LEGISLATIVE ASSEMBLY OF ALBERTA

Monday Evening, May 27, 1974

[Mr. Diachuk resumed the Chair at 8:00 o'clock.]

COMMITTEE OF THE WHOLE (CONT.)

MR. CHAIRMAN:

The Committee of the Whole Assembly will come to order.

Bill No. 18 The Clean Air Amendment Act, 1974 (Cont.)

MR. DRAIN:

Mr. Chairman, before I was rudely interrupted and my entranced audience had to leave on account of the clock, we were discussing Section 9.1 of The Clean Air Amendment Act, 1974: "A prosecution under this act or the regulations may be commenced within two years of the commission of the alleged offence but not afterwards." This of course can be rationalized when it is realized that in some areas it takes quite a sophisticated process s to identify and determine the pollutant as such.

However, looking at the time factor, the progress that has been made in the ability to identify and the analysis of pollutants, and with the sophistication that we now have in the Department of the Environment, with very excellent expertise, and the dedication of the Minister of the Environment, it would be reasonable to say that one year would be more acceptable than two. In fact one year should, under any conceivable circumstance, be sufficient to determine whether a prosecution under this act should be exercised or not.

Therefore, Mr. Chairman, my resolution is that Section 9.1 be amended by changing "within two years" to "one year".

AN HON. MEMBER:

Agreed.

MR. CHAMBERS:

Briefly, Mr. Chairman, certainly the two years is a judgment figure. I am sure there are members here who think that it maybe should be three years or five years, whereas the hon. Member for Pincher Creek-Crowsnest thinks one year.

I would, though, remind members that if you think about this, take the case - I don't know - perhaps of gas in the area that the Member for Pincher Creek-Crowsnest comes from, by the time you evaluate the problem, maybe hold a public hearing on it and commence the prosecution and so forth, then perhaps a year isn't enough. So it was a judgment decision that two years was a sort of optimum number.

I think, Mr. Chairman, that what the department came up with is a judgment decision and we should go with that number.

MR. DRAIN:

Mr. Chairman, in rebuttal to these very logical remarks, and it gives me sorrow to disagree with the hon. member, I would say that if our department is so remiss in abilities and responsibilities there is something wrong. We should require a reorganization. Definitely one year by any standard is 12 months, 365 days - 365 days to look at a problem and assess it.

Visualize a person who is waiting for a jury decision to find out whether he is going to be hung or not. Visualize the indecision that would occur in management and so on. They do not know whether they are going to be hung today or tomorrow, figuratively speaking, Mr. Chairman. All of these things are considerations.

The processes of justice should move along as expediently as possible and this, in fact, is true justice. What we are talking about here is the prosecution for a misdemeanor of someone who has broken the law. Suddenly, two years later we say, oh, a law has been broken. And we go into action and proceed to attack the culprit. This is totally irrational. I'll accept one year and believe that is adequate. But it is out of the question, Mr. Chairman, to talk about holding someone out on a limb and saying, now we are going to saw off the limb, but maybe we will wait until 15 months have gone by, or 16 months, before we hacksaw you a little further down into oblivion. Finally the limb is going to break off in the twenty-fourth month when he could well have broken it off in the first six months.

The thing is, why procrastinate? Why fool around with the thing? Or why hang this over anyone's head? Twelve months is 365 days. If you multiply it by 24 and 60 you'll find the number of minutes. There is a considerable number. Hence, I advocate that this be made one year.

MR. YURKO:

Mr. Chairman, if the hon. member could offer some real concrete reasons, state some cases and perhaps give us one or two case analyses where, in fact, his one year is justifiable, I would find no difficulty in accepting it. I can say, in all honesty, that because of the long winters some of the events or results of an action don't turn up for at least nine months. Then it sometimes takes well over six months to document your case. I am thinking of very serious surface disturbances which affect ground water over a longer period of time. What he is really saying is that we shortened the period to such an extent that most of these people could get away without any difficulty from the time they committed the offence to, in fact, the time it was proven that it had a serious effect on the ground water, for example, which can take a considerable length of time.

I say again, as the hon. Member for Edmonton Calder has indicated, no legislation is open in this regard. We have attempted to give the industry a real break in this regard and suggest to them that we will only hold them accountable for a period of time. On the basis of rational analyses of our cases, on the basis of examination of every shred of evidence that the department has, the department has come out with the period of two years, stretching it as much as it possibly can in that direction. All of a sudden the hon. member stands up in this House and suggests, I don't agree with rationalization of the department which has had two or three years of experience in this area. I say it should be one year. Well, I don't know on what basis.

If the hon. member can submit to the House some rational basis for the one year, I would certainly be prepared to accept it. But on the basis of the fact that he says, I say it's one year - well, on what basis? So if you can give us some real analyses or in-depth examination, we will gladly accept one year, Mr. Drain, if that is what you say it should be.

MR. LUDWIG:

Mr. Chairman, it's interesting to note that the mover of the bill said it's a judgment decision on his part, made primarily because some civil servant recommended it. Now, that's all the reason he advanced. The fact that the hon. minister tried to add weight to the thing and stood up and said, well the winters are nine months - now he lives a lot farther north than I thought he did, if the winters are nine months. They are long enough without him embarrassing the province. But his reason was also merely a judgment reason. So he said, well, provide facts and figures and some real reasons. We're saying, it's your bill, you provide the real reasons, facts and figures. Well, you have to do it. The minister says it's so because the civil service told him it's so.

When an hon. member gets up here it's a different matter. They want with them proof beyond a doubt. Somebody in the department says that's the way we like it, that's good enough. So that's the line of reasoning they use to support their bill.

But I can tell the hon. Member for Pincher Creek-Crowsnest that he can provide all the logic and facts and reasons he wishes to [but] once a civil servant tells the hon. minister on that side what's right, the hon. member in this House hasn't got much to say about it.

Thank you, Mr. Chairman.

MR. TAYLOR:

Mr. Chairman, in considering both Bill No. 18, The Clean Air Amendment Act, 1974, and its counterpart The Clean Water Amendment Act, 1974, I'm thinking not of the person who commits the offence but the person who wants to claim damages because that offence was committed. In my view two years is hardly enough.

I'm thinking of a case where the drinking water of cattle was polluted by a contaminant. It was three or four months before the effects started to show on the cattle. Then the vet stated he would not want to estimate the damages until after the new calves were born, which was a few more months. If it is only one year, that case would have been barred from action. It's the result of it that I'm worried about, not the person who is committing the offence, but those who may want to claim damages because that offence was committed. In my view, two years is not enough in some cases. In the Pincher Creek case it took several months to gather the information before you could even think about laying a charge.

I'm thinking more particularly of this thing with The Clean Water Amendment Act. If we're going to do this in The Clean Air Amendment Act, then we would likely do the same thing in The Clean Water Amendment Act. There, two years is certainly not too much; if anything it's not enough.

In a case that wasn't [taken] out of my head, an actual case, it was over two years before it was possible to evaluate the actual damages correctly. Two years had gone by before that could be done, because of the unborn calves and so on.

I would suggest to the hon. members, let's not do something here that's going to cause an injury to somebody who was injured and prevent that person from claiming damages from the person who commits the offence.

MR. CHAMBERS:

Mr. Chairman, I'd like to draw to the attention of the hon. Member for Drumheller that Section 9.1 talks about the commencement within two years of the offence. We see here, of course, a very reasonable alternative given. We have two members who have indicated they want one year and another hon. member who thinks that's an absolute minimum. It perhaps should be longer. Then you have the other question, that if you make it too long a term or an indefinite term you have it hanging over the head of the contractor or individuals involved, and that just has to be reflected in the total price. If one has to bear a liability for life then the consumer ultimately has to pay for that. It is a judgment decision. Certainly the department thinks that it should be two years.

I'm surprised that the hon. Member for Calgary Mountain View has such a low opinion of civil servants. Personally, I think we've got a lot of fine civil servants in this province who are doing a good job. I think the Member for Calgary Mountain View should reconsider what he said about our civil servants in Alberta.

AN HON. MEMBER:

Apologize.

MR. LUDWIG:

Mr. Chairman, I feel that I ought not to be prevented from making a criticism because the hon. member is sensitive about something. I don't think my opinion of the civil service is as low as the attitude of some of the ministers and hon. members opposite in this House.

SOME HON. MEMBERS:

Apologize.

SOME HON. MEMBERS:

Question.

MR. CHAIRMAN:

Order.

MR. DRAIN:

Well, Mr. Chairman, one of the reasons for moving this amendment was to get a rationalization from the hon. member from your right as to why it should be two years.

What do we get? We get an 'affronted' statement from the minister. We get a statement from the Member for Edmonton Calder that in reality it's a judgment decision. So his judgment, my judgment, the minister's judgment equates to what? And we find a rather logical representation from the hon. Member for Drumheller. I must confess his logic in explaining the thing goes considerably further than what I have heard from the right, Mr. Chairman. Frankly, I'm disappointed. However, I am inclined to accept that there could be a rationale under certain circumstances, therefore we will let the judgment of the Legislature carry the decision.

SOME HON. MEMBERS:

Agreed.

DR. BOUVIER:

In addition to what the Member for Drumheller just said, I cannot understand where there is anything in here about a civil suit that would claim damages and where he would be precluded from claiming damages if the time of two years or one year expired. Could the minister answer that point for me please?

MR. YURKO:

Mr. Chairman, an individual's case can certainly be reinforced - that is in a civil suit - by what in fact the department does, the analysis it does and the evidence it presents. If a case is permitted to go on for two years then the department is investigating it for two years before a charge is laid. Now, if you established a six-month period or a one-year period and there was no opportunity for prosecution subsequently, then as soon as that year was up the department would have a tendency to drop it and wouldn't fully identify the nature of the case. As a result, as the hon. Member for Drumheller said, it would depreciate the ability of the man who was aggrieved in terms of his case in civil court, so this is how it would affect the man in terms of the damages he could subsequently claim. And it can be quite substantive in some instances.

DR. BOUVIER:

I'll accept that point, but what I was trying to clarify is that there's nothing in the act that says a civil suit couldn't be started ten years after.

MR. LUDWIG:

Mr. Chairman, to make a comment on what the hon. minister just said, I was under the impression that proceedings in a provincial judge's court, especially a charge that involves a penalty, would not necessarily have any bearing at all on the civil action. I think the hon. minister was entirely wrong in making that a point in defending this section of the Statute.

MR. CHAIRMAN:

Ready for the question, the amendment moved by Mr. Drain, that Section 9 be amended by striking out the words "two years" and substituting the words "one year" therefor?

[The amendment was lost.]

[All sections, the title and preamble were agreed to.]

MR. CHAMBERS:

Mr. Chairman, I move that Bill No. 18 be reported.

[The motion was carried.]

Bill No. 28 The School Amendment Act, 1974

MR. GRUENWALD:

Mr. Chairman, I am just wondering about the amendments on Bill No. 28. While I agree that it is wise to have Sections 7, 8 and 9 deleted at this point I can't help but wonder why they were ever put in there in the first place. We put some sections into the bill that met with a lot of opposition from the Alberta School Trustees' Association and the Alberta Teachers' Association, so I'm simply asking the minister why he wouldn't consult with those people in the first place if he's going to take their advice? Let them draft the legislation. I mean, that's a point you should maybe answer because it's pointless to put these things in. Are you really serious in what you thought, that you should have

taken these types of actions, making school trustees go through certain actions to raise their salaries, which the Minister of Municipal Affairs would never ask of the municipal people. I'm just wondering why the discrepancies. What's your answer to that?

MR. HYNDMAN:

Well, Mr. Chairman, Section 7, and Section 8 which is consequential, relate to the subject of honoraria, and I think hon. members, especially those from one of the centres in Alberta, will agree that earlier in the year they received quite a number of representations. At that point it was my judgment that this amendment, as demonstrated by Section 7, should be included. That was some weeks ago. I think we have, in the interim, made our point that covered a specific situation by introducing it and deliberately leaving it on the Order Paper for a number of weeks. I think the point has been made, and bearing in mind the situation regarding our local autonomy and the fact that there will be school elections this fall, it is my belief that it is not necessary to proceed but that it was very necessary at the time and had a very useful effect for a period of about 12 weeks.

MR. GRUENWALD:

I just was going to say that the point could have been made prior to the legislation.

I think there is another section here we have to take exception to and that is page 2, part 4, dealing with Section 12, where the minister could ask an individual to give information rather than going to a superintendent of a school. In other words, if I read this right, you could go to a caretaker or an individual teacher and ask for certain information which, I think, is really going over the heads of the administration of the school board. I am just wondering why you would do that. Don't you think that is really eroding the authority of the school and is a pretty dangerous precedent.

MR. HYNDMAN:

I don't believe it will erode the authority of the board. I think the question is a pertinent one. In most cases I think the information would be received from the school board, but I think the hon. member must realize that under, for example, the Statistics Act of the federal government, which relates to the collection of statistics in all provinces, it is necessary on some occasions in order to provide for future educational planning to be able to get the information directly from teachers.

I think the hon. member will also appreciate that there may be some information required, say from the federal government through the Statistics Act, which teachers would be very loath to give if they knew it was information the school boards had. It may be information the board wouldn't normally need in terms of hiring teachers and setting them out in various schools. So that is the basic reason for the approach taken there, and certainly it is not for the point of view of simply by-passing boards, but rather, if you are going to do educational planning, surely it is necessary to have some basic information to be able to best use the dollar in planning in the years ahead.

MR. GRUENWALD:

It just seems like a pretty backhanded way of getting information. And I kind of relate it to possibly your own department, if someone went to some of your civil servants and asked for information rather than going to you or someone higher. It just strikes one as being something that is undercutting the administration.

Also there is one other one that gives us concern, one that I really think takes away from local autonomy and I just find real difficulty in accepting; that is, your Section 11 where you are talking about setting school opening and closing dates a whole year ahead. Again, I just wonder about the necessity for this. I don't really think it's so important that they be the same all over the province. I say that with some bias because I think I was quite instrumental from the very beginning in setting up the divided school year and I just think that the flexibility of allowing school boards to set school years within their own jurisdiction is a pretty valuable type of local autonomy. I loathe to see this type of interference because I think you yourself in this Assembly have reprimanded people on this side for asking certain questions that you thought infringed upon the local autonomy of certain school boards. Here, I think you are doing it more than ever so I am just wondering how you rationalize this?

MR. HYNDMAN:

Mr. Chairman, with respect, I think the honourable gentleman is under a major misapprehension because this says nothing about setting, or in any way requiring, school dates. The sole purpose of this amendment is simply to enable the province to get some idea of the pace at which the number of changing opening and closing dates of school years are occurring throughout the province with the more than 140 school boards.

I think the honourable gentleman would appreciate that if there were 140 different opening and closing dates there would be virtual curricular chaos in the province, especially with a view tc the articulation with other school jurisdictions. The sole purpose of this is to give us some indication as to the rate or pace at which these are changing. Of course, the other interesting thing is that the school trustees themselves have indicated that they might like the minister to, in legislation, set a fixed spring break, say the last week in March or the first week in April, which suggestion I will probably turn back to the ASTA to enforce themselves because I think that's the better way to do it.

It simply requires information and notice be given. There's no power there to the minister to mandate a school year apart from the existing one.

MR. GRUENWALD:

You have to accept that fact in a few years if you use the hypothetical figure of 140. If there's going to be 140 school boards you're going to have to accept 140 different types of decisions in the province.

MR. HYNDMAN:

Well, Mr. Chairman, I don't think the people of this province would accept that. I think the honourable gentleman wouldn't be representing his riding if he agreed to that.

SOME HON. MEMBERS:

Agreed.

MR. LUDWIG:

Mr. Chairman, I wish to commend the hon. minister for backing off Section 7. I agree that it should be deleted but not for the reasons he expressed. I thought the real reason he backed off was that he got the message from the Alberta School Trustees' Association, from various school boards and from public opinion that he perhaps encroached in an area that it wasn't necessary for him tc move into. He very wisely, in the face of very strong resentment from all concerned, backed off. I commend him for that. It isn't easy once he has made a public position so clearly [to say] that this is it and we're not going to put up with this nonsense. Now he has to state that we've made a point.

Well, I believe that the public has also made a point. We have to realize that even though we set up the school boards under our legislation, they are still elected. Local autonomy has a place. Although I don't agree that the minister should be just let off lightly saying, well, we made a point and there is no reason for it anymore, I still commend him for making the reverse even though it wasn't until he got his fingers crimped in the clothes wringer. Nevertheless I'm satisfied that this section should not be in the bill.

MR. HYNDMAN:

Well, certainly we're prepared to demonstrate flexibility as a government, Mr. Chairman. The honourable gentleman is perfectly right that the message was received. Now whether the message was received by the minister or by a school board, I'm not sure, but the message was communicated.

MR. LUDWIG:

Mr. Chairman, I'm quite aware of the flexibility of the government when we bring in amendments which, in many cases, certainly prevail over the logic brought up from the other side. I think in this case a school board probably got the message but I have no doubt in my mind that the minister also got the message.

MR. TAYLOR:

Mr. Chairman, I'm not worried at all what the reasons are. I'm glad Sections 7, 8 and 9 are struck out. They're in accordance with the representations I've received from my people. I'm glad they're struck out for whatever reasons, maybe very many.

There is one point related to the point raised by the hon. Member for Lethbridge West that I would like to raise. This came out of my presessional meetings. I also believe in local autonomy but I think there has to be some guidance in connection with the starting age of boys and girls for school.

The hon. minister mentioned that if there are 140 different periods under Section 11 there would be chaos, and I agree with that. Similarly, some parents have found that their child is a year behind because they are in a school district where they could start after six; the other youngsters in a school district could start after five. In some

cases certain handicapped children can even start at three and a half now but generally at five years, six months or six years, six months and so on.

I would like to have the comments of the minister on difficulties that would arise if there was a standard age for normal boys and girls starting school right across the province. It seems logical to me that a youngster in Peace River at six years of age should be similar to a youngster in Lethbridge at six years of age. To start one at five and a half and another at six and a half does leave one of them at a disadvantage if he happens to move into the other district where he's one year older. That does make a difference when you get to the higher grades. I'm not going to press the point at all. I realize The School Act presently permits this, but I would appreciate having the comments of the minister on that point.

MR. HYNDMAN:

It's true, Mr. Chairman, that there is a six month variable there, whereby for the entry into the basic education system in grade one, a youngster can be no less than five and a half and no more than six. It is at the option of the school board as to which is chosen. I think that if it were any broader than that there would be difficulties. Certainly we encourage flexibility in terms of the actual age of the youngster and his mental and physical maturity. Some youngsters at seven are less mature than others at five.

I believe that more and more school boards, particularly the principals and teachers in the class, that are receiving the youngster from another part of the province are more and more cognizant of difficulties. So I think that flexibility is increasing. We wouldn't see expanding that beyond the six-month range.

[The amendments were agreed to.]

[All sections, the title and preamble were agreed to.]

MR. HYNDMAN:

Mr. Chairman, I move the bill be reported as amended.

[The motion was carried.]

Bill No. 37 The Financial Administration Amendment Act, 1974

[All sections, the title and preamble were agreed to.]

MR. MINIELY:

Mr. Chairman, I move that Bill No. 37 be reported.

[The motion was carried.]

Bill No. 39 The Agricultural Statutes Amendment Act (No. 2)

[All sections, the title and preamble were agreed to.]

MR. FLUKER:

Mr. Chairman, I move that Bill No. 39 be reported.

[The motion was carried.]

Bill No. 44 The Department of Industry and Commerce Amendment Act, 1974

MR. CHAIRMAN:

Some amendments have been circulated.

MR. CLARK:

Mr. Chairman, might we have the mover of the amendments explain to us just what these amendments do, because I don't really think they make much difference. The reason for bringing them forward, as the member will recall, was the question of setting out the terms in the legislation as to the basis on which the minister can make regulations. The

amendments simply say that the minister may make regulations governing grants for the purpose of encouraging the development of transportation. That's not quite as broad as just saying he can make grants. Would the member comment?

MR. JAMISON:

Yes, Mr. Chairman. During the second reading of Bill No. 44 a number of questions were raised from the other side and at this time I could answer some of those questions including the one on transportation.

The questions asked by the hon. Leader of the Opposition and the Member for Spirit River-Fairview were in regard to Section 10. The key word in the government's thinking behind Section 10 is flexibility. The intent is to give the Alberta government room to move, the ability to act when the opportunity arises. I believe, Mr. Chairman, that we all realize Alberta is presently looking at a new era in industrial development which will bring hitherto unknown opportunities. Not only do we have the raw materials, we also have the expanding technology which is constantly opening new doors, revealing hitherto unknown methods almost daily. In this situation, Mr. Chairman, I feel it would be a mistake to try to spell out criteria for government grants or loans, criteria that might restrict our flexibility at a time when the province is clearly moving into an era of greatly expanded major and secondary industry.

The Leader of the Opposition, as well as the Member for Spirit River-Fairview, appear to have some concerns regarding the authority of the minister and the fact that limits are not spelled out in the act. The minister, in my estimation, Mr. Chairman, is clearly in the best position to make the required assessments and judgments. I do not agree that the bill should tie his hands in any way.

The hon. Member for Pincher Creek-Crowsnest is concerned about the DREE grants. I agree with his comments that government has gone far enough with concessions to industries. Regarding his experience with DREE grants, I am sure he was right when he said you can't go out and lead industry by the hand, locate it in some uneconomical area and expect it to survive. The citing of former DREE programs as being fiascos, in my estimation is true. We need all the flexibility under this bill to ensure that fiascos are not repeated.

This government, I suggest, will be able to pursuade industry that our policy of diversification is the modern answer to problems of both industry and government. Industry coming into the province will have to work under government policy guidelines, which is not to say that they will not have input useful to this government. I think, Mr. Chairman, we should remember that government is the agency which has responsibility for the interests of all the people.

To Mr. Taylor, the hon. Member for Drumheller, I consider his contribution as a very good example. He mentioned road grants in cooperation with industry. This is one of the good features of grants, where the public and industry share in the use of roads and contribute jointly.

Mr. Wilson, as usual, raised a question or two. I would like to point out to the hon. Member for Calgary Bow that his suggestion that the Minister of Industry and Commerce would influence loans from the Alberta Opportunity Company is merely an attempt to drag another red herring into the debate through an erroneous conception of the manner in which loans are made.

I thought, when I was answering some of the questions on second reading, that I made it clear to all members that an auditor's yardstick is used by the AOC when applications are considered for loans. I might add that the Regional Services Board also assists with loan applications.

I should also point out to all members that grants, if any, and loans are published regularly in The Alberta Gazette and the members will have lots of opportunity to discuss these loans and grants when the public accounts are examined. They are also published in The Alberta Gazette.

To the hon. Member for Wetaskiwin-Leduc: in replying to the independent thinker may I assure him again, as he was asking about the loans and grants - he had some concern there - that they were regularly published in The Alberta Gazette.

I made a little note here. May I also congratulate him on being at the Premier's dinner the other night.

MR. HENDERSON:

A spy for the Independent party.

MR. JAMISON:

Strike the Independent party?

AN HON. MEMBER:

He said spy.

MR. JAMISON:

Ch, spy.

[Interjections]

MR. CHAIRMAN:

Order. Continue, Mr. Jamison.

MR. JAMISON:

I would like to make it very, very clear that with regard to grants I think you have heard it [said] a number of times by the Minister of Industry and Commerce that he's not in favour of this method. Neither am I, but when you are dealing with DREE programs you have to - as I mentioned at the beginning - have some flexibility. Grants are where the minister has the flexiblity to either accept them or reject them.

Primarily, the grants will be used to aid transportation facilities, in the upgrading of new and old airport facilities. You might also be interested in dealing with the promotional and research activity through the Alberta Export Agency.

Mr. Chairman, I think, in reading Bill No. 44, The Department of Industry and Commerce Amendment Act, that perhaps some plain talk is needed in this debate. I would like to say that any member of this Assembly who still believes Alberta doesn't need every arrow in its quiver that it can get - arrows for the life and death struggle the West is now facing - in my estimation is not thinking straight.

We have a centralist federal empire determined to keep the West in a position of fuedal serfdom. Just look at the control of Ontario and Quebec with 162 federal seats, while the four western provinces only have 68. I would say, look at the boxcar situation. Look at the situation of our cattlemen in Alberta. Look at the imbalance in our economy through lack of industrial development. Members of this Assembly and citizens of this province, we do not realize the need for arrows in Alberta's quiver - ammunition for every positive approach - to achieve our industrial goals. I say to you people on the other side, you simply don't understand the reality of the situation which Alberta and western Canada are facing.

AN HON. MEMBER:

It would sound better if you tabled it.

AN HON. MEMBER:

Nice speech, Ernest.

MR. JAMISON:

Like some of the other members I don't get that many chances to make a speech, so I'll go ahead.

Industrial development in the West will diversify power and population and money supply. It will help spread through all of Canada those entrepreneurs with the vision and creativity that will build Canada in this century. Industrial development in the West will raise western entrepreneurs, as yet unknown but holding much creative potential. And we can do it without the smokestack disadvantages of eastern Canada.

AN HON. MEMBER:

Hear, hear.

MR. JAMISON:

The hon. Bill Yurko has both the expertise and the authority to see to that.

[Interjections]

AN HON. MEMBER:

Stand up Bill Yurko.

MR. JAMISON:

All I can say to the hon. members with their unfounded fears and undocumented fears that this government will ever move in, as they have put it, on industry [is that] they forget a fact of life. Alberta is part of the West and is surrounded by three NDP provinces who may indeed move in on industry and who have indeed already moved in. The West faces a federal government who neither understands nor gives a hoot about the West.

AN HON. MEMBER:

Agreed.

MR. JAMISON:

Nevertheless the battle we face, and we dare not look away, is the fight for the future of western Canada. Our battle is a fight for a strong united Canada. I would say to those people who may not understand the implications of this country, if development of the West is hamstrung, in the name of foresight and in the name of common sense wake up before it's too late.

[Interjections]

AN HON. MEMBER:

Carry on.

MR. JAMISON:

I thought tonight we might hear some free enterprise speeches by the hon. Member for Calgary Bow and so forth, but I noticed the other day that when the Minister of Culture, Youth and Recreation was up he was wondering how many more handouts he could get. I call that real free enterprise.

Now on transportation, as the Minister of Federal and Intergovernmental Affairs mentioned today, under the DREE program a general agreement has been reached with the federal government but the subagreements have not been reached. To explain further, as far as transportation is concerned at the present time we are using the grants to upgrade old and new airport facilities and transportation.

Thank you.

MR. CLARK:

Mr. Chairman, I believe that was in commenting on some comments that were made on April 1. I'd like the hon. member to just have one more crack at it. He's asking us to trust the minister.

AN HON. MEMBER:

Agreed.

MR. CLARK:

We can say "agreed" pretty quickly. But in this particular case we are being asked to trust the minister in making recommendations to the Executive Council as far as grants are concerned. I don't think I'm going too far when I say it was three years ago in this House when with considerable gusto, not only the minister, but I believe even the distinguished Member for St. Albert, made a comment about how the former administration was involved in giving grants to industry, grants to business and so on. And times change.

The second point I want to make to the hon. member is in addition to being asked to trust the minister and give the minister flexibility as far as grants are concerned, we're also being asked to trust the minister and the cabinet on this occasion because the minister has to go to the cabinet for special warrants for grants under this specific program. So we are not only being asked to trust the minister as far as what grants are going to be available, but the Assembly isn't having the opportunity to make any comments or approve the volume as far as grants in total are concerned.

So when you say to us, you know, trust the minister, trust the government, I'm saying to you that on two counts here we have no money included in the budget for this particular

program. We're going to have to rely on a special warrant and discuss that a year after if it warrants discussion then.

Second, as far as grants are concerned, there is precious little here in a guideline for grants at all. I don't think this is good legislation, whether it be done by the present government, the former government or future governments. The purpose in the comments I made on April 1 was that hopefully we would get some indication as to how these grants were going to be used and for what purpose they would be used. The only information we have is that they will be used to encourage the development of transportation, and frankly I wish the member would have another try at at.

MR. JAMISON:

Mr. Chairman, in the case of grants, I think I tried to point out to the hon. members that the minister isn't going to be throwing grants all over the place. This is on special grants, grants that are to be made under DREE programs, and I mentioned that these grants must be left flexible for the hon. minister to be able to make a decision on the spot. As far as loans and grants and so forth, the order in council may be necessary there on some deals, and this will be done by the Lieutenant Governor in Council.

MR. CLARK:

Could I just follow it up then and ask the member and also the minister, would the government be prepared to accept an amendment then that would simply say, right in the legislation, that this would be to cope with situations that develop as a result of the DREE program? If, in fact, that's what it's for then let's put that right in the legislation.

MR. PEACOCK:

Mr. Chairman, I think I should speak to this just for a moment. First of all ...

AN HON. MEMBER:

Agreed.

MR. PEACOCK:

... with regard to the amendment that was brought forth on Bill No. 44 in which "the Minister may, in accordance with the regulations, make grants for the purpose of encouraging the development of transportation", I thought we explained this fairly well when we stated that this was a departure, that we as a government were recognizing a need for the development of world transportation in airport matters and that, like a highways program, it was difficult to establish in one year a total program that was needed for this total province. We are embarking on a five-year trial program in which we had set up, in Appropriation 1627, which we took up in our estimates, $547,500 for the purposes of making grants in the first year to airports that we felt fell into those priority needs in order to set up communal services within the province.

That was where the minister wanted some ability to move and the flexibility of offering those grants without going back to the Lieutenant Governor in Council in order to make those grants.

But anything else we did not have in our budget, for the simple reason that there was no way we could identify or determine at this time under these conditions after the general signing of the agreements, that is the umbrella agreement, that that would sprinkle down into industrial development. We could define specifically and say the Government of Alberta would enter in any way, shape or form, in conjunction with the federal government on a grant program in the supporting subagreements. However, we said we must keep those options open. At the signing of those subagreements - the general agreement expires at the end of June - possibly there will be the necessity to analyse each and every individual application regardless of where it may exist geographically in the province of Alberta. That is what the Minister of Federal and Intergovernmental Affairs had effected in changes in the DREE agreement so that there was no geographic boundary as far as Alberta was concerned. We would then look at the whole program and determine at that time individually whether the Province of Alberta should in any way be part of that federal program.

Now, you can turn around as the Opposition and say , well, we don't want any part of it, as we did in saying we don't want any grant program. I think we also explained in the Estimates that we were part of a total national program. If the Province of Saskatchewan or the Province of British Columbia was being offered an industry DREE grant - at Lloydminster as a classic example - we, in the Province of Alberta, might have to reconsider and look at the situation individually. Therefore, it would require an application to the Lieutenant Governor in Council in regard to that specific incident or that specific industry.

I thought we explained that fairly fully. That's why there is no reason to have any appropriation in our budget for industry grants. The reason for the latitude, as the hon. member suggested, is [that] if you want your government to be flexible and to move with the punches with regard to how you might fit into confederation and the competition for DREE grants in Canada, we had to have that flexibility. I think that maybe answers it.

MR. NOTLEY:

I wonder if I could ask the minister a question just to follow that up. I wonder if the minister could tell us whether the government has any intention of amending the legislation once the DREE agreements are signed? I could see some problems in the intervening period of time and some need, perhaps, for flexibility but surely we are going to have these subagreements signed within the next four, five or six months. The same will be true with the other provinces. Once those agreements are signed we will be working with certain facts as opposed to variables.

It would seem to me that once we achieve that situation, would it not be possible and would there be any commitment then on the part of the government to come in with amendments which would more clearly define the latitude in the legislation?

MR. PEACOCK:

Mr. Chairman, I think that's a reasonable question in this regard, that in Section 4 of the amendment we state that at the end of each government fiscal year the minister shall prepare a report listing the recipients, et cetera, et cetera.

When there is an historical background established and the subagreements are signed, and we have some knowledge of what the game is all about as far as the new DREE subagreements relate to industry, I think then we can come in front of the House and present a reasonable approach as to what the government might expect in regard to this particular area for the subsequent year. I don't think we can do it this year.

MR. CLARK:

Just following that along. I appreciate what the minister has said, but for the life of me I can't understand why you're not prepared to put in this legislation. The Lieutenant Governor in Council may make regulations for grants dealing with the DREE program. Then you've got it clearly spelled out in the legislation. That's going to give you all the flexibility you'd need.

I think a point we rather have to say to the minister - this is said with no disrespect at all - is what the minister or anyone else says in the Estimates or in the subcommittee and what is said in the legislation - no, the legislation says what you can do - the discussion of the Estimates in subcommittee certainly gives an indication of what you are going to do but it has no legislative or regulatory effect at all.

The point I want to make is, if it is to be used as the minister has said previously on this occasion and as he said in the House and in committee, then lets just spell it out in legislation. Say that the government or the Lieutenant Governor in Council may make regulations for grants needed to complete Alberta's portion of the DREE program or something like that. I would have no hesitation.

MR. PEACOCK:

Mr. Chairman, surely that's exactly what we are saying. We are saying that in the amendment (2), "The Minister may, in accordance with regulations, make grants for the purpose of encouraging development of transportation". Period. And (3), "The Lieutenant Governor in Council may make regulations" (a), (b), (c) and (d) and in (c) it says, "specifying individuals, corporations or organizations or classes thereof that are eligible to receive such grants."

MR. CLARK:

But you said you were going to use this as far as the DREE program is concerned. If that's the only reason you are going to use it, then why not set it right out in the legislation?

MR. BENOIT:

Mr. Chairman, I only wanted to say, thinking in terms of the comments that were made by the hon. Member for St. Albert and then again by the minister, they made a good pitch for flexibility. I have no objection to the flexibility aspect of it. But there is a difference between flexibility and dictatorial authority as given to the minister in Section 6. There the minister, under the old section, simply said that with the approval of the Lieutenant Governor in Council the minister may do certain things. Here the Lieutenant Governor in Council is left out.

All three sections come right down to, the minister may establish boards, committees, councils, etc. The minister "may" without regulations or anything. The minister does all of these things. The Lieutenant Governor in Council doesn't come into play at all. Now surely there is nothing so pressing that the cabinet can't have a meeting to deal with a situation of this kind.

If it were only in this one it would be one thing, Mr. Chairman, but it comes out in so many pieces of legislation that we have had this year and last year. The minister takes over the entire authority without even consideration of the Lieutenant Governor in Council. I only want to suggest that flexibility, for the hon. members of the government, seems to be wide open at both ends, open ended. Do anything you want. In other words have dictatorial authority to do it. I don't think flexibility and dictatorship are the same thing. A dictator has lots of flexibility but that is not the type of flexibility necessary in a democratic government. I really believe that at least we could make reference back to the Lieutenant Governor in Council for things of this nature.

MR. LUDWIG:

Mr. Chairman, I think that the explanation given by the hon. minister is very acceptable, but why do they seek such broad spending powers, especially in the field of making grants? These should be limited. After all the main purpose of the hon. members here, all the MLAs, is to vote spending. Here we are going to give them a blanket bill to hand out funds.

I am not going to go back to the expression that is often made in Parliament by the Conservatives in Ottawa, that this is a move to legalize the dishing out of slush funds, if I want to go to that extreme. I am not going to say that, Mr. Chairman. What on earth is the purpose of going into the grant method of dealing with problems on such a grand scale? There are grants in every department, increased by the millions. One department, Culture, Youth and Recreation, has a total of almost $10 million in grants. The Department of Agriculture has all sorts of grants going for it. Every place you look this government is anxious to be in a position to make grants, notwithstanding that I believe some of the purposes for these grants are good. But they are seeking powers far beyond what is established by the remarks made by the hon. minister. They can make any amount of grants, free handouts to anybody they like under this bill. Nobody can say anything about it because it was authorized by legislation.

Now if you get half a dozen bills like this, with references to every department, we won't have to spend very much time on the Budget debate. Maybe that's the only advantage to the whole thing. But I don't think any MLA, no matter which side of the House he is on, ought to approve this type of blanket grant-giving by any department.

This kind of thing is what leads to what I saw on television last night about the corruption that takes place in Nova Scotia - where you start making grants and start looking for little political favours and the first thing you know, unless you belong to the right party, you're out. This was openly stated right on television, last night I believe, by people from Nova Scotia on the matter of dishing out jobs, contracts for trucking.

This is the kind of thing that ought to be guarded against. Someone has to get to the minister with the proper kind of request, through the proper channels, to get a grant.

It's no use to have somebody telling us we've got to trust the government. Any time you get a government that shows any indication of political preference or of being slightly politically oriented, you have to be on guard [or] you're not doing your job no matter on which side of the House you sit. I don't say the hon. ministers are dishonest, but they're politically oriented and they make no bones about it.

If two groups from a village out here in the country came to the minister for a grant and one came very strongly politically recommended and one came with the fact that he got on the minister's back for something and wouldn't get off, I have no doubt in my mind - with all due respect to the minister's integrity - who's going to be favoured. This is the kind of thing we have to fight because the government will be hurting itself in the long run if it does this.

The matter of getting to the minister through the proper channel, the proper civil servant and the proper recommendation is known. I'm not saying this just because it happens to be a Conservative government; this issue is raised in every province. It's raised in Ottawa time and time again by outstanding representatives of the West asking questions [such as] who got how much money from the federal government? We then have to come here and say, who got how much and how come John Doe, who was a Conservative bagman, got a grant to start something when somebody else didn't?

So the government is actually putting itself in a position where it's going to have to provide details and make an awful lot of explanations why it did something. It would be better for government, for the image of governments and for the public interest if this

were not done. We're not in that great a hurry and we don't need that much flexibility, that if he wants to help transportation he needs a blanket bill to be able to give anybody any kind of grant he can convince the cabinet to approve. If he's persuasive he can get them to approve almost anything. One thing this government doesn't lack in its budget this year is extensive votes for the grants and I personally want to be on record as opposing this kind of thing because it leads to pressures, lobbying and grants being made which, even if they are not political, will look to be, Mr. Chairman.

MR. NOTLEY:

Mr. Chairman, I can certainly appreciate, first of all, why some flexibility is needed in the intervening period, whether we are looking at three, six, nine or ten months, whatever the case may be. But it seems to me, Mr. Chairman, that the minister - with all due respect - hasn't answered the argument as to why an amendment couldn't be inserted in this bill which would relate the powers here to the DREE program.

As I understood his initial answer, we're not talking about the transportation allowance here. There is a provision made in the Estimates for that. We're really talking about the grants under the DREE program in this period of time when there is a good deal of uncertainty because the various subagreements haven't been signed.

Certainly, with that in mind, we're going to have to have some flexibility. I don't think anyone in this House would argue otherwise. But why not restrict this legislation then to the DREE program, because as it stands now the government, the minister, will have the opportunity to go to the Lieutenant Governor in Council and make grants far beyond the DREE program which may not relate in any way, shape or form, the way the legislation is presently worded and the amendment as well.

I would just question why that is needed in order to achieve the objective of flexibility as a result of the DREE negotiations. Mr. Chairman, before we surrender this power to the Lieutenant Governor in Council I think, again with the greatest respect, we're going to have to have a little better explanation as to why the government can't accept this kind of amendment.

I know there is going to be accountability in a sense. We'll have the grants published in The Alberta Gazette. We'll have an opportunity during the Estimates to go over the department in some depth. Also, the member, Mr. Jamison, talked about public accounts. But this, of course, is accountability after the fact. It is the same sort of accountability we're going to have with the northeast Alberta regional commissioner - accountability after the fact. That's small consolation if we have some pretty serious reservations about grants that are given.

So it seems to me that the test the government really must pass is to convince the Opposition to support this bill in committee stage. The amendment is why it is necessary to have flexibility beyond the specified points he has mentioned, beyond the transportation grants and beyond the DREE agreement.

Mr. Chairman, as I say, I have yet to hear from the minister or anybody else on that side reasons why we should grant this de facto carte blanche opportunity to hand out grants on a very wide ranging basis.

MR. JAMISON:

Mr. Chairman, regarding accountability after the fact, The Alberta Gazette is published weekly. I realize it is one week late. But I think if there is anything to be raised from a grant that may be made for airport facilities, if it is a week late ...

MR. CHAIRMAN:

May we have a little more order in the Assembly.

MR. JAMISON:

Mr. Chairman, as I was saying, the hon. Member for Spirit River-Fairview was raising the question of accountability after the fact. I think that [for] grants that might be used by the Minister of Industry and Commerce for upgrading airport facilities The Alberta Gazette is published every week. It will only be a week late. If the hon. member thinks that one week is going to make that much difference from raising Cain in the news media or whatever way he wants to do it, I think it's up to him.

Primarily The Department of Industry and Commerce Amendment Act, 1974 was a housekeeping bill to clean up some parts of it that are now included in the Department of Consumer Affairs, the Department of Manpower and Labour and so forth.

The section which was amended was Section 10. This was distributed to all hon. members at least seven weeks ago. In Section 10, for those who haven't got it in front of

them - and I'm sure the hon. Member for Highwood hasn't got it in front of him, otherwise he wouldn't have made the remarks he made - one, the Lieutenant Governor in Council upon the recommendation of the minister may - now "may" is a big word - make grants for the purpose of encouraging development of industry, and two, the minister may, in accordance with the regulations, make grants for the purpose of encouraging the development of transportation.

As the hon. Leader of the Opposition wished to have the word "transportation" spelled out, we spelled it out. But transportation primarily was the upgrading of airport facilities in the province or out of the province if it is going to be of benefit to the province of Alberta. If the hon. minister would like to add a few words to this ...

MR. PEACOCK:

Because it was presented in the House we made the amendment so that the Lieutenant Governor in Council, upon the recommendation of the minister, may make grants. The only latitude the minister kept in this area was as explained by the hon. Member for Spirit River-Fairview, that there has to be some latitude in regard to transportation. It was spelled out in the budget in any event, so we defined that amount.

The reason that we get hung up on this DREE agreement or subagreements is because the situation is in a state of flux at this time. There has to be some latitude. But surely in the way that Section 10 is rewritten, we in the House first of all and then the public are alerted, through Section 4, as to where and for what reason those grants are issued, and secondly the minister, with all due respect to the development of industry in this province, is answerable and must receive permission for those grants from the Lieutenant Governor in Council. So, I can't see, as far as I'm concerned, where there is any problem as far as the minister taking excessive latitude in regard to grants, personally or otherwise. I think he is answerable not only to some 22 colleagues and to the press but answerable to the people in approximately maybe a year's time.

I have also publicly identified my position in relation to grants. I have also publicly, in this House, addressed myself to the reason for the latitude in this particular bill. Without that latitude surely industry from which this province extracts a great portion of its budget, surely to goodness when we are talking in terms of $500,000 in grant 1627 - and that is the only industry grant I know of that comes back into the province of Alberta from the Department of Industry and Commerce - we can give sufficient latitude to that contributor to the provincial budget so they could look in terms of the federal agreement as to what might be in the public interests of Alberta if there is a need of effecting an industrial grant in this way.

I hope, frankly, that we will never have to exercise this part. But I would suggest that I think you, as Opposition members and members on this side of the House, would be very, very remiss to ever harness a situation with which those who are involved in industry are very familiar, that would affect in any way, shape or form the opportunity of negotiating with a specific industry that might be of significance to the future economy and welfare of this province.

I think that is all we are saying here. Without that latitude and without that understanding in the minister having that opportunity of saying this could be available to you through the Lieutenant Governor in Council, would afford, I think, that the proper negotiations go forward. That is what we are saying in this bill, unlike in the humanities and in the social areas of government grants where they are given and identified and you pass them very generously and have very little comment.

In this particular area - the contributor to the very basis of the economy of the province - we are getting hung up on something that conceivably might never happen, but on the other hand if it does you are going to be aware of it.

MR. CLARK:

You know, I appreciate very much the minister's rather passionate comments about being hung up. But it seems to me, Mr. Chairman, it is rather important that this is a place where we perhaps should get hung up. In this Legislature right now we are being asked to give the minister and the cabinet carte blanche approval to make grants of any sort as far as industrial development in Alberta is concerned.

Now you may have $10 in your estimates this year, or you may have $60,000 or $600,000. Next year or the year after that, or the year after that, you may not be the minister. But someone else may be and he or she may well not have the same attitude, the same approach, you have.

You are coming to us and saying, we need this legislation so we can cope with the DREE arrangement. We are not arguing one iota with that. A lot of us over here have been through the fights with DREE before, when we were on that side of the House, and we sympathize with you and can appreciate the problems you have. But if you are coming to us

and saying, we want to make grants so we can cope with the DREE thing, then this is a new position as far as the government is concerned. What we are saying to you is, are you then prepared to have that kind of condition put on the grants by moving an amendment?

That's what the argument is about. It's not a matter of not trusting the minister. It's not a matter of saying there shouldn't be grants made under any circumstances. We recognize there should be.

If I could go just a bit further, the minister talks about encouraging the development cf transportation. He says that money is going to be used for airports. I suppose if we wanted to press this further we could say, would you be prepared to change "transportation" to "airports"? Let's leave that one. On this other one, we are opening up the whole package of grants. After this particular section of legislation is passed, there is going to be nothing stopping any Alberta businessmen, from my constituency or from Jasper, reading this legislation and saying, lock, under section whatever it is of The Department of Industry and Commerce Amendment Act you can make grants holus-bolus. The only protection you, as a minister, have is to say, well, in the committee in 1974 I tcld them I would only make them if it was as a result of the DREE arrangement.

So I would like to ask the minister once again if he would be prepared to hold this particular section and have a go at it with Legislative Counsel? If not, I am quite prepared to move an amendment to it saying that such grants shall be made in keeping with any agreements signed with the Department of Regional Economic Expansion.

MR. PEACOCK:

Mr. Chairman, at the expense of repeating myself, I quite understand the concern of the Opposition. As I have previously stated, I sympathize in any area of industrial grants. That is the question cf it.

I say this: until some historical evidence, until some background is before us we would assure the House that after an experience of the subagreement we would be pleased to come back with an amendment next session. At this time we have to have this latitude to know what we are doing and what we are going to be faced with.

MR. CLARK:

Mr. Chairman, I would like to move an amendment that Section 10(1) be amended by simply adding at the end, "Such grants shall be made in keeping with any agreement signed with the Department of Regional Economic Expansion."

AN HCN. MEMBER:

Agreed.

MR. LUDWIG:

Mr. Chairman, that amendment is in keeping with the statement made by the hon. minister as to the real purpcse of this bill. There shculd not be too much doubt that if the minister says something is so, he should not be afraid to have it in the bill. I think this line of reasoning that says, well, you show us why this isn't the way to go, give us your facts and reasons and argument why this shouldn't be so and then we'll proceed - we say, no you should show us that you need all these broad powers.

You have to establish it, It's your bill. You're trying to convince us that this is a bill in the best interests of the people. We don't want this negative approach: if you object, then give us procf and convince us. We want to be convinced that the minister can't possibly do it any other way if he must go this way, but [not] to have a bill that gives him unlimited power, if the government wants to go this way - and this government may. It has an inclination to lean sort of heavily tcwards a grant way of dishing out money, If you don't believe this, look at all the departments and see what happened in the grant vote. Decide for ycurself.

We want the minister tc say, well, I can't possibly do my job. This is what I need. I need these extra broad powers. It might be a tremendcus opportunity for doing good by way of dishing out grants all over the place. He's got the power to do it. We say he doesn't need this power to do what he wants to do. The hon. Leader of the Opposition brought in an amendment to tie in completely with what the hon. minister said. I urge the hon. members to vote for it. Iet's keep this whole thing straight, Mr. Chairman.

MR. CHAIRMAN:

The amendment, as moved by Mr. Clark, is that after Section 10(1) the sentence be added:

Such grants shall be made in keeping with any agreement signed with the Department of Regional Economic Expansion.

[The amendment was lost.]

MR. WILSON:

Mr. Chairman, could we have a standing vote on that?

MR. CHAIRMAN:

Very well.

The amendment is defeated 15 to 32.

MR. LUDWIG:

Mr. Chairman, I was not aware - did the minister vote against his own recommendation or not? I think he did.

MR. RUSTE:

Mr. Chairman, I have listened with a great deal of interest this evening to the discussion on the amendments to Bill No. 44. Looking back to this very Assembly some three years ago or a little better, there was a lot of talk about supremacy of the Legislature, the words open government, cost-benefit analysis and many other things. But it seems to me that with the windfall income the members opposite have acquired, they have forgotten all these things. And certainly the supremacy of the Legislature by the one who is the main proponent of that - who is, shall we say, in this Assembly possibly a quarter of the time - doesn't speak well for what they were proposing at one time and what they are carrying out now.

Certainly when we hear such statements as, mistake to spell out criteria, the need for flexibility - and even the member who brought in the bill was referring to the weekly edition of The Alberta Gazette. Now, Mr. Chairman, I'm just wondering if he gets an edition that I don't get. It seems to me that I get them about every two weeks. But the member, and I noticed this twice, referred to the weekly edition of the gazette. I submit, Mr. Chairman, that by the time we get the gazette, as Opposition members certainly, we haven't an opportunity to discuss these things until the next session.

I submit that with the two and three sessions we have in this Assembly, there's no need for such broad powers, especially in light of many of the proponents in the front bench now who were for open government, for supremacy of the Legislature - and then to have before us such legislation as this.

And this certainly, Mr. Chairman, is not the first piece. We have several. We have Bill No. 55. We have many others. It's going to make rather an interesting study to see just what has happened to the actual presentation in this Assembly of legislation as it relates to supremacy of the Legislature, as it relates to open government.

So with that - and I think the minister himself has expressed some concerns. He says he hopes he never has to exercise those powers, but I think it has been ably pointed out here that the legislation is there. The minister may change, and this has happened at different times, and certainly citizens of Alberta can come and say to him, well, here's a proviso, now help me out.

So, Mr. Chairman, I have to oppose legislation such as this at this time.

[All sections, the title and preamble were agreed to.]

MR. JAMISON:

Mr. Chairman, I move Bill No. 44 as amended be reported.

[The motion was carried.]

Bill No. 41 The Expropriation Act

MR. KOZIAK:

Mr. Chairman, with respect to Bill No. 41, just two comments quickly.

There are amendments which have been circulated this afternoon. In addition, the flow chart which was promised during second reading of the bill was also circulated this afternoon. I hope that's comprehensible.

MR. CHAIRMAN:

Any questions, particularly with the amendments that have been circulated?

MR. BENOIT:

Well, not the amendments; I was thinking in terms of the bill itself, Mr. Chairman. I have a number of questions. I don't know whether he warts me to ask them all at once or whether he wants me to ask them one at a time ...

AN HON. MEMBER:

All at once.

MR. BENOIT:

All at once?

On page 2, Section 2, under application of the act it says:

> This Act applies to any expropriation authorized by the law of Alberta and prevails over any contrary provisions that may be found therein, except the statute or parts of statutes enumerated in Schedule 1.

This means that this overrides any other act with regard to this matter.

I don't know how many acts we have that have a section like that in them. I'm concerned lest we have two acts saying the same thing about two other acts. I would like comment on that, if these are very carefully studied to make certain there are no two acts that say the same thing about the other act.

On page 4, Section 7:

> For the purpose of this Act, the approving authority in respect to an expropriation shall be (a) in the case of ...

No, I think I satisfied myself on that. I'm sorry.

On page 5, at the bottom of Section 8(g):

> a statement that a person affected by the proposed expropriation need not serve an objection to the expropriation in order to preserve his right to have the amount of compensation payable determined by the Board ...

Will this then be automatic or will the expropriatee be required to inform the board? I want to know whether that will be automatic and he doesn't have to provide any information, or whether he will have to inform the board.

There is a very small matter in Section 9(2) on the second line. There is a wrong reference. At the end of the line it says, "the provisions of section 8, subsection (4) ... ." It should read subsection (5), Mr. Chairman.

Still on page 5, in Section 10(1)(b) it says, "in any other case, within 21 days after the first publication of the notice of intention." I would like an example there to explain why it should be that way.

Now, Mr. Chairman, further on page 6, 13(1) ...

MR. KOZIAK:

I didn't get that last comment. I wonder if you could ...

MR. HENDERSON:

Mr. Chairman, may I rise on a point of order?

I am wondering if it wouldn't be desirable to go through clause-by-clause study. I don't know whether anybody else has the amendments. I have one or two that I'd like to bring up. We might make more progress by going through it clause by clause than ...

MR. CHAIRMAN:

Is it agreed? Very well, I will proceed section by section.

[Sections 1 through 7 were agreed to.]

MR. BENOIT:

It is on Section 8 that I have a question on portion (g) on page 5. Will this notification be automatic or will the person who is being expropriated be required to inform the board?

MR. KOZIAK:

Mr. Chairman, what happens here is that if the owner is only concerned with the amount of the compensation that is payable to him, he doesn't have to respond to the notice of intention to expropriate. What will then happen is, at the expiration of the appropriate time the expropriating authority will apply for a certificate of approval which they will get.

They must, at the time they serve the certificate of approval upon the owner, indicate what they are prepared to pay and tender that amount within the given period of time. This is all while the owner is still in possession. When the owner receives the tender, the offer of proposed payment, at that point he then decides whether or not the compensation offered is sufficient. He can then, if he feels it is insufficient, accept the amount that has been given to him and concurrently apply to the court or to whichever board is involved for setting of compensation. That will be done after the certificate of approval has been granted.

MR. BENOIT:

He will have to make the application if he is not satisfied?

MR. KOZIAK:

He can make the application or the expropriating authority can make the application. Under the provisions of Section 28 for instance, where there is not agreement, the Board shall determine the compensation.

Here it is, Section 34:

(1) Where the expropriating authority and the owner have not agreed upon the compensation payable under this Act

(a) the expropriating authority may institute proceedings to determine compensation after offering the proposed payment;

Or:

(b) the owner may institute proceedings after the offering of the proposed payment ...

So it's either/or.

[Section 8 was agreed to.]

MR. KOZIAK:

The comment made by the hon. Member for Highwood is correct. I must commend him for his quick eye. This is one of the points that escaped our attention. In fact that should read subsection (5) and not subsection (4). I would like to congratulate the hon. member for finding that error.

That is in Section 9(2), in the second line it should read: "the provisions of section 8, subsection (5)" instead of "subsection (4)". I move that that be amended to read "subsection (5)".

[Section 9 as amended was agreed to.]

[Sections 10 through 12 were agreed to.]

MR. BENOIT:

Mr. Chairman, my question is on Section 13(1) which concludes by saying "he may by order direct that an intended expropriation shall proceed without inquiry." Is this without consulting the approving authority?

MR. KOZIAK:

Yes, that would be the case. The expropriating authority would make the application to the Lieutenant Governor in Council and attempt to show the Lieutenant Governor in Council that in this particular case the urgency is such that the inquiry procedure would have to be set aside because of the public good. The Lieutenant Governor in Council would then order accordingly. No application would be made to the approving authority.

MR. HENDERSON:

Mr. Chairman, just a follow-up. Maybe the member could just give an instance where that could happen.

MR. KOZIAK:

Well Mr. Chairman, I would hate to indicate an area where this might happen. I would only point out at this time to the hon. members, Mr. Chairman, that under the present Expropriation Procedure Act no inquiry at all is called for. When, for example, the Department of Highways and Transport wishes to expropriate your land, all the department does is file the appropriate notice at the Land Titles Office. When that notice is filed, title automatically passes from the owner to the Department of Highways and Transport or the appropriate government body. There's no provision for an inquiry now at all. What this does is really, in the case where there is urgency, is put the department almost exactly in the position it would be [in] now under the present Expropriation Procedure Act.

As I say, we can all in our own minds conjure some situation of emergency where we might feel it would be in order to grant such an order. I don't think I can suggest to you now where that may be, but the expropriating authority would have to show the Lieutenant Governor in Council that in this particular case urgency is such that the inquiry procedure has to be dispensed with. I would think that the onus on the expropriating authority in doing so would be very, very heavy.

MR. RUSTE:

Well, Mr. Chairman, just further to that reply. Certainly in the Department of Highways and Transport there shouldn't be any need for this type of operation where they know what they're going to do well ahead of time. I can recall some of the oil operators or oil companies coming in and saying they're going to have to have it within a few hours or a few days, and I can't believe them at that even, because surely these outfits out operating know what they're going to do. Maybe the excuse of a rush is just to try to confuse the one they're trying to get the land from to sign something he shouldn't - that he'd be able to argue his case if he had more time. That's why I asked for a reason for specifics on such a piece of legislation as that.

MR. KCZIAK:

I don't think, Mr. Chairman, that one should look at the section in that fashion - that it's going to be used as a method of imposing pressure upon the owner. I would think that an expropriating authority that used that section as pressure would not get very far in proving that there's urgency before the Lieutenant Governor in Council.

I think that we cannot, of course, envisage all the possible situations in which expropriation is necessary here this afternoon or this evening. It may be that on a particular occasion, part of a road may cave in or there may be a detour required, there may be an emergency construction that has to take place, an addition to a bridge or something like that. We don't want to be in a position where an emergency cannot be attended to properly - where in the greater public good it is necessary that something be done - because of a prohibition in the act.

Again, I must reiterate that when the Lietuenant Governor in Council says the matter is urgent and waives the inquiry procedure, what that is then doing is putting that particular expropriation in exactly the same position as any and all expropriations are now under The Expropriation Prccedure Act, so they are no worse than they are today.

Mr. Chairman, it's important that the act not be overbinding in certain areas where difficulties may arise and where the general overall public good may suffer, and suffer very badly, because of a particular situation that we can't anticipate now. So it's an escape clause that will permit the Lieutenant Governor in Council, where the matter is of sufficient importance and of sufficient urgency, to waive the inquiry procedures and I think it is a wise inclusion in the act, Mr. Chairman.

MR. HENDERSON:

Mr. Chairman, very briefly I'm just going to support the fact that I think the clause should be in the act. In the past the question of expropriation, the whole procedure, was

basically one which had statutory authority. The purpose of the act was to determine compensation. Even though Section 13 (1) is in the act, the question of the rest of the procedure that deals with compensation is still applicable.

I think one could imagine quite a number of circumstances where the public inquiry, which is really just a double check on the expropriating authority to make sure they need to expropriate - that's the way I see the inquiry - may pose some serious problems. I can think of the question of a water management project that is carried out when drainage-wise we get a bad year such as this year. Something has to be done expeditiously in order to deal with the problem. Because of the clause in the act you can't do it and some pretty serious problems could result therefrom.

So as the member has said, leaving the section in certainly doesn't detract from the procedure as it now stands because the rest of the act, relative to compensation, still applies. Determination of compensation still applies and this just means that this new section, which ordinarily would be effective, is not required under those extenuating circumstances.

Quite frankly, I would have to say that since the expropriation procedure has been lengthened considerably time-wise with the new bill, as compared to the old procedure, I would find it difficult to support the bill if this clause wasn't in the bill because I can envision quite a number of circumstances where it could be required.

MR. TAYLOR:

Mr. Chairman, I also support this bill. If a concrete example is required, it's where you have a landslide. Traffic is cut off entirely and you have to secure another road in order to keep traffic moving. A good example is the Peace River hill where we had a very bad slide a few years ago and had to find a new road forthwith, not ten days later but immediately. So this type of thing is essential under varying circumstances, as the hon. member mentioned.

SOME HON. MEMBERS:

Agreed.

MR. HENDERSON:

Mr. Chairman, I'd like to just ask a question and possibly move an amendment on Section 13(5). It deals with the question of where the Lieutenant Governor in Council is satisfied that refusal of an approving authority to grant, and so on - that where the approving authority refuses to grant the expropriation order the Lieutenant Governor in Council may grant such an order. The only concern I have about it is, to make it abundantly clear, I assume that the certificate of approval, which would be issued by the Lieutenant Governor in Council, is still in keeping with the limitations imposed in the authorizing act. Because the way I read it right now, it doesn't make that plain.

Taking it to the extreme, the Lieutenant Governor in Council could write some new expropriating law by virtue of issuing this certificate. While I don't imagine that this is envisioned I think, in view of the nature of the bill and it's importance and the problems that led up to the substantial revision of the procedures in the bill, it should be abundantly clear that Executive Council is not writing new expropriation law by virtue of granting such an approval.

I'd like to hear the comments of the mover of the bill before I proceed further, Mr. Chairman.

MR. KOZIAK:

No, that is not the intention of the section. The section would only permit the Lieutenant Governor in Council to overrule the decision by the approving authority in failing to grant a certificate of approval. It would not permit the Lieutenant Governor in Council to either create new expropriating powers where they didn't exist or in any way affect those powers. The powers to expropriate are found in the very statutes.

In other words, The Municipal Government Act provides the power to expropriate for municipal governments. The Public Works Act would provide the power to expropriate for the Department of Public Works or for other departments. You look to the statute for the actual power to expropriate. This bill tells you, once you have the power, this is how you go about doing it. This bill in no way adds to or takes away from the powers to expropriate which appear in other statutes. This is a statute which deals with the mechanics of how, once you have your power of expropriation, you exercise that power. These are the steps that you follow.

As the hon. members will recognize in going through the bill, there is no appeal from a decision with respect to the granting of the approving certificate. There is no appeal

with respect to the inquiry procedures in the act. What this does, Mr. Chairman, is provide again, in the event that the Lieutenant Governor in Council is satisfied - again, it is not one single minister who makes the decision - but [when] the entire Lieutenant Governor in Council is satisfied that the failure to grant a certificate of approval would be contrary tc the public good he can overrule that decision. But in no way does he add to or subtract from the powers of expropriation found in the statute which creates these powers, if I understood the question right.

MR. HENDERSON:

The hon. member has understood the question right. The only thing that gives me cause for concern is that the wording is very broad. It says "Where the Lieutenant Governor in Council is satisfied that a refusal by an approving authority to grant a certificate of approval for a proprosed expropriation is contrary to the public interest ... ." That covers such a multitude of sins that I would like to suggest for the consideration of the House, just with the view of making it abundantly clear, that what the member has said is the purpose and intent cf the act, that we amend slightly the words, "he may by order direct the approving authority" and change those to read, "he may by order, subject to the limitaticns imposed in the authcrizing act, direct the authority".

It may be just a question of interpretation of the law that really isn't necessary, but it bothers me somewhat in seeing the general phrase in here: "a proposed expropriation is contrary to the public interest ... ." I can envision, quite frankly, where an expropriation would be in the public interest for one reason or another, but it isn't covered by a statute. Those particular words, "is contrary to the public interest", could be used to grant a certificate notwithstanding the fact that the inquiry committee may have rejected it because they say it isn't within the terms of reference of the authorizing statute.

Mr. Chairman, I don't necessarily suggest that we have to deal with the question of the amendment today, but I would still like to recommend it for the consideration of the government. I accordingly move, Mr. Chairman, that the words in Clause 5, "he may by order direct the approving authority", be struck out and be replaced by, "he may by order, subject to the limitations imposed in the authorizing act, direct the approving authority."

MR. KOZIAK:

Mr. Chairman, I appreciate the concern of the hon. member. The only thing that bothers me [is that in] my reading of Section 13(5), Mr. Chairman, I am satisfied of course that the Lieutenant Governor in Council, in reversing the decision of the approving authority, is in fact going to be limited by those very statutes I mentioned earlier that create the expropriating power. In other words, in Section 13(5) they won't be giving expropriating power by their decision in overruling the approving authorities' decision to somebody who never had it in the first place, or to someone who never had the power to the extent that might be desired.

The thing that concerns me, and I appreciate the hon. member's amendment, is that the same argument could easily apply to Section 13(1). I could possibly, in looking through the act, develop other examples where we would include such a limitation when in fact the limitaticn is already there.

I believe that what the hon. member is suggesting by his amendment is in fact there in the words as they appear, strictly because, as I say, this act is not to be interpreted as giving cr taking away expropriating powers. This act only deals with the proper exercise of those powers once you have them.

Whereas I completely agree that we wouldn't want to see the Lieutenant Governor in Council, in reversing the decision of the approving authority, give expropriating power to somebody who never had it in the first place, I would think that if we accepted this amendment, we would have to prcbably look at, well, not every, but a number of sections where a similar argument cculd be made. I don't think it is necessary, Mr. Chairman, because the act is strictly an act which develops the method in which the machinery of expropriation is to be exercised and is not an act which in any way gives the expropriating power to any particular body. That power you have to look at in the act which creates it.

I would think, from my limited knowledge of statutory interpretation, that the specific overrides the general. Where a specific power is given in an act, or is not given in an act, a side implication that the Lieutenant Governor may - would not, in my opinion, Mr. Chairman - override the fact that either the expropriating authority has or has not got the power, under the act which creates it, to expropriate, I say is a principle in the amendment that doesn't bother me. It's completely in order because we don't want the Lieutenant Gcvernor in Council, in reversing the decision of the approving authority, to give the expropriating authority more power than it ever had. That is not intended by this act. I am ccncerned that it is an unnecessary phrase and an unnecessary

bit of English which is added to a section. If we add it here perhaps we should also, because of the fact that we then make a specific provision here, look at Section 13(1) and a number of other sections where that same implication could be drawn if you took the interpretation to its widest conclusion.

For that reason, Mr. Chairman, I would think the amendment is unnecessary. It may do some damage to other clauses in the overall interpretation of the bill if we just deal with this one section in this fashion.

MR. HENDERSON:

Mr. Chairman, if there are other clauses in here where the same interpretation might apply, I quite frankly appreciate what the member said, but the member doesn't have any authority to govern what Executive Council is doing. Nor do I, except from the floor of this Assembly.

My concern is making it abundantly clear in the statute that none of these powers granted to the Executive Council, in dealing with the technicalities of the act, in any way can be interpreted as extending the expropriation laws as they are now defined in authorizing statutes. I would like to suggest to the government, in view of what the member has said, that possibly what is required is a general clause in the act to make this abundantly clear. That would put my concerns to rest as opposed to just amending this specific section.

I have to say also, Mr. Chairman, that one of the things I am concerned about is a significant number of bills before the House where the government is asking for authority, by Executive Council, to rewrite provincial statutes. While I don't at all dispute what the member says is the intent, I still think with a bill of this type it should be abundantly clear to the public that in no way, shape or form can powers granted to Executive Council in dealing with the administrative technicalities be interpreted as extending the expropriation powers of any provincial statute that is taken to be the authorizing act.

Maybe the amendment is ill-placed in this particular section and maybe what is desirable is a general clause to that effect elsewhere in the bill. I would still like to ask the government to take it under advisement because, as I say, there is quite legitimately concern in this session about the number of bills before the House where the cabinet is actually asking for exceptional powers to override provincial statutes. While I accept the general argument that it is not the intent of the bill to do that in this particular case, I still think the matter should be considered further by the government while the bill is in committee. I am quite prepared to see the amendment go down the drain if it isn't properly applied in this section, but I still think the basic question is still there, Mr. Chairman.

MR. KOZIAK:

Mr. Chairman, the provisions I would respectfully suggest the hon. member consider are Sections 2 to 5 of the act which deal with the application of the act. The reason I refer to those sections is not because of the specific answer those sections will give the hon. member in the points he raises, but because of the method in which the whole business of expropriation is dealt with in those sections. It's under the heading "Application of Act". For example, Section 2(1) would read,

> This Act applies to any expropriation authorized by the law of Alberta and prevails over any contrary provisions that may be found therein, except the statutes or parts of statutes enumerated in Schedule 1.

And then Section 3:

> ... an authorizing Act permits or authorizes an expropriation of land, the expropriating authority may, unless the authorizing Act expressly otherwise provides, acquire any estate required by him ...

et cetera, et cetera. So the provisions dealing with the powers the expropriating body has are in those sections related to the authorizing act, which is the point I am trying to make, and that we look to the authorizing act and not to this act to see the extent of those powers. In this act, what we are dealing with is the machinery for the execution of those powers.

[The amendment was lost.

[Section 13 was agreed to.

MR. BENOIT:

Mr. Chairman, just a question. It appears both in subsection 2 and subsection 4. My question is, why can't the board be inquiry officer for the Crown and the municipality as well as others, instead of having to supply an inquiry officer separate from the board for the Crown and the municipality?

MR. KOZIAK:

There are a number of ways in which we could have handled this. The report of the Institute of Law Research and Reform suggested an inquiry officer in all cases, and we felt that the board should be the inquiry officer in those cases where the inquiry is other than by the Crown or a municipality.

Perhaps it may be difficult to draw the distinction, but insofar as the expropriation by the Crown, insofar as the expropriation by the municipality, what we are trying to establish here is a person who is as independent as possible, who can look at the reasons for the expropriation. If the hon. member will look at the bill, in a further section it provides that the owner, the Crown, is the expropriating authority and the approving authority. In that particular case, the owner can go to the courts instead of the board to set compensation. The reason for that is, it may well be that the board will do a better job than the court. But the owner at least has the opportunity of saying, well, you know, the government appoints the board, they may be telling them what to do, we're going to see that we get our day in court, and they have the opportunity to go before the courts.

In the case of the inquiry officer, because there is a separate inquiry officer for each particular expropriation - it isn't a person who is constantly on staff or a civil servant or an employee of the government - it is felt that there will be a seemingly greater independence between the inquiry officer and the expropriating authority than there might be in the case of the board. Now that doesn't apply where the expropriating authority is a company because the expropriating authority, when it's a company, does not have any connection with the board. It cannot, through legislation, appoint members of the board. It has no control over them.

I believe that basically sums up the reason for not having the board act as the inquiry officer where the Crown or municipality is the expropriating authority.

MR. BENOIT:

Is the hon. member now suggesting that each time an inquiry officer is appointed it will be a different person, or is it a possibility that the same person might be appointed several times as an inquiry officer?

MR. KOZIAK:

Mr. Chairman, the same person may be appointed as an inquiry officer on numerous inquiries, but it is not intended that that inquiry officer - other than the chief inquiry officer who may be around, and that position may equally be filled by the Deputy Attorney General or someone who would just make the appointments - but the idea would be that the inquiry officer would not be on permanent staff with the Attorney General's department and would not be a civil servant. Perhaps he might be something in the nature of an arbitrator or a mediator in a labour dispute, if I can draw that analysis or that example.

MR. BENOIT:

The same question still prevails because it is the Lieutenant Governor in Council who appoints the inquiry officer as it is also the Lieutenant Governor in Council who appoints the board. Am I not right there? The Lieutenant Governor in Council appoints both the inquiry officer and the board. How does that make him any farther away from the government?

MR. KOZIAK:

Mr. Chairman, it's difficult for us to be able to delegate that power to anybody else and I'm sure this Legislature wouldn't want us to do that. The Lieutenant Governor in Council must appoint the board strictly as a matter of the course of legislation. It would be difficult for us to handle this in any other fashion. We wouldn't want to leave the appointment of the board to perhaps a federal agency or what have you. We're trying to establish some semblance of independence.

The hon. Member for Calgary Buffalo just brought to my attention that The Individual's Rights Protection Act also provides for an inquiry officer in machinery that would be similar to this, with a subsequent hearing by the board in the case of compensation.

[Sections 14 and 15 were agreed to.]

MR. BENOIT:

Mr. Chairman, is there no appeal at all from the decision of the inquiry officer or is this only in the course of ...

MR. KOZIAK:

No, Mr. Chairman, there is no appeal from a decision of the inquiry officer. The reason for that is fairly clear: the approving authority does not have to accept the inquiry officer's decision. It's unnecessary.

[Sections 16 and 17 were agreed to.]

MR. KOZIAK:

I move that Section 18 be amended in accordance with the ... [Inaudible] ...

[Section 18 as amended was agreed to.]

[Section 19 was agreed to.]

MR. BENOIT:

In Section 20(1), speaking about the variation of the size, location and boundary of the expropriated land, within the boundaries of the parcel is there any set size for the parcel? Does the parcel have to be a quarter section, does it have to be a legal subdivision or is this parcel set out by some other method?

MR. KOZIAK:

I think the case would have to be made to the approving authority who would like to vary the matter, that the variation is indeed minor. I would think that a substantial change in direction, a substantial change in location, an interference in any way with the buildings or what have you from the original application that would not be of a minor nature, that the proceedings would then have to commence again. There is provision elsewhere where if the expropriating authority wishes to take less than it originally asked for it may be required to pay as if it had taken the whole, the original amount. That isn't an answer, of course, to this comment.

However, this involves judicial interpretation. The importance in that clause is the phrase "the variation is minor". We can't in this legislation begin to outline what variation is minor in every particular circumstance so we'd have to leave that to the judicial interpretation of the board.

MR. BENOIT:

What I want to know is what determines the size of the parcel?

MR. KOZIAK:

I wonder if the hon. member would explain. Does he mean the size of the parcel as it is owned by the owner, or the size of the parcel as it was proposed to be expropriated by the expropriating authority?

MR. BENOIT:

Mr. Chairman, if it is the size of the parcel that is proposed to be expropriated by the expropriating authority, and you vary that, then you are not varying the size of the location or the boundary of the expropriated land within the boundaries of the parcel unless the parcel means what is being expropriated. Then you are going to be varying the parcel itself. But it says you can't vary that except within the boundaries of the parcel.

I may not understand it, Mr. Chairman, if it is something ...

MR. KOZIAK:

I believe I understand the hon. member's comments. In other words, perhaps the question can be put in this fashion: if an owner has two quarter sections of land, are the two quarter sections treated as one parcel or is each quarter section treated as one parcel? And the location within the one quarter - is that the matter under consideration or is the location within the half the matter under consideration?

I believe the phrase "parcel of land", Mr. Chairman, would have judicial interpretation. My immediate off-the-cuff comment would be that "parcel" means the lowest legal subdivision within a title. In other words, if the title read ten lots then you have ten parcels of land within that title. It would be only within the boundaries of one of those lots that there could be a minor variation.

MR. BENOIT:

One other question with regard to Section 20(2) where it says "where the approving authority varies the expropriation under subsection (1), it shall provide the expropriating authority with an amended certificate of approval."

What about the owner? Does he not get an amended certificate of approval too?

MR. KOZIAK:

The owner then is served with an amended certificate of approval when the compensation proceedings come into effect. That's part of the certificate of approval plus the proposed payment.

I guess what happens is this: the certificate of approval, in fact, is registered at the Land Titles Office. That's what results in the change of title. At the moment that happens, the notice of expropriation which deals with the certificate of approval and is found in Schedule 2 is then served on the owner with the proposed payment.

[Sections 20 and 21 were agreed to.]

[Section 22 as amended was agreed to.]

[Section 23 was agreed to.

[Section 24 as amended was agreed to.]

[Sections 25 and 26 were agreed to.]

MR. BENOIT:

One question on Section 27(5), on page 12 it says:

> The Board may enter upon and inspect, or authorize any person to enter upon and inspect, any land, building, works or other property.

Without warrant?

MR. KOZIAK:

Mr. Chairman, the method in which the board, in fact, authorizes could well be a warrant. It could be a form that is provided for in the regulations. What this section does is authorize entry on the land. The particular paper which the board will then issue which proves your authority to enter will be a matter which either the board will have to develop in accordance with the act or which may be provided for in regulations. Warrant may not be the proper terminology. But, of course, the board would have to issue some sort of document which would prove that they have, in fact, given somebody the power to do this under this section.

[Section 27 was agreed to.

MR. HENDERSON:

Mr. Chairman, I would just like to ask for an explanation of the use of the word "shall" in Section 28(1), where it says, "... the Board shall determine such compensation.", and in (2) where it says, "The Board shall also determine any other matter ...". On the surface, at least, it seems to conflict with the use of the word "may" in Section 34(1)(a) and (b). Section 28(1) says:

> Where the expropriating authority and the owner have not agreed upon the compensation payable ... the Board shall determine such compensation.

Then you go to Section 34(1) where it says:

> Where the expropriating authority and the owner have not agreed upon the compensation payable under this Act
>
> (a) the expropriating authority may institute proceedings to determine compensation ...

I don't quite get the subtleties as to the difference in the choice of the words. I presume one way or the other they have to go through some sort of proceedings to determine compensation. So what's the explanation of "shall" and "may" in those?

MR. KOZIAK:

Thank you. In Section 28 the word "shall" applies to the board. It's the board that shall do this.

In Section 34 the word "may" does not apply to the board but applies to the expropriating authority and to the owner.

MR. RUSTE:

Mr. Chairman, if the member would explain, in Section 27 (6)(b) it says: "is not bound by the rules of law concerning evidence ...". Could he explain that a bit?

MR. KOZIAK:

Mr. Chairman, if I'm called upon to explain this section, of course I'm called upon to explain every section in which a board is created, because that very principle has applied to every board, I believe, that is created in this province. That is, of course, the advantage the board has over the courts. If we eliminated that section we would in fact be creating another court.

[Section 28 was agreed to.

MR. HENDERSON:

In the same vein as the last question. In Section 29 (3)(a), the last sentence says: "the Board may make directions as to the disposition of that amount ...". You go over to Section 38(1) and this time it's the board. It says: "the Board shall direct that the amount shall be paid into court".

In one way it [enables] the board, the way I read it, to make directions itself as to disposition. This is where they can't agree on the land. It may have something to do with ownership provisions of it. When you look at Section 38(1) it says the board shall pay it into court. So what are the differences between those two?

MR. KOZIAK:

Mr. Chairman, the proposed payment provisions under the act are not the final decision of the board. One of the things [necessary] for the entire proceedings to flow in accordance with the flow chart that has been prepared, and in accordance with the act, is that the proposed payment must be made by the expropriating authority within a given period of time, otherwise there are certain interest penalties and other problems that the expropriating authority will face in the further proceedings under this act if it fails to do this.

When it makes the proposed payment the expropriating authority may find itself in a position that it really doesn't know whom the proposed payment is to be paid to. At this particular point in the proceedings it may be hampered by a problem that isn't of its own making. This section permits the board to authorize the payment in a particular direction without, in fact, permitting the expropriating authority to continue with its proceedings under the act at a later date.

Section 38 deals with the final disposition when the compensation is set. That section says that if the owners cannot agree amongst themselves whether they are entitled to one half each or one quarter each, then let the courts decide that, because in fact the board has no authority to decide those civil rights as between owners as a result of this expropriation act. That's a matter of law that isn't within the jurisdiction of the board. It's a matter of law that, properly speaking, should be dealt with before the courts. Such questions can arise as to whether or not they are in fact joint tenants or tenants in common. Such questions can arise as to whether or not there is a common purse or as to the value of dower interest. Such questions may arise as to whether or not a will needs probation.

These are matters which are not within the jurisdiction of the board. So my reading of those two sections is that when it comes to the question of the final compensation and there is a dispute, it's not within the board's jurisdiction to determine the rights as between parties to the dispute.

In Section 29, the directions the board would make there would be so as to enable the whole procedure to flow properly.

SOME HON. MEMBERS:

Agreed.

MR. HENDERSON:

I'm not just certain if I grasped the subtleties of that. In both cases they are talking about a dispute amongst the owners of the land. In 29(3) it said "where ... they are not co-owners of the same interest therein, the owners may agree as to the disposition among themselves of the proposed payment", but in the event they don't agree the authority can apply to the board and the board can direct the payments, split it up amongst the various owners. They're not co-owners but there are a number of owners apparently involved in the thing. I would think that the question of co-owners, would still be dealt with in 38(1) where it says "persons interested". Again, it deals with the question of dispute.

I'm afraid I really don't follow the member as to the distinction because in both cases it's a dispute amongst the owners of the properties in question. There may be a fine technicality in law but I guess maybe, not being a lawyer, the member hasn't got through to me yet. But try again.

MR. KOZIAK:

What I'm trying to say, Mr. Chairman, is that under Section 29(3)(a) which is the one we're discussing now, if there is a dispute between the co-owners they may, in the first place, apply to the board for payment of those moneys to the board. I shouldn't say that the owners can, but in that particular case the expropriating authority. The expropriating authority, in order to be able to move along through these proceedings, has to be able to offer this money to the owner. If there is that particular dispute, the expropriating authority is then stymied unless it can do something. So then it says to the board, listen, we're in trouble here. Will you help us out? We'll pay the money to you and you decide what you want to do with it. It may well be that the board says, okay, fine, under Section 38, once the money is paid in to us, we shall then direct that it's to be dealt with in that fashion. They have the options there. If they find subsequently that the money is paid in to them or that there was some sort of a mistake there is no dispute, there's that flexibility with the word "may", whereas in Section 38 where there is a definite degree of confusion then the board can order it.

MR. BENOIT:

In the same section, subsection 6, it indicates that the expropriating authority offers a proposed payment but the board may award an amount less than the proposed payment. Under what circumstances and why may a board award something less than what was being offered by the expropriating authority?

MR. KOZIAK:

The only circumstances that come to my mind are when the expropriating authority is offering too much. In other words, if the expropriating authority is offering more than the land is worth, more than is properly payable, the board may, when the evidence is presented to it, award something less than the proposed payment. I would think that that situation would be very rare but the provision is there. It's in the same sense that you might have now in a court action where a plaintiff is suing a defendant, the defendant agrees that he is liable to a certain extent and pays moneys in to court to the extent that he feels he is liable. The court, when hearing the evidence, without knowing what's paid in to court, might decide that the claim is not worth as much as even the defendent thought and award something less. There are these possibilities.

As I say, the only time I can envisage is where, in fact, the expropriating authority offers more than it is worth.

MR. BENOIT:

In all due respect to the owner and the expropriating authority, if the expropriating authority was willing to pay that much and it was too much in comparison to others, shouldn't the owner have that benefit if they were both willing to go for that amount?

MR. LEITCH:

Mr. Chairman, I would just like to make one comment on the need for that kind of section in the bill. If you don't have that kind of section you are going to encourage people to always go before the board for a hearing. Without that kind of section it means that the expropriated person will always get at least the offer, so he may as well gamble on getting something more. With that kind of section it makes them take a close look at the offer because the board may assess the value of the expropriated property at something

less than he was offered, so he runs some risk going there. Without it you would have just a multitude of hearings.

[Sections 29 through 32 were agreed to.]

MR. BENOIT:

Here, Mr. Chairman, is another one, and it is creating quite a bit of a problem so far as The Surface Rights Act is concerned - and not only in this Section 33, but it occurs again in Section 37 and in other places - where they talk about reasonable legal costs being paid to the owner for having to appear before the board or in court or whatever the case may be.

The question of the word "reasonable" I know, of course, is difficult to ascertain. But when it comes to the legal costs is it what the board thinks is reasonable for the lawyer to get, or is it what the lawyer has a reasonable right to charge? Because now lawyers are charging about $200 a day to appear for a client before the Surface Rights Board, whereas the board allows about $50 a day to the person who is making the appeal, which is not at all anywhere near compatible as far as I can see.

MR. KOZIAK:

Mr. Chairman, we have received a number of submissions dealing with that, particularly from expropriating authorities. They are always concerned that they might be paying more than they would like in the area of the appraisal costs and in the area of legal costs.

The important point to remember here is, of course, "reasonable" is not determined by the lawyer or by the board. I suppose it will be the board that will award the costs, so their determination of "reasonable" will be some particular figure. That particular determination could well be subject to appeal to the Appellate Division in the overall compensation-setting features of the bill and the Appellate Division may deem other costs to be reasonable.

There is another alternative. This is for a schedule of costs to be developed through regulation which would indicate that these are the costs that would be payable and would be deemed to be reasonable.

These are alternatives. In other words, you can have the Lieutenant Governor in Council set what I would think would be reasonable costs or, alternatively, the board could through judicial practice determine what costs are reasonable.

However, the most important point is this. If in fact the landowner who is having his case heard before the board finds that he must acquire legal help and that legal help is $200 a day, then the board shouldn't be awarding $50 a day and the landowner picking up the other $150. The owner who is being expropriated shouldn't be put out because of the expropriating authority making a decision to take his land. Those particular costs are reasonable and should be included in the total compensation which the expropriating authority would pay.

[Sections 33 through 38 were agreed to.]

MR. RUSTE:

Mr. Chairman, this one goes into an area, and I think it follows several - there are 40, 41 and 42. Concern has certainly been expressed, I think, by Unifarm and others about the fact that market value of land expropriated is the amount the land might be expected to realize if sold on the open market by a willing seller to a willing buyer.

I would submit, Mr. Chairman, that if land is going to be expropriated it could hardly be parted with on that basis; at least I wouldn't part with it on that basis. I think there should be a lot more consideration given where it is taken, because expropriation is really taking from one who has a right of possession of property. There can be a lot of argument about taking and replacing and so on. I would just like to have the member comment on it.

MR. KOZIAK:

Mr. Chairman, what must be kept in mind here is that of course there isn't a willing seller when you have expropriation. When the Land Compensation Board or the Surface Rights Board or the courts are setting compensation they must, in determining the value, consider what price that land would bring [on] the open market if, in fact, the owner was a willing seller and not under duress and the buyer a willing buyer. That is basically the only major principle you can really live with.

If there are other provisions under the heading "Principles of Compensation" in this part of the act which provide for additional compensation over and above market value in

those particular circumstances - as we have in the home-for-a-home principle - [then] generally speaking this expropriation just couldn't work any other way than to have a clause of this nature included in the bill. You might otherwise expect people to buy their way into an expropriation, which I have heard happens in the United States on occasion. I haven't heard of any examples here where people will buy land because they know it is going to be expropriated and they will get a lot more than it's worth.

I've heard of those situations in the United States but we have never had that situation here. The important thing is its market value. If that is what the land is worth, that's what you are going to get. If there are added circumstances which require additional compensation, then those are provided for in the other sections of the act. But otherwise expropriation would be unworkable.

AN HON. MEMBER:

Agreed.

MR. BUSTE:

Mr. Chairman, I am thinking of the rural point of view where you pay the expropriated part of your operation. In taking that part you can just ruin your operation in total, as far as being an economic unit. Surely there should be some compensation for that kind of operation.

MR. KOZIAK:

Mr. Chairman, that's covered in the other sections.

MR. ZANDER:

Mr. Chairman, in looking at Section 39, and I would also refer to Section 42. In determining the value of the land, you say it's a willing seller and a willing buyer. Then, of course, under Section 42 you say, on no account the acquisition being compulsory except where unusual circumstances... . You are saying that by compulsory taking of a parcel from an existing parcel of land you should not recognize the fact that it is expropriation. Therefore, you would be selling to a willing buyer. But really, when you look at a quarter section and you are taking five or ten acres out of a quarter section or cutting diagonally across a quarter section, you would have a willing buyer but you wouldn't have a willing seller.

When you look at Section 42 it says, "on no account of the acquisition being compulsory except where unusual circumstances exist". So what you are in fact saying is that the compulsory taking shall not be taken into consideration when one considers taking a piece of land out of a parcel of land.

MR. KOZIAK:

Mr. Chairman, the reason for the existence of that section in the bill is that it was the practice of some courts - it wasn't a universal practice, it varied from case to case - whereby the board or the court as the case may be, after it had found the market value of the land expropriated, in other words determined compensation, added an additional 10 per cent, because they weren't sure that they had covered everything anyway. They called it a penalty for compulsory taking.

This bill goes further than any act we have had so far and provides for other heads of damage which were not provided for in other legislation. The need for a 10 per cent bonus on compulsory taking is no longer there. That's all that provision does. It eliminates the 10 per cent bonus, but it covers the situation that in the event there is an unusual case where the provisions of this act do not provide relief, then there is that escape route where the board could take that into account.

That section deals only with the compulsory acquisition, with that 10 per cent. This is the reason for the inclusion in it.

MR. ZANDER:

Mr. Chairman, it still gives me some problems when I look at Section 43: "In determining the value of the land, no account shall be taken of", and it goes on to list what shall not be taken into consideration.

What I am saying, Mr. Chairman, is when I look at a parcel of 160 acres of land, if the market value is $200 an acre, we are looking at $32,000. Now when you take a piece out of that parcel of land, whether it's diagonally or off the side or whatever it is, the fact that you are taking that by expropriation and you are going to say in that section that you are looking at the selling price, the market value of that land - the market

value of that land, by taking one parcel out of a larger parcel, certainly creates a different value.

MR. KOZIAK:

Mr. Chairman, the other sections, of course, have to be looked at under that whole heading of "Principles of Compensation," such as Section 40, for example, which provides for damages for disturbance, damages for injurious affection. Injurious affection, by the way, Mr. Chairman, is exactly the example which has been raised by the hon. Member for Drayton Valley, where, by taking a portion of the land, you affect adversely the remaining land owned by the owner. What the board under those circumstances must do is establish the value of the land taken. That's one pot of dollars that the owner is going to get. The next thing it must do is establish the damage that that taking has done to the remaining lands owned by the owner. In doing so it can look at all those other damages that the hon. member is concerned about and award an additional amount for those damages. That would be covered.

MR. RUSTE:

I'd just like to take as an instance the oil spills that happened this last, I think, winter, and there was a recent one the other day. This gets back to land that could have been expropriated some years ago, I don't know how long ago, and then you get the oil spill. Now there's no way, to me, that some of these spills would get into the land and not do permanent damage to it.

Now, is there any coverage or compensation in here to cover instances such as that?

MR. KOZIAK:

Mr. Chairman I would refer hon. members to my comments during second reading of this bill. What we are dealing with in The Expropriation Act is expropriation and that's all, the forceful taking. We're not going to cover in this act all heads of damages that all citizens can suffer, whether they be at the hands of government or they be at the hands of their neighbour.

There is no doubt that with regard to the particular example the hon. member put forward the circumstances could well have been that the owner voluntarily signed the easement and that there was no expropriation on that particular parcel of land. So what we are dealing with here is only expropriation. If there are damages for oil spills, there are other heads of law, nuisance and other remedies available to the owner. Those don't flow from The Expropriation Act.

SOME HON. MEMBERS:

Agreed.

[Sections 39 through 63 were agreed to.]

MR. BENOIT:

Mr. Chairman, maybe this is as good a place as there is, when we're talking about interest here, to ask a question with regard to annual compensation. There is no provision made anywhere in the bill for annual compensation either for land that is purchased or land that is used for right of way, is there?

MR. KOZIAK:

Mr. Chairman, on that particular point, I believe if the hon. member will refer to Hansard on the occasion of second reading of this bill, he will find there a statement by the hon. Deputy Premier that he will, in the course of instructing the Surface Rights Board this summer, consider, study and receive submissions with respect to annual compensation and its review.

[Sections 64 through 69 were agreed to.]

MR. CHAIRMAN:

We have an amendment.

MR. KOZIAK:

Mr. Chairman, I move that Section 70 be amended in accordance with the amendment circulated.

[Section 70 as amended was agreed to.]

[Sections 71 through 75 were agreed to.]

MR. RUSTE:

On Section 75. What is the intent here, fixed by proclamation rather than assent?

MR. KOZIAK:

Well, Mr. Chairman, on that particular point, we have a new board created in this act. The physical details will have to be looked into, setting up the office, appointing the chairman, the vice-chairman, all the appropriate staff that follows. The proclamation will be attendant upon making those physical arrangements.

MR. RUSTE:

Mr. Chairman, just a further question on that. About how long would the member anticipate this would take? I was just wondering how long he would anticipate it would be before the board was set up?

MR. LEITCH:

Mr. Chairman, we intend to move as rapidly as we can. But as the member responsible for the bill has indicated, there are a number of administrative things we have to do before we can have the board in operation. I can't give a time but certainly our intention is to do it as rapidly as possible.

MR. LUDWIG:

To the hon. member, just a question. Is it the intention of the government to perhaps make some of the sections at least retroactive in view of the fact that there may be some expropriation of homes in the process right now? It wouldn't be a difficult thing to do but it would clear up any disappointment on the part of these people.

MR. KOZIAK:

Mr. Chairman, on the retroactivity point, it's always a difficult point to be able to get back far enough to solve everybody's problems. If you go back to January 1, what about the people who were expropriated December 1? There is just no way we can possibly solve all these problems in that fashion and retroactivity just can't be considered, I believe, at this time.

MR. LUDWIG:

Mr. Chairman, I didn't mean to go back indefinitely for those that were settled, but there may be some expropriations of homes in process at the present time which are not completed. Perhaps these could be brought in. But I think those which are completed - I don't think you could draw a line where it would be fair to others who have been expropriated before. I don't see any reason why they can't include all those which are in process at the present time because the home-for-a-home concept may not be taken into account. This bill might influence their decision. Nevertheless, I believe you can make Section 45 retroactive to cover expropriation proceedings in process.

[The title and preamble were agreed to.]

MR. KOZIAK:

Mr. Chairman, I move that Bill No. 41 be reported as amended.

[The motion was carried.

MR. FOSTER:

Mr. Chairman, I move the committee rise and report.

[The motion was carried.

MR. CHAIRMAN:

In order to keep the decorum of the Assembly, I wonder if the Minister of Highways and Transport would bring his maps to the inside of the desk there.

[Mr. Diachuk left the Chair.]

* *

[Mr. Speaker resumed the Chair.]

MR. DIACHUK:

Mr. Speaker, the Committee of the Whole Assembly has had under consideration the following bills: Bills No. 28, 44, 41 and begs to report same with some amendments. The Committee of the Whole Assembly has had under consideration Bills No. 18, 37, 39, begs to report same and begs leave to sit again.

MR. SPEAKER:

Having heard the report and the request for leave to sit again, do you all agree?

HON. MEMBERS:

Agreed.

MR. FOSTER:

Mr. Speaker, I move that this House do now adjourn until tomorrow afternoon at 2:30 o'clock.

MR. SPEAKER:

Having heard the motion for adjournment by the hon. Acting Government House Leader, do you all agree?

HON. MEMBERS:

Agreed.

MR. SPEAKER:

The House stands adjourned until tomorrow afternoon at 2:30 o'clock.

[The House rose at 10:43 o'clock.]