulator. In other words, there will still be decisions made by the regulator without a hearing, following logic here – right? – where individuals may be adversely and directly affected. Therefore, two original problems with this bill remain despite this change. How will the regulator ensure individuals are personally notified of energy projects?

Then, number two, will the regulator ensure that directly and adversely affected individuals are in fact being heard in the cases where hearings are not being held? Again, this brings back unpleasant memories to me of when I was dealing with issues around energy, specifically electricity power lines. This is something that can not only affect, I guess, people's sense of what is just and right, but it can actually get in the way of moving a project forward. Once people are agitated on these issues and perceive injustice to be taking place or that they're being railroaded or steamrollered, then things can go sideways so quickly.

You know, we're at a certain point where I think we need to step back and not streamline our consultative process but expand the consultative process with landowners in this province because I think, quite frankly, that you're playing with fire if you don't deal with these things properly. Again, my original comments on Bill 2 were that because we've had these amendments come through, it seems as though a lot of Bill 2 is, in fact, a bit half baked and needs to go back to where it came from to be finished off and then made more palatable for general public consumption by the landowners here in the province of Alberta.

Thank you.

The Chair: Further comments on amendment A1E?

Seeing none, I'll call the question.

[Motion on amendment A1E carried]

The Chair: We'll now move to amendment A1F.

Hon. Members: Question.

[Motion on amendment A1F carried]

9:20

The Chair: We'll move to A1G. Questions or comments? The Member for Strathmore-Brooks.

Mr. Hale: Thank you, Mr. Chair. So I just want to ask the hon. Energy minister or the Minister of Environment and SRD about section 36. To me it looks like in this section you're just changing the order around. Instead of reviewable decision, you know, it's pretty much the same thing. This is something that is not going to have much bearing on the process. This is something that happens after. This is taking away from the Environmental Appeals Board. It's not letting anything go to the Environmental Appeals Board.

If you're adversely affected, then

(i) a decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal

under the Environmental Protection and Enhancement Act or an appeal under the Water Act or an appeal under the Public Lands Act or

(iv) a decision of the Regulator that was made under an energy resource enactment . . . [that] was made without a hearing, or
(v) any other decision or class of decisions described in the regulations

are reviewable decisions. And if you're an eligible person under any of those as it stands now, you can go to the Environmental Appeals Board, which is arm's length, which does not have anything to do with the regulator.

For issues that happen after the process – so you have a pipeline going across your land, and after the well is drilled, after everything is done, it has a leak, so you call, and they come and clean it up, but you don't think that it's been cleaned up properly – you can go to the Environmental Appeals Board. That is not going to have any bearing on the approval process for any projects of the oil companies.

I would like to propose a subamendment to this one if I could. I've got the proper number of copies if we can hand them out.

The Chair: Yes, please.

Hon. members, this will be subamendment 2. So we'll be dealing with A1G-SA2.

Proceed, hon. member.

Mr. Hale: Thank you, Mr. Chair. This amendment says:

(a) in the proposed section 36
  (i) in clause (a) by striking out subclause (i), (ii) and (iii)
  (ii) in clause (b) by striking out subclause (i);
(b) by adding the following after the proposed section 36:
  36.1 A decision of the Regulator in respect of which a person would otherwise be entitled to submit a notice of appeal under
    (a) section 91(1) of the Environmental Protection and Enhancement Act,
    (b) section 115 of the Water Act, or
    (c) section 121 of the Public Lands Act
  may be appealed in accordance with that section notwithstanding that the decision was made by the Regulator.

This allows people, if they have issues that the decision was not made by the regulator, to go back to the Environmental Appeals Board.

We feel that the Environmental Appeals Board is a very, very substantial board that deals with issues that happen after projects are completed. This is something that is very, very important so that people have somewhere to go. If they have to go back to the regulator – again, the regulator makes the rules, the regulator enforces the rules, and the regulator makes the decision. This gives them another avenue to go and voice their concerns. It is not going to hamper the process of streamlining, which we all agree we all want, the streamlining, the one-window shopping. This has absolutely no effect on the bill.

I would like to ask the hon. minister of environment if she can explain to me how she thinks this will have an effect on the streamlining, the one-window shopping of this bill when all this is doing is looking after issues through the Environmental Appeals Board.

The Chair: The hon. Minister of Environment and SRD or the Minister of Energy to respond.

Mr. Hughes: Let me start, and my colleague will deal with the difficult questions. This subamendment to the amendment really has the effect of not achieving a single regulator. I would note that it's my understanding that, for example, some of these appeal mechanisms that are today in existence have very limited use. There might be 15 applications in a year or something like that, so it's not as though this is something that is a big normal course of business for a lot of applicants, important though it is.

I would note that the commissioners that we're going to appoint are separate from the governance of the new energy regulator. They do have an independence, which will provide very good oversight in terms of these kinds of important environmental acts that are regulated by the regulator. On that basis, Mr. Chair, I would not support this subamendment.

My colleague the hon. minister perhaps has additional items to add to that.

Mrs. McQueen: Thank you, Mr. Chairman. The hon. Minister of Energy has done an excellent job of explaining that.

I talked about this earlier this evening, that I think we have to think about this regulator as a new regulator. It's one regulator. It's one window. The current regulators of ERCB and Environment and SRD are now one regulator. To bring that together, we have different pieces of legislation that currently fall under ESRD, and we have the ones under the Energy department. These all come together, and the regulator will be regulating under all of these pieces of legislation.

To deal with what the hon. member across the way is talking about, if you go to section 36 and look at that section in its entirety, that explains with regard to if someone has an issue with regard to the Environmental Protection and Enhancement Act, the Water Act, the Public Lands Act from the area of the Ministry of ESRD. That is where the reviews are. That talks about the definitions and who becomes eligible and the reviewable decisions. Then if you look into section 38(1) and (2), it then talks about the review requests and how the eligible person can actually make the request.

I know it's hard for people to understand – and I don't mean that negatively at all when I say that – what this one new single regulator will be. It's all of these together with all of the pieces of legislation, looking at it holistically. All of those pieces of legislation that apply now today under the two regulators of ERCB and ESRD all apply under the new regulator but will be looked at at one time, holistically. So all of those areas still apply to people under the Water Act, the environmental protection act, the Public Lands Act. All of the statutes under the Energy minister's responsibility also, then, fall under this regulator.

The Chair: The hon. Member for Drumheller-Stettler.

Mr. Strankman: Yeah. That's the place, sir. I'd like to question either the hon. Minister of Energy or the hon. minister of environment. Recently I've asked the environment minister questions about endangered species. Going forward, if in that case the energy company would have affected endangered species prior to or, in this case, after the licensing of the facility, who would have been in charge of the investigation? Would it have been the regulator, or would it have been the ESRD?

The Chair: The hon. minister.

Mrs. McQueen: Thank you. And thank you for the question. What the single regulator is doing is approving or denying applications with regard to oil, gas, oil sands, and coal. If something falls under the Species at Risk Act or, in our particular case, the Wildlife Act, that is different than the approval of the regulation. If something happens under the Wildlife Act, we regulate that. Of course, the hon. member knows that the Species At Risk Act is a federal regulation.

9:30

Mr. Strankman: To the question, though, in the case of the energy company, if the energy company would have violated the act after the energy company received a licence for their development, how would the process fall?

The Chair: The hon. minister to respond.

Mrs. McQueen: Yeah. So the enforcement piece after an offence may occur is what you're talking about. Is that correct, hon. member?

Mr. Strankman: Yes, Mr. Chair.

Mrs. McQueen: Okay. That then falls within the different pieces of acts, so depending on if it's under the Wildlife Act, if it's under the Species At Risk Act, if it's under different provincial park acts or federal park acts, depending on what the case is, that's where it would be. Those pieces under the current ministry would follow under the ESRD ministry with regards to that because that is not the approval of the regulatory application.

The Chair: Further comments? The hon. Member for Strathmore-Brooks.

Mr. Hale: Thank you, Mr. Chair. A question. Either one of you can answer. In this amendment all you did was change "reviewable decision" to "appealable decision." Why, then, did you switch and put "eligible person" under section 36(b) when it was 36(a) before? Why was that switched?

Mr. Hughes: It's alphabetical.

Mr. Hale: No. In section 36 you have:

> In this Division
> (a) "eligible person" means . . .

Then you have what defines an eligible person.

Then you go to 36(b) and you changed "reviewable decision" to "appealable decision," and then you list it in this act. Go to page 22. All you did is switch them around. Is there a reason why you switched them around?

The Chair: Through the chair.

Mr. Hale: It's not alphabetical because in here you have 36(a). Section 36(a) on this one is now 36(b) on here, and 36(b) on this one is now 36(a), and you just changed two words.

Mr. Hughes: Yeah. Just to answer that, Mr. Chair, as I understand it, when you get into the nuances of drafting legislation, alphabetical actually does apply, so in this case "appealable decision" begins with an A under section 36(a), and "eligible person" follows in alphabetical order. That's all it is in terms of drafting the legislation. It's nothing more complicated than that, surprisingly.

The Chair: Further comments on subamendment SA2? The hon. Member for Innisfail-Sylvan Lake.

Mrs. Towle: Thank you, Mr. Chair. Obviously, I'm rising to speak in support of the amendment. I sort of feel like I was asking this question a little earlier because once again this government seeks to take out the right to appeal to the Environmental Appeals Board, which is something that's been existing since 1993, and it's something that's been providing landowners with an appeal of last resort for the last 19 years. They thought it was okay then. They thought it was okay yesterday in other options, but Bill 2 brings that to a complete end.

Why would we want to bring that to a complete end if we've been offering it to landowners for 19 years and there really was no amendment to those things that it was affecting all that time? But all of a sudden in this specific act we're saying, "No; we had that, but now we want to just completely end that," which really means no more independent appeals to the EAB for landowners whose lands might be contaminated. This bill is proposing that the new energy regulator will make all of the environmental decisions relating to that land.

It would seem that we're right back to what we discussed in the previous amendment, when we were talking about the statement of concern, when we took out the ERCA, section 26, which, once again, protected landowners. You know, it just seems a little odd to me that everything we're removing is exactly what the landowners are asking for for protection. I would think that as government and as legislators it's our job to not only work for the industry – and it's my understanding that that includes the Minister of Energy, that it's not his job to only do whatever benefits the industry – but you also have to make sure that it benefits the landowner and to streamline that process.

If it doesn't benefit the landowner or it's not a win-win for the landowner and the industry, what you're going to have is absolute chaos, which we saw with those bills 19, 24, 36, and 50. This is really bringing that right back into there. It doesn't seem to make a lot of sense to remove something that we've had for 19 years and put an end to independent appeals to the EAB for landowners. That just doesn't even seem democratic.

If a landowner thinks the energy regulator missed something or got something wrong, his only remedy is to ask the regulator to review that decision. There's no independent review. Yet in the House today we talked about justice. The Minister of Justice went on and on and on and on about the importance of independent review. When we asked for an external review of that situation, he said: "No, no, no. We've got an independent review." He was adamant about it. He said that the government's mandate is an independent review. But we're taking that away from landowners. We're now saying: "No. Not only do you not get a review; you don't get an independent review. The regulator will review its own decision."

I mean, when does the regulator ever overturn its own bad decisions? Time after time I think most of us can agree that regulators almost always will decide that they got it right the first time. Why would they reverse on appeal unless it was so grossly unjust that they were forced to or unless landowners revolted, which we saw with Bill 50? Bill 50 was brought back to this House to be rediscussed and re-evaluated because we got it so wrong. This government got Bill 50 so wrong that for the last two years you have been inundated by landowners who were so disappointed in Bill 50 that they said: "You will hear us, we'll make sure you hear us, and you will make changes to Bill 50," which you had to do.

But then we're right back to this bill, the Responsible Energy Development Act, and literally we're saying: we know we got it wrong the first time, but we're going to try this all over again and do the exact same thing. An independent appeal process is a standard in modern democratic countries. It's an absolute standard. Everything has the right of appeal but this, which is mind boggling. This does not have a right of appeal. I just find it hard to believe that the only people who are seeing that is this side. I find that mind-boggling.

Right now under the current system a landowner appeals to the EAB a decision of Alberta Environment that the landowner thinks

was inadequate. Alberta Environment makes a decision. The landowner has the opportunity to appeal to the EAB. Then Alberta Environment has an opportunity to take a position at the EAB hearing that Alberta Environment got it right, that there's no need to change its own decision. Often the EAB is actually an excellent advocate for landowners. They'll often rule against Alberta Environment. There have been cases where the EAB finds that something was missed and that additional steps need to be taken to deal with those environmental concerns, so it would appear that that system kind of works. Why would we not restore that and ensure that the people falling under this act would have the same rights to appeal that people falling under the other acts would have?

It seems like you're purposely punishing landowners because you want to create a single regulator, yet landowners are begging for a single regulator. They just want to be treated fairly in the process. By removing the right to appeal to the Environmental Appeals Board, you're saying to them: we just really don't care what you have to say. I don't see how they could read it any other way.

9:40

Quite honestly, that can easily be fixed by quite literally taking a look at the amendment by the Member for Strathmore-Brooks, that actually puts that protection for landowners right back in there. I would think that if you have the protection for landowners back into the act, then landowners know that they can negotiate in good faith with industry. They can come to an agreement, and most of them do.

My husband works in oil and gas. He works for an oil services company. Most of the time, most good companies – this is all that we're dealing with here – do the right thing. That's the majority of industry. But the regulator is now forcing animosity between the industry and the landowner and the government.

It would seem to me that if we're going to streamline the process, why don't we make it clear what those rights to appeal are?

Over and above that, it's not enough that we took away the rights to appeal to the Environmental Appeals Board. It goes further. We took away the rights to appeal any energy-related decision to the Public Lands Appeal Board. That means Bill 2 strips people of that right as well. Neither appeals to the EAB or the Public Lands Appeal Board delay any energy projects. The project still goes ahead. The appeal just gets to be heard, and you give landowners a voice at the table. They only occur after the energy project has been approved, so there's no harm in ensuring that this right to appeal is in the act.

It would be a complete win for the government side to say: "You know, that's not bad. We can appease the landowners. They have some protection." Industry still gets a streamlined process, and if there is a problem, it doesn't act as a stay. The appeal is fine. It allows the government to show that there's a fair process, and it recognizes the importance of fairness. From what I'm hearing from landowners and from industry – I'm not solely hearing from landowners – industry is saying that they want it to be fair. They want it to be a just system. Landowners are saying, "We want it to be fair for industry, but we want it to be fair for us, too." So if it's fair for one, why can't it be fair for landowners as well?

It would seem to me that our northern friends across the way would have the same issues as our southern friends. It would seem to me that our rural friends across the way would have the same issues that our rural friends on this side are expressing. It would also seem to me that our urban friends across the way would have the same issues over here as our urban friends. Now, I don't know of anybody who would say that it's the right thing to do to take away any abilities from the person who owns the land, whether that be city, rural, wherever. If you own the land, you should have the right to appeal a decision that you don't think is fair.

It's offered in every other system, every other act. Why in Bill 2 would it be removed specifically, when it occurs in a majority of your other acts? It may not be under the Environmental Appeals Board, but, you know, the Minister of Justice talked about the right to appeal, about due process and the rule of law and how we have to make sure that everybody who has an issue can appeal. We heard that. We've heard it in health. You have the right to appeal any decision. We hear this every day. All we're asking for is that landowners be treated fairly, that the person who owns the property has the ability to have a fair decision made, and if they feel that it's been an unfair decision, they have the ability to take it to the next level to ensure that they are heard.

It would seem to me that that wouldn't be that much to ask of this government given that these current boards, the Environmental Appeals Board and the public lands board, already exist, already are in place. In the case of the Environmental Appeals Board it actually works. You know, the Environmental Appeals Board is actually a board that landowners trust. So you have a board that's working. It would seem that you could make that the model.

The Minister of Energy has done a really good job on this bill, and he seems to have hit all the right notes, and he's worked really hard. I know that our critic here, the hon. Member for Strathmore-Brooks, has worked equally hard on trying to ensure that what we're bringing forward is reasonable and not unrealistic. It would seem to me that it would be imperative for us to actually consider those options given that they already exist in other acts.

I would implore the Minister of Energy to remind himself that the Environmental Appeals Board works. Landowners like it. Industry likes it. So why not appease both groups and make sure that the right to fairness is in this act?

Thank you.

The Chair: The Member for Rimbey-Rocky Mountain House-Sundre.

Mr. Anglin: Thank you, Mr. Chair. I'm actually ashamed of this amendment. It saddens me, hon. member. This is an antilawyer amendment. How is a lawyer to make a living if we allow people to go to an appeals board that is some independent? These lawyers need to go to court. They need to charge $500 an hour to take their case to the Court of Appeal. I'll guarantee you one thing. I don't like lawyers anyway, but I like this one, by the way. I like this one. [interjection] Well, I don't know. I won't even mention my hon. member. I have issues with lawyers, as I have issues with many things.

The reality is this, hon. member. Without a process what this will do is save money. I will guarantee you. I don't care how you write legislation; you will find two lawyers to take each side of the argument, and they will find a way to take this to court. They will find a way to take it to court. What you have here is the process that is actually in place now that has been removed under this act and that we want to put back into it.

So there's a process to appeal to an independent body to resolve the issue, to prevent it from having to go to court. That should be paramount in trying to accelerate the approval processes, to get things moving along, in the end finding a compromise to resolve the issues. We're talking about resolving. Sometimes the issue is pride more than it is anything else. We resolve these issues

through the whole board process. If the board gets it wrong, by having an independent appeal, we can alleviate the necessity of going to court. That, to me, has tremendous value in streamlining what your intent here is, the approval process, so these companies can get on with the business of extracting resources in the best interest of the public.

By not having an independent body, you create a problem. I understand what you're trying to do with the bill, but it doesn't make it. It doesn't do it. You're appealing to the regulator, and there's this human psychological condition called: people don't like to admit they're wrong. It's very difficult for that same regulator to make a decision and then have somebody appeal it to them.

An Hon. Member: He's baring his soul here.

Mr. Anglin: At least I've got a soul.

An Hon. Member: Says who?

Mr. Anglin: Say a lot of people. Come on over on this side.

I also have integrity for standing up for landowners. I have the courage and the integrity to go to those people who don't understand the process, who have a fear of going in front of a board, who don't trust lawyers but have an issue, and sometimes it's an important issue. So when a single little old lady living alone, who still wears a cookie apron, is told by somebody working for industry that if she doesn't sign the papers, they're going to bring the police – now, to a normal person that's not even a valid threat, but to an immigrant who came from Nazi Germany, who still fears the police showing up, that is a real threat, and in my mind that's an act of terrorism by that individual. Who's going to come to her aid? Who's going to stand up for her? You, the members on the other side?

An Hon. Member: Yeah.

Mr. Anglin: Really? That's really nice to know. I didn't see you there when I stood up for her.

The reality is that there are people out there that need a process to go through. They are innocent victims, and many of their concerns are valid concerns. They are resolvable. They don't have to go to court, but if you remove this right to go to an independent appeals body, all you're doing is making a case for lawyers to charge more.

Thank you very much.

9:50

The Chair: Other speakers on this amendment? The hon. Member for Calgary-Mountain View.

Dr. Swann: Thank you, Mr. Chair. It's an honour to speak to this important amendment, I think probably the most important issue that this bill and this amendment omit. With your permission I'd like to quote, and I hope to pass this on in writing to the minister. This comes from Nigel Bankes, an environmental lawyer from Calgary. Because it's so well and so succinctly expressed, I thought I would just read it.

He asks the question:

> What then are the most important differences between the current scheme under [the Environmental Protection and Enhancement Act] and the Water Act which provides for an appeal to the EAB and the scheme that will prevail under Bill 2 where there are "powers, duties and functions" "in respect of energy resource activities."

He cites six problems that he sees with this, and they can be easily remedied, as I think others have suggested, by reinstating the EAB.

The first problem, which he expresses so well:

> (1) The review is internal to the Regulator. There is no opportunity for a view from the outside.
>
> (2) It seems unlikely that the review panel will be receptive to creative and purposive interpretations of the legislation that are markedly at variance with those that informed the original decision by the Regulator that is under review. That is, I think, an observation on human nature as much as it is an observation of law. And if a creative interpretation is unlikely to succeed on a review application it is even less likely to succeed if included as part of a judicial review application given the deference that the courts say is owed to the expert body when interpreting its own statute.
>
> (3) The current bifurcation of responsibility between the EAB and the line departments creates the possibility for a form of "conversation,"

shall we call it. That is

> the idea of a conversation between the courts and the legislature in relation to Charter issues – i.e. not a real-time conversation – between the EAB and the Department . . . It seems unlikely that the Regulator will have a conversation with itself (i.e. it won't be critically reflecting on what the "other" has decided or observed).
>
> (4) The review will be a review and not a de novo appeal, i.e. it will be a review on the record. It seems unlikely there will be an opportunity to introduce new material except in exceptional circumstances (but here much may depend on the rules that the Regulator develops).
>
> (5) Access to the courts following the review is channeled to the Alberta Court of Appeal, with leave, rather than directly to the Court of Queen's Bench on a judicial review application (without leave).

I don't know what that means, but obviously this is a lawyer saying that this doesn't address real justice concerns of people who are trying to get redress for something they feel has been wrongfully done to their property.

Finally:

> (6) The new scheme has done nothing to advance the accountability function of a review/appeal by sanctioning a form of public interest standing to supplement the current rules that confer standing based on direct and adverse effect (a test which favours private interests rather than broader public interests).

To me that relates to the question of reducing the ability of interest groups to act on behalf of public lands where there is no directly affected person. We need to have the ability as individuals who represent a broader, nongovernment organization or as individuals with special expertise to stand up for public lands that have no direct, perhaps, adverse effect and no one to stand up for them, therefore.

> And finally there is the sheer incongruity that will result from the application of Bill 2 to statutory approvals that relate to energy projects while the same air and water approvals for non-energy projects will continue to be subject to the existing regime.

There's an incongruity there that he cites.

It makes sense to me on a number of levels, but the language is legal, and I put that to you to please review that. I think that's going to be a hill for us to die on over here.

The Chair: The hon. minister to respond.

Mr. Hughes: Thank you, Mr. Chair, and I thank the hon. member for his thoughtful intervention. As he has observed himself, this is

a fairly technical area and a fairly technical argument made by somebody who obviously has a really keen interest in this and knowledgeable interest.

Let me just sort of clarify a couple of points that I think might be helpful to the person that you've heard from and to others as well. That is that the commissioners that we will be appointing to fill out panels on behalf of the new regulator will have a kind of independence that does not exist today in the ERCB and even in some ways in other regulators that are being affected by these changes as well. Again, they're appointed by cabinet. They will be selected on a competency basis, so it'll be a mix of people and a mix of skill sets and understanding and life skills, all those kinds of qualities that you look for in a good panel.

Those commissioners are not involved in the preliminary decisions, so when there's an appeal, it's not appealing to the same person. It's appealing to people who are specialists in the area who are skilled at understanding whether or not the folks in the organization have actually gotten it right in terms of interpreting regulations properly according to the policies that they've been given. There is a greater independence there, and that goes some way at least, I believe, to addressing some of the technical concerns that the hon. member has raised.

With respect, though, to the concerns of interest groups who have a concern about a particular policy area, we're creating a policy management office, which is a new entity, which will be responsible to the two ministers and which will be a place to focus debate around policy issues, which doesn't exist today, which we think will be very helpful particularly to engage folks who have a policy concern and would rather deal with the policy issue at the policy level as opposed to at a particular application level, where there's an opportunity to intervene or try to intervene. What we're trying to do is ensure that the policy debate is at a thoughtful level, where it engages all the right players who want to be part of that, and not have policy developed by wrapping it around a particular application because in today's world that's kind of the only place where people have a chance to engage.

I hope that helps clarify a bit how this is an improved process in a single regulator. I mean, you either have single regulator or you don't, and we're proposing a single regulator. That means, as a result of that, that there are some changes in who appeals go to. What we have structured here is a number of changes that have to be looked at in the full, broad spectrum of changes that we're bringing forward that will create a new, more efficient, more effective regulator that respects that balance that we're all trying to achieve as Albertans between development, environmental responsibility, and landowner respect.

The Chair: Further comments on amendment A1G-SA2?

Seeing none, we'll call the question.

[Motion on subamendment A1G-SA2 lost]

The Chair: Back to amendment A1G.

Hon. Members: Question.

[Motion on amendment A1G carried]

The Chair: We'll move to amendment A1H.

Hon. Members: Question.

The Chair: The question has been called on A1H.

[Motion on amendment A1H carried]

The Chair: We move to amendment A1I.

Hon. Members: Question.

[Motion on amendment A1I carried]

The Chair: We move to amendment A1J.

Hon. Members: Question.

[Motion on amendment A1J carried]

The Chair: We move to amendment A1K.

Hon. Members: Question.

The Chair: The question has been called.

[Motion on amendment A1K carried]

The Chair: We move to amendment A1L. The hon. Member for Strathmore-Brooks.

10:00

Mr. Hale: We were on a roll. Thank you, Mr. Chair. This amendment doesn't seem too bad. In their amendment it says . . . [interjection] No, I'm not done yet.

Section 84(1)(a) is amended by striking out "at least 2 other members" and substituting "such other members as the Lieutenant Governor in Council considers necessary." That's something that we're in favour of, having more than two members.

Now, the issue is: what members? I'd like to propose a subamendment that I'm pretty sure you guys will all find favourable. I have the proper number of copies.

The Chair: Please, if the pages could distribute the amendments. Once we have a copy at the table, then the member can start to speak to that.

This amendment, hon. members, will be SA3 to amendment A1L.

Proceed, hon. member.

Mr. Hale: Thank you, Mr. Chair. In this subamendment section 84 is amended (a) in subsection (1)(a) by striking out "2" and substituting "4" and (b) by adding the following after subsection (1):

> (1.1) Members appointed to the transition committee shall include at least
> (a) one individual with demonstrable expertise in property rights,
> (b) one individual with demonstrable expertise in environmental conservation, and
> (c) two individuals with demonstrable expertise in the energy industry, each in different sectors of the industry.

What we're trying to achieve here in the transition committee is that there are representatives from the major players affected by this single regulator. The energy industry, which is a huge industry, has many different types of industries within it. You know, it could be someone with shallow gas and conventional oil expertise and someone with oil sands expertise. We feel that there needs to be someone with environmental expertise to look after the EUB decisions, all the environment. Then someone with property rights experience is someone who can relay the property rights expertise that needs to be implemented in this section.

Now, I noticed that on November 5 one of the government members actually touched on this. It's in *Hansard*. It was the Member for Banff-Cochrane talking about

> a roster of people . . . those commissioners, that, in fact, have the background, the knowledge, the education, and not only the

> industry perspective but the landowners' perspective, the social perspective, the environmental perspective.

And he carries on.

Now, that's talking about the commission. This is talking more about the transition committee. But I'm honoured to realize that he sees that, you know, there needs to be equal representation so that the voices can be heard. That's why I'm putting forward this subamendment, to ensure that all facets of this industry and the industry players are represented.

Thank you.

The Chair: Further comments on the amendment? The hon. Member for Rimbey-Rocky Mountain House-Sundre.

Mr. Anglin: Thank you, Mr. Chair. I will be short and brief on this one. This is logical. This makes sense. It's not telling the government who to appoint. What it's saying is that when you make your appointments, find these areas of expertise to balance the board, to get the appropriate knowledge. To us, that's common sense. It just puts it in legislation to guide further governments down the road, particularly when the Wildrose is sitting over there.

The Chair: The hon. Minister of Energy to respond. Did you care to respond, Minister? No? Okay.

I recognize the Member for Olds-Didsbury-Three Hills.

Mr. Rowe: Thank you, Mr. Chair. I've sat here most of the evening now and heard the different comments, looked over these bills until they're blurry, to the point where I thought I should get up and say something. Through this whole course of this bill, from beginning to end, there's one theme that keeps coming up on every amendment in every clause of this bill. It's mainly the reason why there are 17 members sitting in this opposition, and that, fellow members, is property rights. That's key to every one of these bills, to every clause in them and to every amendment. It was key when the government of the day enacted Bill 19, Bill 24, Bill 36, and Bill 50, and we're back to it again.

We have a chance here to address these issues. This amendment to the amendment does exactly that. It puts people with property rights expertise on a panel to address these issues. If there ever was a chance to fix this, this is it. I would ask that we get some support for at least this amendment on this bill because it will make a difference, a huge difference. During my campaign a common theme kept coming up again. Every farmer that I talked to, every rancher, everybody that was impacted by those power lines: they kept going back to property rights, property rights, property rights. It's not about landowners and energy companies. It's about property rights and being treated with respect and dignity and being included in the process. This will do it, so I ask you to support this amendment.

Thank you.

The Chair: Thank you.

The hon. member for Livingstone – Drumheller-Stettler.

Mr. Strankman: You're going to get it right, sir.

I'd like to chime in to support my member also on that. I spoke to it earlier in another statement, where I talked about having an elected board of directors. That may be too advanced for some people's thoughts, even for one of my members here, Rimbey-Rocky Mountain House-Sundre. I'd like to compliment the member for bringing this amendment forward.

I'd like to challenge the government to appoint people of proper expertise to this board and to speak to private member's Bill 202. When the member was in my riding and I had a chance to meet him, I said: if you can go forward with this private member's Bill 202, I'd like to be seen in a public arena giving you a hug because that would guarantee my re-election. The minister for environment actually spoke in favour of my position on Bill 202, and I'd like to compliment her for the record on that.

Going forward, I'd like to just say that I'd like to have you endorse this amendment.

The Chair: Further comments? The Member for Little Bow.

Mr. Wilson: Calgary-Shaw.

The Chair: Calgary-Shaw.

10:10

Mr. Wilson: Again, Mr. Chairman, I understand. Long nights. No harm, no foul, sir.

I, too, would like to speak in favour of this amendment. I think that it demonstrates a clear objective. If we're going to have this board, having these people with these specific skill sets on the board and defining what those are is the best possible way to ensure that that balance is being struck on all levels. I do hope that the hon. ministers who are in charge of this bill give this serious consideration because this is one of those things that just seems to make sense. If what we're here to do is put forward good, common-sense policy, this is one of those amendments that simply just makes sense.

Thank you.

The Chair: Further comments on amendment SA3? The Member for Little Bow.

Mr. Donovan: See? You've been dying all night to say it. Thank you.

Again, I just want to reiterate what the rest of my colleagues have been talking about, property rights. That's right in this amendment here. This is what people want in this province. I think it's been identified, and I think we'll hear about it for weeks because we have lots of colleagues in here that either understand property rights or they don't. If they don't, they're going to soon understand them because it keeps coming back to that hour after hour in here. We're not going to give up on what we feel is right.

Thank you.

The Chair: The hon. Member for Calgary-Shaw.

Mr. Wilson: Thank you. I just wanted to add that as much as many of my colleagues are consistently bringing up the idea of property rights, what we have here is an opportunity to ensure that we've got a three-pronged approach, that we're also looking after the industry's interests by having at least two members with identifiable experience in the energy industry and that we're also looking after the environmental side of things by ensuring that someone has demonstrable experience in environmental conservation. Again, we're not just simply suggesting this is all about property rights. This is about striking the balance that this whole bill was intended to do in the first place. I just wanted to add clarity to that and ensure that that was on the record as well.

The Chair: Thank you, hon. member.

Other comments?

Mr. Hughes: Well, perhaps, Mr. Chair, if I could wrap up the discussion on the amendment and the subamendment but address

the proposals in the subamendment. You know, I'm very sympathetic to the intent of the message that's being sent here. When you're appointing people to take on an important transition, you want people who actually understand the subject matter very deeply. I completely accept the intent of this. I just think that the part that isn't perhaps as commonsensical is to put it in legislation, but I know that the hon. members will take me at face value that I will take on the representations and the intent that they have made here tonight when we're making a judgment about who should take on the leadership role here. I appreciate it, but I would not support putting it in legislation.

Thank you.

The Chair: Further comments?

I'll call the question on subamendment SA3 to A1L.

[Motion on subamendment A1L-SA3 lost]

The Chair: We're back to amendment A1L.

[Motion on amendment A1L carried]

The Chair: We'll move to amendment AIM.

Hon. Members: Question.

The Chair: The question has been called on AIM.

[Motion on amendment A1M carried]

The Chair: We'll move to A1N.

Hon. Members: Question.

The Chair: The question has been called.

[Motion on amendment A1N carried]

The Chair: That concludes amendment A1.

The hon. minister.

Mr. Hughes: Thank you, Mr. Chair. I just have one more amendment to put forward, and I shared it with our colleagues across the way earlier today, or at least most of them. The amendment is being circulated now, I believe, or is available for circulation. It really speaks to section 15, where section 15 is amended by adding "including the interests of landowners" after "prescribed by the regulations."

The Chair: Thank you, hon. minister.

For the record, hon. members, we will treat this one as amendment A2.

Hon. Members: Question.

The Chair: The question has been called on amendment A2.

[Motion on amendment A2 carried]

Mr. Hughes: Mr. Chair, I move that we adjourn at this point so that people can return to their warm homes.

[Motion to adjourn debate carried]

Bill 10
Employment Pension Plans Act

The Chair: The hon. Member for Calgary-Varsity.

Ms Kennedy-Glans: Thank you, Mr. Chair. I was going to spend 10 minutes talking about the virtues of lawyers, but it would be very difficult to consolidate all those good ideas into 10 minutes.

I was very pleased to see the support that Bill 10 received in second reading. This support rightly recognizes that the new Employment Pension Plans Act is meant to make it easier and more affordable for private-sector employers to offer pension plans to their employees. With estimates showing that only 1 in 6 Albertans working in the private sector have pension coverage, this legislation is more important than ever.

This act isn't all we're doing to improve pension coverage for Albertans in the private sector. The federal government recently passed legislation allowing for pooled registered pension plans. These plans will help private-sector employees and the self-employed who are without access to a workplace pension plan by creating a voluntary retirement savings vehicle that will be cost-effective and easy for employers to offer. This will help improve both pension coverage and retirement savings income for Albertans. This is the type of targeted solution Alberta has been advocating for years to address concerns that many middle-income Canadians are not saving enough for retirement. We are looking at ways to bring these types of plans forward for Albertans.

I'd also like to respond to some of the questions raised. One of the points brought up during second reading was around the experiences of Nortel employees, some of whom are in my constituency. Their pension plan didn't have the necessary assets to fully pay for their expected benefits when the company went bankrupt. I believe the question was whether or not Bill 10 would prevent that unfortunate situation from happening again. No pension legislation anywhere in Canada would have prevented that from occurring. Legislation to prevent a Nortel-like situation would require plans to be 100 per cent funded at all times. This would be a very difficult and expensive requirement given that pension funds are invested in the markets. We all know that markets carry various levels of risk and that they can perform very well at times but also very, very poorly at others.

What our legislation does is to introduce new funding policy requirements and also call for more transparent disclosure to members. In addition, provisions have been added to require the plan administrator to notify the superintendent if insolvency proceedings begin. This means the superintendent can take immediate action to protect plan members' interests. This action includes the ability of an administrator to wind up the pension plan to ensure that members' interests are considered. The new act also makes provision for an equitable distribution of plan assets between all members if there is a bankruptcy.

10:20

This new act also allows for the development of solvency reserve funds. Under current pension legislation employers are responsible for making regular contributions to the pension plan. They must set aside contributions in a pension plan to pay for future benefits, and they must invest the fund. If the plan is a defined benefit plan, the employer is also responsible for making special payments to fund any deficiencies that arise in the pension plan due to adverse events such as investment losses or drops in interest rates. This deficiency must be paid back over no more than five years, and the special payments are paid into the pension plan fund itself. If the plan ends up in a surplus position in subsequent years due to better investment returns or additional required funding, the employer may be legally constrained from removing any excess dollars from the pension plan fund due to the old wording from the plan's rules. Because of this restriction

employers may be reluctant to fund benefits at greater levels than the minimums required.

This act permits the creation of a solvency reserve fund account, which would be in addition to the regular pension fund and subject to the rules set out in legislation. The employer would make solvency deficiency special payments into that account. Of course, the employer would still make regular contributions to the main pension fund. If the plan funding improves and the assets in the main pension fund are sufficient to pay for all benefits, the employer would have the ability to access the excess funds in the solvency reserve account. Before a withdrawal could be made, the employer would require consent from the superintendent of pensions. They would also have to leave a contingency amount in the account. With this change employers may be more willing to fund benefits at greater levels, and employees' benefits will continue to be protected as well as or better than under previous rules.

This legislation includes changes that benefit members and employers. Immediate vesting, which gives members immediate entitlement to benefits that accrue under the plan, has been added to recognize that pension plans are part of an overall compensation package. Pensions are part of employees' compensation.

I said earlier that this legislation is meant to make it easier and more affordable for private-sector employers to offer pension plans to their employees. It sets out standards for two new types of plans, target benefit plans and jointly sponsored plans, and allows the superintendent to consider other types of plans as ideas arise. Both of these new types of plans will see employers and employees sharing the risk that comes with funding them, which has traditionally fallen mostly on the employer. This will help the private sector provide pensions at affordable costs without disproportionately burdening anyone with risks.

These are just some of the highlights of Bill 10, but there are many others, which I won't cover tonight. We sincerely hope that this will increase pension coverage for working Albertans. At the end of the day, Mr. Chair, our goal is to help working Albertans prepare for their retirement years. In order to do this, we don't want to force employers into a one-size-fits-all regulatory environment and make it even more challenging for them to offer pensions. This doesn't serve anyone's needs. What we can do is give the private sector the tools they need to develop plans that will work for them and will work for their employees. We very strongly believe that Bill 10 does this, and I look forward to the support of all members in moving this legislation forward.

Thank you.

The Chair: The hon. Member for Calgary-Shaw.

Mr. Wilson: The third time is a charm, sir. Thank you, Mr. Chair. I just wanted to stand up and briefly point out that when legislation makes sense, this opposition is here to support it, not to needlessly oppose it, and that is what we will be doing tonight.

Thank you.

The Chair: Are there other questions or comments? The hon. Member for Edmonton-Calder.

Mr. Eggen: Thanks, Mr. Chair. I concur with the Member for Calgary-Shaw. Certainly, it's a good thing. But I think when we have an opportunity to talk about pensions – and I will again when we bring this back to third – we know that there are a lot of workers in Alberta that are not covered by pensions, right? We have about 2.2 million workers in this province, and there are only 236,628 people in registered pension plans, so we have a lot of work that we can do on pension reform. The goal for us should be that all workers have some sort of security for the future to ensure a reasonable standard of living when they are retired.

This bill, I think, is a good first step, and I appreciate the review that we had in regard to it. I will make further comments when we move into third.

Thank you.

The Chair: Thank you, hon. member.

If there are no further questions, no further comments, I'd ask: are you ready for the question on Bill 10, the Employment Pension Plans Act?

Hon. Members: Question.

[The remaining clauses of Bill 10 agreed to]

[Title and preamble agreed to]

The Chair: Shall the bill be reported? Are you agreed?

Hon. Members: Agreed.

The Chair: Opposed? That's carried.

The hon. Deputy Government House Leader.

Mr. Campbell: Thank you, Mr. Chair. I move that the committee rise and report Bill 10 and rise and report progress on Bill 2.

[Motion carried]

[The Deputy Speaker in the chair]

The Deputy Speaker: The chair recognizes the Member for Calgary-East.

Mr. Amery: Thank you, Mr. Speaker. The Committee of the Whole has had under consideration certain bills. The committee reports the following bill: Bill 10. The committee reports progress on the following bill: Bill 2. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

The Deputy Speaker: Having heard the report by the hon. Member for Calgary-East, do you concur?

Hon. Members: Concur.

The Deputy Speaker: So ordered.

Government Bills and Orders
Third Reading
Bill 3
Education Act

The Deputy Speaker: The hon. Deputy Government House Leader on behalf of the Minister of Education.

Mr. Campbell: Thank you, Mr. Speaker. On behalf of the Minister of Education, the MLA for Athabasca-Redwater, I'm very pleased to rise today to move third and final reading of Bill 3, the Education Act.

The Education Act is a blueprint for where we want to take our education system, a blueprint built by Albertans for Albertans, and we are proud of that. We are proud that the vision Albertans shared with us during Inspiring Education, Setting the Direction, and Speak Out is reflected in this legislation.

We are proud that the act puts students first. We are proud that it helps all of us take a stand against bullying and will ensure our

schools are welcoming places where diversity is respected and every child feels safe. We are proud that it empowers school boards to make local decisions, and we are proud that the Education Act affirms the important role the family plays as the primary educator of their children.

We sincerely hope that you will all join me in supporting this extremely important piece of legislation. Thank you, Mr. Speaker.

The Deputy Speaker: The hon. Member for Rimbey-Rocky Mountain House-Sundre.

Mr. Anglin: Thank you, Mr. Speaker. I rise in support of this bill. This has been a long-awaited bill, multiple tries. Yes, we offered amendments, and maybe some way down the path in the future we'll get to correct some issues dealing with the bill. But it is a necessity, and it is anticipated that this bill is going to do some really good work in our system of education.

I want to compliment the hon. member and I want to compliment the hon. opposition members for working together to try to get this bill passed for the benefit of all Albertans. Thank you very much, Mr. Speaker.

10:30

The Deputy Speaker: Thank you.

The hon. Member for Little Bow.

Mr. Donovan: Thank you, Mr. Speaker. We brought up a couple of amendments that didn't quite make it through, but that's part of how the world works sometime, I guess. I think this is a good bill. I think it's a much better bill than the original Bill 2, that was introduced back in the spring. It has a lot of highlights in it. It eliminated a lot of the controversial language in section 16, which in my riding was key and crucial, where my constituents said that this is a better bill now. There's general support for the autonomy for parents with elected boards, the agreement to combine with other boards, the allowing of boards to appoint superintendents without the approval of the minister. With most of the school boards in my riding that I talked to, that was one of the key things.

I just think there are a lot of bonuses to this. I think there was some good work put into it. I think there was some good debate around it. In saying that, I think it's a good bill.

Thank you.

Mr. Khan: Mr. Speaker, I move to adjourn debate.

[Motion to adjourn debate carried]

The Deputy Speaker: The hon. Deputy Government House Leader.

Mr. Campbell: Mr. Speaker, I would suggest that we've had good progress tonight and that we adjourn the House until 1:30 tomorrow afternoon.

[Motion carried; the Assembly adjourned at 10:32 p.m. to Thursday at 1:30 p.m.]

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Published under the Authority of the Speaker
of the Legislative Assembly of Alberta

ISSN 0383-3623