

## Legislative Assembly of Alberta

Title: **Thursday, November 29, 1990 8:00 p.m.**

Date: 90/11/29

MR. SPEAKER: Please be seated. I wonder if we might have unanimous consent to revert to the introduction of special guests.

HON. MEMBERS: Agreed.

MR. SPEAKER: Opposed? Carried. Thank you.

### head: Introduction of Special Guests

MR. STEWART: Mr. Speaker, it is my real pleasure on behalf of the Hon. Nancy Betkowski, the MLA for Edmonton-Glenora, to warmly welcome nine members of the 116th Lynnwood Scouts to our Assembly this evening. They are accompanied by their leaders Gavin Noonan, John Hazelwood, and Stuart Serediuk. I would ask all members to join in a warm welcome to these scouts and their leaders.

[On motion, the Assembly resolved itself into Committee of the Whole]

### Government Bills and Orders Committee of the Whole

[Mr. Schumacher in the Chair]

MR. CHAIRMAN: The committee will come to order, please.

#### Bill 52

#### Natural Resources Conservation Board Act

MR. CHAIRMAN: In committee this evening we have before us a government amendment to Bill 52, the Natural Resources Conservation Board Act. Are there any questions or comments?

The hon. Member for Edmonton-Jasper Place.

MR. McINNIS: Thank you, Mr. Chairman. I have a few comments on the government amendment. I also have a subamendment, a very minor but I think an important improvement to make to the government amendment that's come before us. Perhaps I could ask that that be distributed while I make my remarks on the amendment, and we can get right into the subamendment.

There are some improvements in the amendments that are before the committee, and I wish to recognize that, starting of course with the definition of the word "environment." Somehow or other when the legislation was drafted and went through the economic development committee of cabinet and the government caucus, they just didn't get around to putting a definition of the environment in. I have actually tabled as part of my package of amendments a definition of the environment which is very similar to the one that was presented. I will speak to that under the subamendment, because I think there's a significant addition that needs to be made to that amendment. Clearly, in a Bill which deals with the environmental impact of major projects in the forestry, tourism, mines, minerals, and water resources areas, you do need a definition of the environment, a term which will come up, I submit, most of the time in the deliberation of those hearings.

The reworking of the purpose of the Bill in section 2, that's amendment B, offers very little improvement, unfortunately, over the previous draft.

MR. CHAIRMAN: Could we perhaps deal with this government amendment by letters, and then that way you might deal with your amendment A and then move on to B one at a time?

MR. McINNIS: Sure. I have no objection to that. I just wanted to make sure that members had a copy of the subamendment before I spoke to it; that's all.

I was onto item B, which is the reworded purpose of the Act. This is essentially the same as the previous draft with the exception that "the effect of the projects on the environment" is removed by the word "and" from "the social and economic effects of the projects." I'm not sure what the intent of that is. It may be that the government does see the need to put some emphasis on the environment to try to put the environmental imperative front and centre dealing with the public hearings under the NRCB. If that's the case, that sentiment runs in the right direction. Unfortunately, separating the environmental effects from the social and economic effects by the word "and" doesn't make a great deal of difference, so we'll have to tighten that up just a little, or certainly it would be advisable to do that.

Item C, which deals with section 8, adds a new provision that the board will set regulations governing who gets notice of application. Now, I think the government perhaps recognizes that the rules they wrote were not sufficiently clear and are hoping that the board would pass some regulations and develop a protocol over a period of time so they would know who should be notified. We're still essentially, if you look at subsection (2), dealing with "persons who may be directly affected." Now, the idea of someone being directly affected by a project comes from the Energy Resources Conservation Board. They make it a practice of notifying local property owners within the immediate vicinity of the project so that they have notification and status, standing, before the hearings.

Now, unfortunately, that's simply not good enough, because some of these projects, for example, are forestry projects on Crown land, where the local property owner is the Crown provincial. There is no other local property owner to notify. In addition to what the board may come up with in the regulations that will be made under subsection (1), we need some criteria to involve a broader group of people who follow these things in the public interest and who could make a valid contribution.

I have some suggestions in that regard, and these essentially come out of the Alberta Environmental Impact Assessment Task Force report dated March 2, 1990. I think the board should be obliged to provide notification for people who have a clearly ascertainable interest which ought to be represented at a hearing before the board. They ought to notify those who have an established record of legitimate concern for the interests that they seek to represent — those I think would become known to the NRCB within a relatively short period of time — and those who have a legitimate interest of representation which is necessary for a fair decision. Let me give the example again of a forestry project. I think we should make it a practice of notifying any of the Indian bands and the Metis colonies in the affected area, and I believe that probably would become the practice over a period of time, but there's no good reason not to include some criteria like that in the legislation.

Further on the new section 8, I think there's an improvement in providing that the board will hold a hearing when a written objection is received. That's new. That wasn't in the previous draft. I'm a little concerned about withholding hearings where the board considers an application "to be vexatious or of little merit." I suppose the concern is that someone may for a nefarious reason try to tie up the resources of the board and

unnecessarily delay a project, but I'm not exactly sure how you determine that. I'm just a little bit uncomfortable with that big a loophole in that provision. However, I do want to say that I think it's an improvement over the previous draft, which allowed the potential for projects to be approved without any hearing at all, even if people did make an objection.

Item D to me doesn't say a great deal, but I guess it's okay.

Item E was part of the previous package of amendments, and again I think it's probably wise to substitute the term "proceeding" for the word "hearing."

The conflict of interest provisions under item F are extended to temporary board members and persons who are brought forward as experts, and I think that's a sound and reasonable suggestion.

G and H are essentially a reworking of the regulation-making authority. I find this arrangement to be more logical than it was in the previous draft, so I think that's relatively minor.

Perhaps I could turn to the subamendment, which I think has been distributed by now. There are two parts to it. I think the two are essentially a package. It doesn't matter to me whether they're voted on singly or separately, but I can perhaps explain to the committee how they fit together.

8:10

The first item restores the fifth clause in the definition of the environment, which was left out in this particular draft. The clause relates "human, economic, social, cultural and health environments" to the "biophysical environment," a very important concept, to relate the activities of what Barry Commoner calls the technosphere to ecosphere. The conflict between those two spheres of endeavour is really what this environmental problem is all about, and I think it's vitally important to include that within the definition of the environment.

Mr. Chairman, if we do that, then I think there's no reason to have the awkwardness of putting "social" and "economic" into the purpose of the Act, because, as I've been trying to say before to this committee, when you throw social factors, economic factors, environmental factors into a pot and you give somebody, in this case the appointed natural resources conservation board, the job of determining the public interest out of all of that, you're really giving them a political decision to make rather than the kind of clear and precise technical decision that has to be made by an independent body.

I think we could come to the point where this legislation would almost be assured of doing its job if we put human, economic, social, cultural, and health concerns into the definition of the environment so that the board has all the latitude they will need to examine those things, to consider them. But when we come back to the statement of purpose in section 2, it is very clear that what they have to determine is whether this is acceptable from an environmental point of view. If you've got the social, economic, and I think as well the cultural and health aspects in there, then the board will be able to consider those fully and arrive at a decision which Albertans can feel comfortable will give them what they want out of this process.

What they want is clearly this: when this generation or whatever generation considers an economic development measure, considers the benefits that it wants to take out of our biophysical environment, it will be leaving enough there for the next generation to have what they need out of it. That's what we want out of this. I'm sure that's what all members want out of it. We simply adopt the definition of the environment as brought forward by the EIA Task Force, which includes representatives from government as well as industry and the

environmental movement. Then I think we can make a much clearer sense of purpose for the board. That's really what I've been driving at so far.

I think these two amendments fit together in that sense, and I urge that they be considered and adopted.

MR. ORMAN: Mr. Chairman, I would like to, firstly, thank the hon. Member for Edmonton-Jasper Place for his input to the development of this Bill together with some of his suggestions. As I said in my previous comments, I do appreciate the suggestions and comments I received over the summer.

With regard to the subamendment, let me say that in section A I believe we are in many ways splitting hairs. I would submit that "social" and "cultural" would probably be considered under the heading of "social." I don't know that we have to split out social and cultural.

With regard to health, certainly the Minister of Health has a role in terms of jurisdiction. I'm not sure that in this legislation we need to confirm her responsibilities with regard to issues of health as they affect economic development and environmental protection. I would also suggest, Mr. Chairman, that by using the words "biophysical environment," we are in some ways limiting the definition of environment. It would be my assessment that the broad term is environment; a limiting definition of environment would be biophysical environment. So I'm not sure that that would facilitate the broadest interpretation by the members of the board or those that are interpreting this legislation.

Mr. Chairman, I would say with regard to section B in the subamendment that herein lies the philosophical difference. I can say that in section A we are splitting hairs. We're probably pretty close, and I think the hon. member has acknowledged that. Certainly we've taken into account his representations when it came to defining the word "environment" in this legislation. But, Mr. Chairman, the purpose and intent and really the defining mechanism are the words "the social and economic effects of the project."

As I indicated in debate last time, the responsibility of the environmental protection and enhancement legislation is to have sole jurisdiction and responsibility for protecting the environment. Economic Development and Trade and Forestry, Lands and Wildlife are to have a responsibility to the development of economic initiatives. The natural resources conservation board is the vehicle in between the two jurisdictions that are trying to dispatch their responsibilities. In the NRCB we have a vehicle that provides for both forums to be heard and assessments to be made based on a balanced input, not just from proponent and intervenor but also from the public who may have questions that beg answers.

If I were to recommend striking these words, Mr. Chairman, I'm afraid we then would have another piece of legislation whose sole responsibility is protecting the environment. This legislation is not designed to do that. As I indicated earlier, its responsibility is not social exclusively, not economic exclusively, nor is it environmental exclusively. It is a combination to provide a forum wherein all people who have an interest under each one of those umbrella definitions can present their cases. That's why – and the Member for Edmonton-Jasper Place made the case in the past, as have others – in the absence of the draft legislation by the Minister of the Environment, his new legislation, it was difficult to put this legislation in some context. We were missing a fundamental piece, and that is the triggering mechanism together with the fundamental legislation that protects the environment. We now have that in draft form, and it is out

there. This vehicle is an intermediary between the two. It's a forum to allow debate and discussion on all issues. So, Mr. Chairman, if I were to accept B, I'm afraid it would be a fundamental diversion of the intent of this legislation, as I've tried to indicate in my comments.

Mr. Chairman, if I just may say briefly, because they do relate in some way to the subamendment, that the member made a couple of references to Indian bands and notice of interested parties together with making a value judgment on the words "vexatious" or "frivolous" or "of having no merit." Again, and this point has been made by the New Democratic Party as it has by members on our side of the government, the quality of the members of the board is really fundamental to the good working of this legislation. Therefore, the appointments to this board will reflect that important responsibility.

Let me say that we recognized the importance of this by having announced the location of the NRCB for the Edmonton region. At the same time, we'll be asking those appointed board members to spend a period of time with the Energy Resources Conservation Board to get a flavour of how this type of operation should be built from an administrative point of view and how it should work from an operational point of view in terms of dispatching similar responsibilities. We all know that they are different. We all know that their breadth of responsibility and penetration in their respective jurisdictions is different, but it reflects, in our view, Mr. Chairman, the importance of the appointments to the board and their ability to move this legislation into the public sphere and dispatch its responsibilities.

As I indicated, I believe that we're splitting hairs in A, Mr. Chairman. The member acknowledged that. But with regard to B, I just could not recommend to my colleagues a fundamental change in the direction, thrust, and responsibility for this important legislation.

8:20

MR. CHAIRMAN: The hon. Member for Edmonton-Meadowlark.

MR. MITCHELL: Thank you, Mr. Chairman. I'm speaking to the subamendments presented by the Member for Edmonton-Jasper Place. I would like to begin by saying that I accept, and applaud in fact, his item A. I believe the substantive addition of subclause (v), as written in this subamendment, is worth while and certainly has merit. It broadens the definition of environment in a way that I think is much more consistent with our emerging understanding of the broad implications and effects of the environment. Therefore, I would accept and support that particular amendment.

However, with respect to item B, I have some concerns. I certainly appreciate what I believe the member is attempting to accomplish; that is to say, to emphasize in a certain way that all this board will consider is the environment. However, I am concerned that the board's mandate, its purview, would be restricted from an assessment of the social and economic effects of the projects. I do not see anywhere in the process of reviewing a project that the project will receive an objective review for its social trade-offs and for its economic trade-offs. In fact, I would argue that the assessment of social and economic trade-offs can have a huge impact, a positive impact, on how this board might determine and defend a decision not to proceed with a given project.

In the Ontario case the Ontario Environmental Assessment Board does review the economic trade-offs, the economic opportunity costs of this project over other projects that it might

in fact displace. That I believe is a very important step, particularly, as you can imagine, in a place like northern Alberta, where the board might be strengthened in its case against pulp mills, for example, by saying that it will displace important ecological tourism projects, which in the long run will create much more stable, long-term jobs. Therefore, this kind of assessment becomes a very important feature of the role of a board of this nature.

I would accept that the member could argue that his change to the definition of environment, including as it will "human, economic, social, cultural and health environments," will embrace this point. However, I feel that it wouldn't hurt to continue with that point in the purpose of the Act and that nothing in fact is really gained by excluding the "social and economic effects of the projects" from the definition of purpose of the Act.

I would simply summarize by saying that I accept and would support item A in the subamendment, but I would be reluctant to support item B.

MR. CHAIRMAN: The hon. Member for Banff-Cochrane, followed by Edmonton-Kingsway.

MR. EVANS: Thanks very much, Mr. Chairman. I'd just like to add a few comments from the perspective of the Environmental Legislation Review Panel that I chaired around the province of Alberta during the months of October and November. I'm speaking specifically about the subamendments suggested by the hon. member.

As has been discussed already, there is a definition now in the environmental protection and enhancement Act draft which is exactly the same as that suggested by the Minister of Energy for Bill 52. I'm very pleased with the comments that I heard and that our panel heard from various sectors of Alberta society, including a number of environmental groups who recognized that the definition that is in the environmental protection and enhancement Act legislation does deal with the concept of ecosystems. There was a great deal of acceptance of that definition as being certainly broad enough for the umbrella legislation. Therefore, I would suggest to the hon. Member for Edmonton-Jasper Place that the definition that's suggested by the Minister of Energy for the NRCB legislation, to be consistent with the environmental protection and enhancement Act, does deal with the issues that are in the minds of Albertans who are concerned with the environment and that there is no need to change that definition.

Moving on to item B, I would suggest as well that I agree with our Minister of Energy when he says that there is a specific reference to the term "sustainable development" in the environmental protection and enhancement Act legislation. Although we had some debate as to whether only environmental matters should be considered in that legislative package, I think the majority opinion of those who commented was that it was somewhat unrealistic to try to take out of the umbrella legislation any reference to economic factors, social factors, or other factors not specifically environmental. I agree with that philosophy, because I think we're trying to create legislation that is workable, that is doable, that makes sense in the real world. Accordingly, I would suggest that any reference in the NRCB legislation specifically to the concept of sustainable development or the elements of sustainable development are quite appropriate, and to try to exclude anything other than an environmental reference is not realistic.

Thank you, Mr. Chairman.

MR. CHAIRMAN: The hon. Member for Edmonton-Kingsway.

MR. McEACHERN: Thank you, Mr. Chairman. I wish to add some comments to the debate on the subamendment. I want to say to the Member for Edmonton-Meadowlark — he accepted amendment 1 but rejected amendment 2 — that if we accepted amendment 1, then we would could certainly use amendment 2. It would strengthen the overall statement, because the definition involved in subamendment 1 actually strengthens the definition of the environment and includes more things than just the social and economic impacts.

Also, a comment or two to the minister. I'm pleased at the degree to which the minister has adopted some of the ideas put forward by the Member for Edmonton-Jasper Place and also his little explanation about the role of the NRCB being the go-between between the Environment department, whose role it is to protect the environment, and the departments of Forestry, Lands and Wildlife and Economic Development and Trade. You know, they are the development departments, he says, and the Environment department is the protector of the environment, and this is the mechanism to get those two together. That is all very well. I hope that he informs the Minister of the Environment of that so that he becomes a stronger advocate for the environment and takes a look within his own department and realizes that he's also a developer of dams and irrigation systems in this province and that perhaps that's not his role. Maybe that should be put over to Agriculture. So again he can play the role of the environmental protector and play off against the Department of Agriculture, with the NRCB being the go-between and sorting out the differences, rather than the Environment minister also wanting to promote irrigation and dams.

8:30

I want to just go back to where this amendment came from. The Member for Edmonton-Jasper Place last June put forward a definition of the environment which has been partly adopted by the minister but not wholly. I think you need to know the point where that came from. The definition put forward for the environment by the Member for Edmonton-Jasper Place in the debates last June on this Bill was:

- (c) environment means
  - (i) air, land and water.

That part has been adopted.

- (ii) all layers of the atmosphere.

That part also has been adopted.

- (iii) all organic and living organisms.

In fact, the definition adds inorganic matter as well, and that's fine. However, the Member for Edmonton-Jasper Place went on to include:

- (iv) the interacting natural systems that include the components referred to in subclauses (i) to (iii) known as the biophysical environment.

Now, that point has been partially adopted. Point (iv) in the minister's definition now is: "the interacting natural systems that include components referred to in subclauses (i) to (iii)." So that largely covers that point.

The different point, the point that the minister did not adopt, is the fifth point, and this is the one that is being put forward now as the subamendment. Point (v) was:

- Those aspects of the human, economic, social, cultural and health environments which interact directly and indirectly with the biophysical environment.

Mr. Chairman, if that point were included in the definition of the environment, it would strengthen considerably the definition

of environment to make it clear that all human activity has an impact on the environment. The other points are rather cut and dried and sort of a series of nouns. What this definition does is bring in processes as having an important effect on the environment.

The fact is that the Earth has developed and evolved over some five billion years, and the kind of atmosphere we have has of course gradually evolved. The Earth didn't start out with the nitrogen/oxygen components that it presently has nor the amount of carbon dioxide that it now has. It's really important that we recognize that human activities are going to impact on the environment, and this will make it much more specific. To leave that idea until section 2 of the Bill and then make the amendment that the minister made to section 2 — which is a very weak amendment by the way; it really just restates what he had already in the Bill — does not cover the ground. The social and economic effects are important, yes, but it isn't as comprehensive as point (v) that we want to add to the definition.

The amendment also that the minister put forward in section 2 is lacking in that it does not address the problem we raised last day about the hearing process. It talks about "an impartial process to review projects," but it doesn't get at the public hearings. Now, I know that is raised elsewhere, but it's in a rather weak manner and talks about "may" hold public hearings instead of "shall" hold public hearings. Mr. Chairman, that part needs to be addressed. Perhaps we will get to that with a later amendment.

In any case, the interesting thing, I think, is the way this has evolved. I would just like to be a bit partisan for a moment and say that the Member for Edmonton-Meadowlark and the Liberal caucus, instead of just voting against this Bill last spring and then basically sitting back and would have let the Conservative government push this through the Assembly last spring, would have been better to take the tack the Member for Edmonton-Jasper Place has taken and say: "This Bill could be improved. There is a role for this Bill. There is a good idea behind it. We just need to improve it to make it work." Therefore, he put forward 14 amendments, and that did achieve the holding of the Bill until fall to give a lot more time for public input, which has been valuable and important. Also, his amendments, as the minister has already said, have been partly adopted. Therefore progress has been made in the right direction. I compliment the government on that. Often they don't choose to take our amendments seriously and give them the kind of consideration that the minister has. I would have wished that the Liberals would have joined us in that process. However, we were successful in getting it moved until fall now, and we welcome them on board to help us debate the pros and cons of this Bill.

I think the Bill would be strengthened by the adoption of these two subamendments, and I urge all members of the House to do so.

MR. CHAIRMAN: The Member for Edmonton-Jasper Place.

MR. McINNIS: Just very briefly, Mr. Chairman. I don't really understand the Minister of Energy's objection to changing the definition of the environment. He said that adding "human, economic, social, cultural and health environments" interacting with the biophysical environment somehow limited the definition. It doesn't; it expands it quite dramatically. It expands it to the point where virtually the entire sphere of human activity becomes a part of the environmental consideration, and I believe that would give the Member for Edmonton-Meadowlark, with

respect to his concern, all the latitude in the whole wide world for the NRCB to look into these matters.

With respect to Banff-Cochrane, he says that this definition shouldn't be changed because it's the same as something in another draft legislation. Well, maybe they're both wrong. You know, there's sort of two ways to look at that, and I think perhaps that if he thought about it, he would be recommending that the expanded definition go into the environmental protection enhancement legislation rather than trying to impose a narrower definition on both.

I agree that there's a philosophical point here, but it's not quite the one that the Minister of Energy thinks it is. The philosophical point is that we've got to find a way to make the sphere of human endeavour more compatible with the sphere of nature. I use the terms technosphere and biosphere to describe those two concepts. I really think that the reason we create a board like this and give it decision-making authority is because, darn it, we want to make sure we get it right from here on in. We recognize that mistakes have been made in the past. Mistakes have been made I daresay by this government, even though I'm not here to argue that point.

If we're going to get it right, we'd better start getting it right now. When we say that the definition of the environment includes economic, social, cultural, and health activities, that gives the board all the scope it needs to look into the matter. Then when we come to the decision-making criteria, we have to say, "There's one thing we want you to determine, and that is whether this project is compatible with our need for a healthy future." Pure and simple. You can look at it from an economic point of view; you can look at it from a social and cultural point of view. But in the end you have to determine whether those things are compatible with our need for a healthy environment. That's the philosophical point, and I'm really surprised, in fact shocked, that the Liberals won't come onside with that. You can say that somehow boards like this will use social and economic factors to overturn bad environmental projects, but the reality and the record is the other way.

When we debated this the other day, I referred specifically to the ERCB decision on the Caroline sour gas project proposed by Shell. They were aware, they put in their findings that 97,000 additional tonnes of SO<sub>2</sub> go in the air under the Shell project, but they bought it anyway. Why? Because they dragged in this economic criteria, which essentially amounted to some construction dollars in the local economy, and said, "That's worth 97,000 additional tonnes of SO<sub>2</sub>." The Member for Edmonton-Meadowlark and the Liberal party are prepared to accept that type of decision. We're not.

MR. CHAIRMAN: Is the committee ready for the question on the subamendment?

HON. MEMBERS: Question.

MR. CHAIRMAN: Does the committee wish to vote on A and B together?

MR. McINNIS: No.

MR. CHAIRMAN: Separate? [interjections] We'll have it together? [interjections]

[Motion on subamendments A and B lost]

MR. McINNIS: Which item did we vote on?

MR. CHAIRMAN: Both A and B.

The hon. Member for Edmonton-Meadowlark.

MR. MITCHELL: Thank you, Mr. Chairman. I have a few comments on the minister's proposed amendments. I would like to begin by saying that I believe these amendments are substantial improvements to the extent that they represent progress at all. The definition of "environment" is a warranted improvement that has merit, and while it could be driven further, I believe that it certainly represents a significant improvement to the Bill as it was originally written. Similarly, I believe that enhancing the powers, broadening the mandate of the board, as is contemplated in the addition of section 8(3), is an improvement to be commended as well.

Section E. It is proper that this section should be amended to replace the word "hearing" with the word "proceeding." Proceeding certainly includes hearings and any other kind of undertaking that this board might indulge in. Therefore, this is a significant improvement, because public intervenors can claim to have costs covered not just for hearings but for other kinds of presentations before this board.

8:40

I also believe that section 16(2) being substituted by this amended section, which will allow for the board to ensure a broader definition of employee or people engaged by the board who can be dismissed or removed from a given project review due to apparent conflicts of interest, is an improvement.

I will say that the minister is to be congratulated for those amendments. Having said that, I only wish I could prevail upon him to amend this Act still further. I believe the Act remains weak for a number of very significant reasons, reasons which dictated that I and my caucus would vote against the Act on second reading. Our commitment to opposing this Act is sustained by the weaknesses or the omissions in the minister's proposed amendments.

This Act, in spite of these amendments, will still fail to provide the board with the power to determine itself what projects it will review, a power which is not new or unprecedented in Alberta, because it is a power that has been accorded the Energy Resources Conservation Board. We are concerned that this Bill still does not allow the NRCB to take over those environmental responsibilities which have been accorded the ERCB. The ERCB has a mandate much beyond environmental consideration. In fact, it is my concern that we will actually be duplicating this environmental review capacity of the ERCB for energy projects in the NRCB. To streamline government, to reduce costs, to avoid inefficiencies and overlap, it only makes good sense that energy projects, for their environmental implication, should be reviewed by the NRCB.

A further weakness that remains in this Act in spite of the amendments is that there are no guidelines for how environmental impact assessments should be conducted and, therefore, how they should be assessed by the NRCB. Further, there are no guidelines or no specification that board members must be chosen on the basis of some objectivity and some specific kind of expertise or some particular kind of demonstrated interest in this area. The clause which governs the selection of board members is really very, very limited and, in fact, doesn't specify at all what their backgrounds, what their particular expertise should be.

Finally, one of the most significant weaknesses in the Bill which has not been corrected by these amendments and which is of grave concern to us is that this board's role has not been

defined as making a yes or no decision about a given project on the basis ultimately of its environmental acceptability. Instead, this board, as we understand it, could be viewed to be making recommendations. That is a much weaker role than a board that would make final decisions, and an effort by government to overrule those decisions would be a much more public, much more embarrassing, and much more difficult process.

It is for these reasons, Mr. Chairman, that while we applaud the amendments to the extent that they have progressed, have improved this Bill, we feel a good degree of disappointment to the extent that this Bill in our estimation still falls significantly short of the mark to which it must aspire.

Thank you.

MR. CHAIRMAN: Is the committee ready for the question on the amendments proposed by the hon. Minister of Energy?

HON. MEMBERS: Question.

[Motion on amendments carried]

MR. CHAIRMAN: The hon. Member for Edmonton-Jasper Place.

MR. McINNIS: Yes, Mr. Chairman. I have a number of additional amendments that I would like the committee to consider.

MR. MAIN: Many trees died.

MR. McINNIS: Well, the hon. minister of culture is concerned about trees dying. He should be concerned about clear-cut logging in the Daishowa FMA on Lubicon lands rather than being concerned about efforts to try to improve this legislation. This legislation will be with us a long time, and we might as well get it right.

I would like to move amendment 3, which amends section 4, in fact rewrites section 4. I think this is a very significant amendment, because it deals with the scope of jurisdiction of the NRCB. I find that the scope under the government proposal is far too restrictive in several ways, mainly because most of the triggers for this legislation are political in nature; that is to say, they either come from a political decision by a cabinet minister or from a regulation set by the Lieutenant Governor in Council. So what we need is an expansion of that and also at the same time an objectification of it, if I can use that word. What we have now is a subjective trigger. What we need is an objective trigger.

I'd like to go through this very, very briefly. First of all, I think policies and programs of the provincial government which have environmental implications should be reviewed, and I think we have the classic case before us today in the game ranching industry. Game ranching, the ranching of native species of wildlife in the province of Alberta for profit - I daresay there's not much fun in it, especially for the people who are involved these days - especially elk, has tremendous environmental implications and, it turns out, a tremendous environmental risk. We went through an experience in this Assembly in June where legislation to bring game ranching throughout the province was introduced precipitously. It turns out people in the industry probably knew something about it, which is why the price of stock doubled in the period leading up to it. It was precipitously introduced and was literally rammed through the Assembly under closure, and it's with us. No environmental assessment.

My colleague for Vegreville put forth an amendment at the time suggesting to the government that it should consider an environmental impact assessment, but that amendment was unfortunately defeated by the government. So be it: no environmental assessment done. Well, where are we today? The Bill involved isn't even proclaimed, but we have an outbreak of bovine tuberculosis within that industry. It turns out that one of the ranches that is quarantined, it's my understanding and my information, is that of Frank McAllister, who had a jailbreak; you know, a number of the elk escaped into the wild. It just turns out that that ranch is quarantined, which means that those animals may have contracted the disease themselves. The government may have already sanctioned an industry which has let bovine tuberculosis into the wild elk population.

8:50

So we need to have environmental assessments done of government policies and programs, because they can and do have environmental impacts, and those which do should be reviewed. Projects which have environmental implications should be reviewed under this Act, especially where they require operating and construction permits. I think we need a process whereby the boards can make those decisions. So that's what's set up in subsection (3).

In subsection (4) we have again a restatement, but this is the area of board jurisdiction. [interjection] The Member for Clover Bar, who claims to be concerned about conservation dealing with paper, should at least perhaps be aware that this is recycled paper that he's looking at right now.

There is a procedure for having a petition, which I think is perhaps a slightly better provision than we have at the present time because it requires 10 or more qualified persons. A petition can trigger such a review. I think that perhaps eliminates the problem of the vexatious or frivolous putting in these value-laden words and giving somebody the authority of deciding. So I'm proposing a broader but also more objective screen or a trigger mechanism to get this thing going.

MR. CHAIRMAN: Any further comments on amendment 3?

HON. MEMBERS: Question.

[Motion on amendment 3 lost]

MR. McINNIS: I thank the committee for its consideration.

Amendment 4 addresses the fact that the NRCB is not presently required to hold public hearings. I think this is an unfortunate omission, and I believe that adding section 6.1 will define the criteria under which a public review needs to be held. I put it forward for the consideration of the committee.

MR. CHAIRMAN: Are you ready for the question? Oh, the hon. Member for Edmonton-Jasper Place. No, Edmonton-Meadowlark. Sorry.

MR. MITCHELL: Mr. Chairman, what a horrible error.

I would just like to say that I support the sentiment that is embodied in this amendment, as I know my caucus does. At the same time, what this amendment addresses is a very, very critical omission of principle in the Bill. It seems to me that that omission is exactly one of the reasons why my caucus voted against this Bill on second reading, against it in principle, and why we cannot understand how the New Democrats could ever possibly have supported a Bill in the first place that failed to

include this kind of measure. So it is with some curiosity that we view the New Democrat's efforts to gain some credibility on this Bill with amendments of this nature.

MR. McINNIS: Mr. Chairman, this is the second time the Member for Edmonton-Meadowlark has accused the... [interjections]

MR. CHAIRMAN: Order in the committee, please.

MR. McINNIS: ... New Democrats of scrambling on this Bill. I wonder why he keeps bringing it up. I wonder who's scrambling in reality. Because we're fixing a Bill that's fixable, and we're putting forward the proposal to do it.

I suppose it's an easy thing to say, "You know, it's not right" or "It's not to my liking" or "Somebody may not like it somewhere along the line, so I'm going to vote against it." Well, you don't get very far in this world doing that. You don't get to be the government by saying no all the time and hoping that people will get tired of the government that's in power and you'll be next. This Bill is fixable, and we've got the measures in place to fix it.

What we're saying here is that we need to have proceedings which are appropriate to the needs and the backgrounds of the persons who are involved, and that's a very simple thing to put forward. You know, to be sort of making up principles of the Bill after the fact and trying to explain in committee why you voted a certain way in second reading indicates that it's not us who are scrambling, Mr. Chairman.

MR. CHAIRMAN: The hon. Member for Edmonton-Kingsway.

MR. McEACHERN: Yes. Thank you, Mr. Chairman. I guess I want to speak to this particular amendment because the word "may" really needs to be turned to "shall." It's not good enough to set up a board of this sort and then say that they've got the option of looking into some project or other. If they are going to have any teeth or any mandate to do anything of merit, they need to be directed to do so in every development case. That's not to say that every investigation has to be a huge, big one, but the fact of the matter is that with the word "may" in the present legislation it would allow the board to sit back and do nothing and let the project go ahead or be decided by other people under other conditions without following through on the necessary steps to have public input to whether or not the decision is environmentally safe.

I don't understand why the minister would go to all the trouble of putting together a Bill and setting up a natural resources conservation board ... I might ask the minister. He said he has used as a model for the NRCB the ERCB. Now is it possible for the OSLO project to go ahead in the province of Alberta without the Energy Resources Conservation Board having a look at it? The answer is clearly that it could not; it will not. The Energy Resources Conservation Board will be involved; it shall be involved. It's not a question of may be involved. Therefore, the mandate of the natural resources conservation board should not be may be going to hold some hearings, but it shall hold some hearings; it shall do a review; it shall do the necessary things to determine whether that project is environmentally sound in light of the economic and social and other economic benefits from doing that project.

So, Mr. Chairman, I don't understand why the minister hasn't immediately seized on this amendment and just stood up and

said that he's going to adopt it. I really would like to hear from him on this matter.

MR. ORMAN: Mr. Chairman, the hon. member is, I think, missing the point. If he looks at section 8(2), he is right; the board may hold a hearing. However, in section 8(3) if there is a written objection, "the Board shall hold a hearing." You know, we're not going to throw a party and nobody comes. If there is an objection, there will be a hearing. If there is no objection, why is there a hearing? That's why it is crafted this way. So section 8(3) deals with "the Board shall have a hearing" in the event there is a written objection. We have the caveat that if it's vexatious or frivolous, then the board can make a decision that it is not worthy of a hearing. But I submit that it is "shall," and there has been no oversight other than the hon. member's ability to read.

MR. McEACHERN: Mr. Chairman, there is another problem here. It's not just the public hearings part of it. If you look at your own legislation, it says, "In conducting a review under this Act, the Board may make inquiries and investigations and prepare studies and reports." They may. Surely they have to. I mean, even if nobody else in the province seems to know about it or care a damn, the members of the NRCB should care and should do a certain basic amount of investigation until they are satisfied in their own minds that it's okay. So the word "shall" should be used, not "may." The word "may" allows them to do nothing, and if nobody else comes along and prods them, they may do nothing still. You're saying that if somebody prods then they will, but they should anyway. You know very well that if the project were in some remote area where hardly anybody knew about it, it might very well get passed and accepted without anybody taking a second look at it in any way, shape, or form right by the wording of your own Bill. So you need this kind of amendment to make sure that they do do something and are satisfied that the project is a good one. The word "may" is just not good enough.

9:00

MR. CHAIRMAN: The Minister of Energy.

MR. ORMAN: Mr. Chairman, may I submit that if the member wants to enter into a legitimate debate on this very important Bill, I recommend that he read the Bill before he debates it. I know it's a precedent for him, but we're having a very good debate. The members for Edmonton-Jasper Place and Edmonton-Meadowlark are participating in an important debate. We then have someone else who is getting in and not reading the Bill, and that is unfair to the process.

Let me refresh his memory and let me read the Bill for him so that he will not be misled in his own mind. In section 8(1): "the Board shall, in accordance with the regulations, give notice." They shall give notice. If there is no objection, there is no intervention, then the board is not obliged to hold a hearing. They may give a hearing. When they may give a hearing is when they get an intervention. It then becomes "the Board shall hold a hearing." So if they give a notice and nobody's interested, there is no need for a hearing. If there's an intervention, there's a hearing. Plain and simple.

MR. McEACHERN: The minister is trying to get himself off the hook by shifting ground. Section 8 has a problem also, and we will deal with that when we get there. My colleague from Edmonton-Jasper Place has an amendment with regard to 8.

But just going back to 6, on the public hearing point, okay, the word "shall" is there except that there are some loopholes about who are the people directly affected and all that. We'll get to that later. But it also says in 6, "In conducting a review under this Act, the Board may make inquiries and investigations and prepare studies" and so on. What I'm saying is that they should do that anyway: not that they may do it but that they shall do it. Never mind the public hearings. That's a separate and second aspect of it which is also important, but we will deal with that in 8. Fine. But that doesn't take away the point I made. I'm not being at all frivolous here.

MR. CHAIRMAN: Is the committee ready for the question?

HON. MEMBERS: Question.

[Motion on amendment 4 defeated]

MR. McINNIS: Mr. Chairman, if I may, I'd like to move amendment 5, distributed in my name. Amendment 5 amends section 8 to expand the list of people who shall be notified by the board of a proceeding. It expands it from the narrow criterion of "directly affected" — the ERCB criteria, if you like — to a broader range, and this is essentially a list of qualified intervenors whom I suggest would be kept on file by the board.

MR. MITCHELL: Once again, Mr. Chairman, I believe this is a very important amendment. It's not an amendment of insignificance. It is not an administrative amendment. It is an amendment of principle. Again, I'm driven to this question: how could it possibly be that this New Democratic caucus could ever have supported the NRCB Bill as it's been presented by government in second reading, a Bill that omits this very important principle? I could see this caucus, if it were true to its values and principles with respect to environmental review, voting adamantly against the NRCB Bill on second reading because it excludes umpteen principles which this member continues to raise by way of amendments. I could see them voting against it and then attempting to raise amendments to salvage something from the Bill. But on the one hand, while I say, "Yes, it's important this be in the Bill," it should certainly have been in the Bill on second reading if any right-thinking, right-minded, environmentally concerned legislator in this Legislature would ever have considered voting for that Bill in principle. Again, this is a clear indication, its omission in the first case, of why we could never have voted for this Bill in principle.

MR. ORMAN: Let me just simply say that I understand the intent that the Member for Edmonton-Jasper Place is trying to put forward, but at the same time let me point out to him that the natural resources conservation board legislation on this matter of intervenor funding, of directly affected, is more permissive than it is in the ERCB legislation. So we have gone further in this legislation, and it may be that we amend the ERCB legislation to be consistent with this new standard. I should also say that the ERCB has been in practice liberally interpreting this section and, in fact, goes beyond the strict tenets of their legislation, and that's why we saw fit to broaden it here. But I see no reason, Mr. Chairman, to further broaden it than we already have, one step at a time.

MR. McINNIS: Mr. Chairman, I do appreciate that the minister has gone some distance to broaden the list of those who receive

notification of a project by mail or other appropriate means. My point is simply that he hasn't gone far enough. I think, though, it is becoming clear as the Member for Edmonton-Meadowlark continues to rise and identify additional New Democrat amendments as matters of principle that his idea of what the principles of this Bill might be is expanding as time goes on, and perhaps he is the one who's looking for reasons to justify behaviour. I have no reason to need to justify anything that I've done in this Bill. I believe that I've done my homework and our caucus has as well. However, evidently he wasn't here for the debate and hasn't read *Hansard*, but for his information the reason the New Democrats supported this legislation in principle was because of the principle of having independent reviews of projects set out in legislation rather than having them done on an ad hoc basis or not done, as is so often the case. We are pursuing that principle with some vigour. We're putting flesh on those bones as we go along.

MR. MITCHELL: Mr. Chairman, it's beyond me how the Member for Edmonton-Jasper Place could ever say that the one principle that he feels was somehow enshrined in this Bill as it was presented by the government in second reading, this principle of somehow an objective review of projects, could ever have been construed to be enshrined in that Bill on its second reading. The fact of the matter is that there is no guarantee in that Bill that it will ever provide for objective review. All we need to do is review section 16, which in some way calls for . . . I believe it's section 16.

MR. CHAIRMAN: Order please. Is the hon. member speaking about amendment 5 to Bill 52?

MR. MITCHELL: I certainly am.

MR. CHAIRMAN: Oh, thank you.

MR. MITCHELL: I'm responding to Edmonton-Jasper Place's presentation on that particular amendment 5 as he calls it. But in his defence of this particular amendment he raised that the New Democrats supported this Bill in principle because they supported the principle of its providing for an objective review. Well, the one fundamental security that it would be able to provide any kind of objective review would be that the board members would be chosen on the basis of some kind of objectivity, some sense of their being apolitical, some sense of their having an objective expertise. But he need only read section 12 of Bill 52, where it talks about how the membership of the board will be chosen, to know full well that this has been left in a way that the government can manipulate the selection of board members so they will never be objective. Once again, Mr. Chairman, I have to establish and emphasize my true concern that the New Democrats could ever have supported this Bill in principle in the first case, because there is not one principle that they, on the one hand, have ever said they always espouse that is contained in this Bill. I could see them voting against it on second reading and then trying to improve it perhaps, but I'm not convinced by this last retreat, tirade, defensive manoeuvre of the Member for Edmonton-Jasper Place.

9:10

MR. CHAIRMAN: The hon. Member for Edmonton-Kingsway.

MR. McEACHERN: Yes, Mr. Chairman. To the Member for Edmonton-Meadowlark: we're going to form the government



soon, and we will appoint an objective board, so he can rest assured.

Really, in looking at section 8, which amendment 5 refers to, it seems to me that what the minister is missing is an unequivocal commitment to make sure that the factual information the board gathers is publicly available to anybody and everybody, to every citizen of Alberta. This amendment would go some way to making that information harder to hide, but I would suggest that they should go as far as saying that once a project has been declared and put on notice, as 8(1) says, any information regarding that project should be public information.

You know, you used the expressions "persons [that are] directly affected" or "other persons it considers necessary" to inform, but that is not all inclusive. If the project, for instance, were going to add one little bit of carbon dioxide to the atmosphere, that's going to affect the greenhouse effect in this world, and therefore it affects everybody on the earth, not just everybody even in Alberta. So I don't know how persons "directly affected" or "persons it considers necessary" will end up being identified, but it does seem to me that a general statement of everybody having access to that information is necessary. At least the amendment as proposed by my colleague takes us somewhat in that direction.

MR. CHAIRMAN: The hon. Member for Edmonton-Meadowlark.

MR. MITCHELL: Thank you, Mr. Chairman. I'm struck by the Member for Edmonton-Kingsway's . . .

AN HON. MEMBER: Struck dumb, I daresay.

MR. MITCHELL: I'm talking right now.

. . . assertion that somehow their forming a government would make all these problems of principle right. Well, what I see in this would be a government – it will never occur – that on the one hand would present a Bill, I suppose, and then get . . .

#### **Chairman's Ruling Relevance**

MR. CHAIRMAN: Order please, hon. member. The Chair has been very lenient with the hon. member, who has not really made his remarks relevant to the amendment before the House. This amendment 5 deals with section 8 of the Bill. I think the members of the committee would like to hear the hon. member if he would confine his remarks to section 8.

Thank you.

#### **Debate Continued**

MR. McINNIS: Mr. Chairman, these are important and substantial amendments, and I do detect in the protestations of the Member for Edmonton-Meadowlark perhaps a wee tinge of envy that he isn't involved in proposing them.

But perhaps since he did move to another section, again to try to justify his position of having voted against the Bill and done precious little to try to create something out of it, he did drag up a brand new principle. I don't know why this Bill has so many principles, why he seems to find so many principles in it. Perhaps he knows quite a lot about Principal from his past life; I don't know. But I think it should be said that before he gets away with saying that somehow this new principle about the lack of qualification of members is such a serious thing that it should result in everyone running away and hiding from trying to fix this Bill, he perhaps should look at a forthcoming amendment, which

is amendment 9, which does establish exactly the sort of thing that he pretends to be concerned about. So perhaps we can get on with committee study of the Bill and not try to rehash second reading debate of the Bill.

MR. CHAIRMAN: Is the committee ready for the question on amendment 5?

[Motion on amendment 5 lost]

MR. CHAIRMAN: Amendment 6. The hon. Member for Edmonton-Jasper Place.

MR. McINNIS: Mr. Chairman, amendment 6 attempts to curtail the rather awesome authority the cabinet has given to itself in dealing with approvals under the NRCB. It amends section 9 to take away the clause that says the cabinet can dictate terms and conditions which the NRCB would attach to an approval, because I believe the NRCB may very well decide it's in the public interest to approve a project, that it's environmentally sound, but only if it's done in a certain way. I believe they should have the authority to do that, and that authorization should not be prescribed *in* this way by the Lieutenant Governor in Council.

MR. CHAIRMAN: Is the committee ready for the question on amendment 6?

HON. MEMBERS: Question.

[Motion on amendment 6 lost]

MR. CHAIRMAN: Amendment 7, the hon. Member for Edmonton-Jasper Place.

MR. McINNIS: Mr. Chairman, I move amendment 7. This amends the intervenor funding section to inject some criteria. These criteria are not particularly my own. They are the criteria put forward by the Alberta Environmental Impact Assessment Task Force, which again was a consensus of opinion between government representatives, private industry representatives, and representatives of environmental groups active in this field in the province. So carrying that degree of weight to it, I think it's something the government should look at. Unfortunately, we have a situation where this legislation was drafted by another task force which was representative only of the government bureaucracy itself and then later culled and vetted, if you like, by the government caucus which . . . I won't speculate exactly who they represent in this context, but I will say that the wording of the Environmental Impact Assessment Task Force does a much better job and therefore should be put into the legislation.

MR. CHAIRMAN: Is the committee ready for the question on amendment 7?

HON. MEMBERS: Question.

[Motion on amendment 7 lost]

MR. CHAIRMAN: Amendment 8, the hon. Member for Edmonton-Jasper Place.

MR. McINNIS: Amendment 8 changes section 17 of the legislation. This deals with the creation of panels. I believe that making this provision subject to section 22 will improve the operation of these panels to essentially bring in a type of objectivity and a type of expertise which is required. If you don't set it up in the proper way, I think you'll end up getting these panels operating the way the ERCB occasionally does, where sometimes you have even board employees conducting hearings. To me that's unacceptable, so I would like to have some stronger wording in that section.

MR. MITCHELL: Mr. Chairman, this is an important point. It is a weakness in Bill 52 that there is no certainty of objectivity on the part of board members who will be selected by government. Clearly the effectiveness, the objectivity, the integrity with which this board will be able to function will be contingent upon the quality and the nature of the people who are selected to be its members. My concern is that the section that currently determines this is very, very open. It's too open, and the government is given far too much flexibility in the manner in which it can make its selections.

9:20

We need only look at previous decisions in this regard to see a very, very unsavoury precedent. Members on the original Al-Pac panel, apart from the federal membership appointees, were not selected on the basis of objectivity by any means, and it is to their credit that they were able to rise above apparent conflicts. But you could never count on that in any kind of consistent manner. It is clear from the government's choice of Jaakko Pöyry as consultants, whose objectivity is certainly questionable, that the government's intention in selection was not based on objectivity but, quite the contrary, was in fact based upon finding the kind of group that would give them the answer they wanted to hear. Finally, when the first two undertakings did not give them that answer, they went one step further and ended up appointing yet another board, called a scientific board to give it some public relations sense of objectivity, but two of the three members of that board were provincial employees.

What we would be doing by passing Bill 52 without a clear and direct reference to the need for objectivity in the selection of board members would be to endorse or risk the continuation of this kind of cynical manipulation of the environmental review process, the kind this government has been blatant and obvious in promoting in its three review mechanisms for the Al-Pac mill. So yes, this amendment addresses a very necessary improvement to and a very clear weakness in Bill 52 as it has been presented by government.

MR. CHAIRMAN: Is the committee ready for the question on amendment 8?

HON. MEMBERS: Question.

[Motion on amendment 8 lost]

MR. McINNIS: Mr. Chairman, that one was pretty close.

I think amendment 9, which I now move, is perhaps one of the more important amendments on this list and one that the government should at least pause and ponder before it makes an error, perhaps, in voting against it. This amendment does two things. First of all, it sets out the creation of panels by providing that essentially every time a significant decision comes along we should have people who are regular board members whose

expertise would, over time, become expertise in the conduct of hearings: process experts essentially. You won't find people who have technical and scientific expertise dealing with the very broad range of projects that are before this board. In fact, the ERCB, which has a narrower range, finds from time to time that they have to involve expertise. The way section 22 is presently written provides that persons having some special technical or other knowledge can be brought on board to advise the board, to sit with them and assist them but not have a role in making the decision. I submit that's wrong. That's the first point.

The second thing this amendment does is give some criteria for the selection of those people, criteria which have a basis in Canadian law, Canadian tradition, and Canadian jurisprudence. In fact, I drew heavily on the existing federal EARP guidelines in preparing this amendment, because this language has worked very well to avoid some of the problems we sometimes have with such panels appointed at the provincial level, especially in the province of Alberta. It says that persons who sit on those panels have to "be unbiased and free of any potential conflict of interest." Now, I recognize we had an earlier amendment which dealt with the narrow question of conflict of interest, and I supported that particular measure. But this goes a little bit further and says that those people should be free of demonstrated bias going in, because their job is to consider evidence that's brought before them and bring their special knowledge and expertise, which you can't really do if there's a pre-existing and a demonstrable bias.

Secondly, it says they should "be free of any political influence." Now, that's a very important point. We don't want and I'm sure this government would not really want to have people who are politically beholden put on a panel like this, because, you know, governments change sometimes and sometimes political influence pedalling gets in the way of public policy rather than contributes to it.

Thirdly, they have to "have special knowledge and expertise relevant to the anticipated technical, environmental and social [impacts] of the project, program or policy," whichever is under review. So we're looking for people who know whereof they speak, and this is so very important because technology is increasingly complex. Science increasingly advances to the point where it's very difficult for most people, whether they're directly affected, whether they're seasoned intervenors, to be able to comprehend and wade through all the scientific and technical detail when the time comes.

Perhaps I could make just a very short example to demonstrate the point. I attended the meetings of the scientific review panel on the Al-Pac project up in Athabasca. The issue that really became the substance of those meetings was what type of evidence did Al-Pac have that their new process would perform in the ways they stated in their project proposal, a question that I thought was legitimate and obvious but somehow all the parade of experts the scientific review panel had brought to testify had never seen the experimental data. Now, it took some doing, because Al-Pac felt that this data would compromise their competitive position. They didn't want to make it public, but they were persuaded that it would be in the public interest for them to do so and they produced some data, a page of numbers, at an evening session in camera, off the record. Now, the page of numbers had no words on it; it was not meaningful to most people. But it so happened that an individual professor, Dr. Jim Plambeck, who's a chemist at the University of Alberta, had some ability to read these numbers very quickly and interpret them. He presented a perspective to the hearing which was that there was really only one experiment which underlay all the

conclusions that were made. It was done under laboratory conditions, not mill conditions, and there was some reason to question whether the performance characteristic of that one experiment would be duplicated in a real-life pulp mill operating at capacity 24 hours a day, a question he raised and raised quite properly. He happened to have the technical expertise to be able to interpret that out of the data, because there was no narrative, nothing to interpret what was there and to pose the correct question.

Now, none of us have seen the final report of the scientific review panel because it's still secret, held so by the government, but I don't doubt that that panel would have been impressed by the fact that that chemist went up at his own expense and reviewed the data and asked the appropriate question. He may have influenced the report. I don't know, we'll see. But the point *is* that you need to have people reviewing such data who are able to tell whether it's good science, questionable science, inadequate science, or bad science. That's the kind of person we want, and I think we want that criteria in the legislation.

MR. ORMAN: Mr. Chairman, referring to amendment 9, I would simply caution the hon. member about, as he puts it, drawing heavily on the EARP guidelines. He must have a more vivid imagination than to somehow draw on those terribly flawed guidelines – at the same time, guidelines put in by Liberals. You know, I'm actually quite surprised by the fact that the hon. member would draw on something the Liberals had proposed. We know how wishy-washy Liberal proposals can be. At least we know where the NDP stands. We're not sure where the Liberals stand, and I would therefore very, very cautiously submit that he should not draw heavily on the EARP guidelines. I think that is a discredit to his capabilities.

9:30

MR. McEACHERN: I find the minister's remarks somewhat offensive. I understand the attitude towards the Liberals; that's fine. But I don't understand why he would dismiss the guidelines based on that kind of flimsy rhetoric. What you really need to do is look at the detail, and the detail here that is important is that it's a chance for us to make up for the fact that section 2 of the Bill is not specific enough to see to it that there will be public hearings and that those public hearings will have

the assistance of independent expertise to determine whether the projects and activities are compatible with maintaining and preserving the natural ecological diversity of the province of Alberta,

the exact wording the Member for Edmonton-Jasper Place had in one of his earlier amendments, which we debated in this House, and you chose to go with a rather weak purpose for this Bill.

Now, here is your chance to fix that. If you are going to have experts, I don't see how you can tell us we should dismiss the idea that those experts should "be unbiased and free of any potential conflict of interest," that they should not "be free of political influence." That's what we're after. These are the specific things this amendment is asking for. And they should "have special knowledge and experience relevant to the anticipated technical, environmental and social effects of the project, program or policy under review." Nobody in their right mind who wants to live on this planet and expects their children and their grandchildren to live on this planet could object to those specific things unless you intend this hearing to be something of a sham, that it's window dressing and you're not prepared to deal in a fair-minded way with each project as it comes forward.

So really, Mr. Chairman, the members of this House have got to stop and think. I mean, it might be 5 billion years before the sun blows up and swallows the Earth, but we still have to try to keep this Earth going that long and keep life on this Earth until that happens. We're sure not going to do it unless we protect the environment. This is so logical and simple and straightforward, I don't see how the minister cannot stand up and say that this amendment is accepted.

MR. ORMAN: Mr. Chairman, if I can . . .

MR. CHAIRMAN: The Minister of Energy.

MR. ORMAN: You know, I don't want to prolong this debate, but maybe the member could clarify something for me. If he wants someone that's free of political influence, then that means the person cannot vote Conservative, cannot vote NDP, cannot vote Liberal, and cannot vote Independent. If he voted for any of those parties, he then has a political bias. The further extension of that is that he is asking for people to sit on these panels that don't vote. I can't accept that as an acceptable way to conduct themselves as citizens of this province. I find that quite surprising.

MR. McINNIS: This is not a late hour; I don't know why the debate is taking such an absurd turn. I think perhaps it started with this overgeneralization the Minister of Energy made about flawed EARP guidelines, implying that since there may be a flaw or some flaws somewhere within those guidelines, this particular guideline is flawed. It's not. I'm not aware of any circumstance where the conflict of interest and the political neutrality provision of the EARP guidelines caused a problem. The question of being free of political influence has nothing to do with how that person votes in an election; it has to do with how they vote on the project. Right? I mean, it's as simple as that.

This government was caught appointing people to an Al-Pac review panel who had a demonstrated political bias which caused them to be rejected from the panel even though no such guideline was in place. So it seems to me that when forced to, this government has shown it's prepared to operate with ground rules such as this. Why do we have to have a political controversy and have people's names dragged through the news media in order to establish this point? Why not establish it now in legislation so that whoever has the responsibility for administering this Act will know they'd better not pick people who have a reason to be beholden politically to the government or any other person in respect of the project? It's not how they vote in the election or the way they speak politically in a general sense; it's over their role in deciding the project.

MR. CHAIRMAN: Is the committee ready for the question on amendment 9?

HON. MEMBERS: Question.

MR. CHAIRMAN: All those in favour, please say aye.

SOME HON. MEMBERS: Aye.

MR. CHAIRMAN: Opposed, please say no.

SOME HON. MEMBERS: No.

MR. CHAIRMAN: The amendment is defeated.

[Several members rose calling for a division. The division bell was rung]

[Eight minutes having elapsed, the Assembly divided]

9:40

For the motion:

Barrett	Hewes	Mjolsness
Chumir	McEachern	Pashak
Ewasiuk	McInnis	Roberts
Hawkesworth	Mitchell	Sigurdson

Against the motion:

Ady	Fowler	Orman
Bogle	Gesell	Paszkowski
Bradley	Hyland	Payne
Calahasen	Jonson	Severtson
Cherry	Laing, B.	Speaker, R.
Clegg	Lund	Stewart
Day	Main	Thurber
Elliott	Mirosh	Trynchy
Evans	Moore	Zarusky
Fischer	Musgrove	

Totals:	Ayes	–	12	Noes	–	29
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[Motion on amendment 9 lost]

MR. CHAIRMAN: The hon. Member for Edmonton-Jasper Place.

MR. McINNIS: Mr. Chairman, amendment 10 simply strikes out section 25. What this is is an effort to limit the delegation of authority from the board to the staff. I think that when we appoint people to do this kind of a job, they should do it, rather than having people come to a natural resources conservation board hearing, as they sometimes do to an Energy Resources Conservation Board hearing, and find out that the board members are not going to be there; it's only staff who will hear their concerns.

MR. CHAIRMAN: Is the committee ready for the question?

HON. MEMBERS: Question.

[Motion on amendment 10 lost]

MR. McINNIS: Mr. Chairman, I forge on. Amendment 11 is an important amendment. It says that the authority of the board to set wages and salaries shall be limited by a collective agreement which may be in force respecting the employees. I think it's an important principle that the employees of this board may wish to organize, bargain collectively, and obtain what they can through that process, and that the board's authority to set wages should be limited to the extent of any collective agreement which may be in force.

MR. CHAIRMAN: Is the committee ready for the question on amendment 11 proposed by the hon. Member for Edmonton-Jasper Place?

HON. MEMBERS: Question.

[Motion on amendment 11 lost]

MR. McINNIS: Can you imagine, Mr. Chairman? Well, in that case let's move on to the next amendment, which is number 12. Now, amendment 12 deals with the procedure for public hearings. I think it's perhaps an oversight, but section 28 does not really state the operating principle under which the board will make rules of practice governing proceedings. I think these words, again taken from the federal ERP guidelines, have stood the test of time in terms of the process of holding hearings. What we need is something that's appropriate to the needs of people there, and I think the words "in order to facilitate public involvement through a non-judicial and informal but structured manner" adequately do that, and I so move.

MR. MITCHELL: Mr. Chairman, I'm not certain exactly what the member hopes to accomplish with this particular amendment. Perhaps he could explain that a little bit further. But I am concerned if it would in any way limit the ability of a board of this nature to conduct hearings or portions of hearings under oath with intervenors, with people presenting to the board doing so under oath. I think it is very important at certain stages of a public hearings process that the option exists for the board to insist that people present under oath. The opportunity for misrepresenting empirical evidence to emphasize a case one way or the other – the potential for that and the consequences of that occurring are grave. I believe that while not all hearings would need to be conducted in that manner, a board of this nature should have the opportunity to conduct hearings or parts of hearings with those involved being under oath. Therefore, I would ask that the member clarify that point in his description of this particular amendment.

MR. ORMAN: Mr. Chairman, may I confirm that we're on amendment 12?

MR. CHAIRMAN: Yes, we are.

MR. ORMAN: Mr. Chairman, the hon. member presents somewhat of a worthwhile suggestion here, and I'd like to support the intent. I'm not sure I'm willing to support an amendment. I do believe that the board, in making rules of practice governing procedures of hearings, regulations, is worthy of public input. I would not like to leave an impression with hon. members that we would proclaim this legislation in the absence of public input for rules and regulations. I believe that our intent is the same. However, I'm not sure the wording is such that I'd support the amendment. But we are on the same wavelength, Mr. Chairman.

9:50

MR. McINNIS: Mr. Chairman, as long as we're on the same wavelength, I shall perhaps make a slight effort to convince the member as well as the Member for Edmonton-Meadowlark that these words will contribute somewhat to making the proceedings of this body openly accessible to the people who need to have access. Now, I think there's always a bit of a dilemma because there are those who would like to have these proceedings conducted somewhat similar to a court of law, in which everything shall be taken down and used against you. On the other hand, there are those who want to have the hearings conducted in such a way that people with a nonlegal, nontechnical background – in other words, ordinary citizens – can participate fully and meaningfully. I believe these words convey that sense. Obviously, we're trying to facilitate public involvement. I don't think there's any quarrel with that part of it.

The next part is: "through a non-judicial and informal but structured manner." I think those words convey a sense that this is not a court of law but it's not a place where people rant and rave about whatever they want either; that these hearings are structured around a purpose, an objective; that it's a place of business and work is being done.

So I hope to put the Minister of Energy's mind at ease if there's anything in this that's going to cause him any problems. I think it's entirely consistent with the idea of having public involvement over the rules of practice before they come.

With respect to the narrow point raised by Edmonton-Meadowlark, I think it's probably better addressed under subsection (2) than it is under subsection (1).

MR. CHAIRMAN: Is the committee ready for the question on amendment 12?

AN HON. MEMBER: Sure.

[Motion on amendment 12 lost]

MR. McINNIS: Well, he was wavering for a minute, Mr. Chairman.

Let us move, then, to amendment 13. This amends section 34, what is to me an oversight in the drafting of the Bill. Section 34 deals with the records of the NRCB. It does state – and this again is something that the Member for Edmonton-Meadowlark is perhaps concerned about – that "the minutes, accounts and records of the Board are admissible in evidence" in a court of law. That, I think, has its genesis within the Energy Resources Conservation Board. Secondly, these records are "admissible in . . . proceedings"; copies of them can be submitted as evidence in place of the original. That's well and good, but I think we should also state here in the law that these are "public documents" and they're "available for inspection during normal working hours." I so move.

MR. CHAIRMAN: Is the committee ready for the question?

HON. MEMBERS: Question.

[Motion on amendment 13 lost]

MR. McINNIS: Mr. Chairman, I don't know why the government would want to keep such things secret, especially when they can be admitted as evidence in a court of law. Perhaps they wouldn't, but if they wouldn't, then perhaps they should put that in the legislation.

Section 39(2) is what I call the Fjordbotten amendment. This amendment deals with a situation in which government employees have expertise, information, and knowledge which ought to be available to these proceedings and is not made available for political reasons, through intransigence, sloppiness, or whatever. I think that's unacceptable, and I think the effort by the government, or at least that minister, to hamper the AI-Pac EIA Review Board is a matter of public record and also something that's very regrettable. It certainly is open under the legislation as it's presently written for a minister to attempt to frustrate a hearing by withholding information and evidence, and I think that has to be dealt with. It seems to me that the government made some effort to address this in earlier amendments. I'm just trying to locate that right now. I can't find it at the moment, but I recall in reading it that what was put forward was also inadequate.

I think we have to make sure that never again in the province of Alberta will you have fish and wildlife officers, people who have knowledge and concern about the proceedings of this board, being kept away from it. I cite the concern expressed publicly by some of the members of the AI-Pac Environmental Impact Assessment Review Board in that the fish and wildlife officers and officials of Forestry, Lands and Wildlife were kept away from the hearings other than a single, delegated briefing, which was done on an agenda set by the senior officials of that department. So I think we need to make it absolutely clear, as we do in section 14, that this board shall have access to employees of the government, and the board or commission or the minister responsible cannot arbitrarily, or for any other reason, withhold that information and those employees from proceedings of the board.

MR. ORMAN: Mr. Chairman, as I recall, having looked at this section, it is my understanding that the concerns expressed by the Member for Edmonton-Jasper Place, in that this is a quasi-judicial board, would be covered by the Evidence Act.

MR. CHAIRMAN: Is the committee ready for the question?

HON. MEMBERS: Question.

[Motion on amendment 14 lost]

MR. CHAIRMAN: The hon. Member for Edmonton-Meadowlark.

MR. MITCHELL: Thank you, Mr. Chairman. I appreciate the opportunity to make some general comments about this Bill in the committee stage. I would like to begin by stating and reiterating, in fact emphasizing, my clear disappointment with this Bill and with the process that has surrounded it, for two reasons. I am extremely disappointed with the government. The government of Alberta had a chance to begin to create proper, substantive, effective, and acceptable environmental policy in this province with this Bill. A natural resources conservation board, properly structured with proper powers, with proper attention to each and every one of those principles that we have talked so frequently about as being essential for this kind of Bill, is an integral and necessary condition, a fundamental part of proper environmental policy for this province.

If we cannot be assured that environmental impact assessments will be objectively, realistically, rigorously, and definitively assessed, then we can have no confidence that environmental policy in this province will ever be applied properly. What this natural resources conservation board legislation has done is consistent with what this government has continuously done when it comes to environmental policy. They approach the opportunity to do something right. They dabble with that opportunity. They tantalize those of us who would like to see them do something right, and then they fail to achieve the objective of implementing a policy initiative that is, in fact, right.

10:00

We saw it with the AI-Pac review board when that board rose above the kind of manipulation to which it was subjected, cynically and calculatingly, by this government and gave us a report that gave many Albertans the hope that that AI-Pac mill would be dealt with in the way it should be dealt with. We saw the Minister of the Environment. His initial reaction was that that was a good report and we will adhere to that report. He

approached doing what was right. He was so tantalizingly close, and what happened, Mr. Chairman? Two or three days later he was directly overruled by the Premier of this province. We got close to what was right, and then they fell short. Expectations were raised. Clearly, they were raised in the hearts and minds of the New Democrats, because they couldn't help themselves but to vote for this flawed Bill. Expectations were raised that the natural resources conservation board could in fact achieve some measure of success in providing that core, that essential element of environmental policy: proper environmental impact assessment reviews, public processes.

But this Bill falls fundamentally short. I could illustrate what this Bill amounts to by saying that in fact all it does is formalize the original Alberta-Pacific review panel. We know that panel was structured without any attention, except on the part of the federal appointees, to objectivity, and we have seen with great disappointment and great dismay the complete and utter lack of power – the complete and utter lack of power – that the Alberta-Pacific review board in the final analysis actually has had. Well, Mr. Chairman, what we have in Bill 52 is a veiled formalization of the original Al-Pac review panel. It will be no better. It will not meet anybody's raised expectations about its possibility, its potential for achieving some kind of objective, scientific, proper environmental impact reviews of major and other projects in this province. It is fundamentally a disappointment that this government walked up to the edge of doing something right and hastily retreated, as we have seen them do so consistently over the last number of years in this Legislature.

I am also fundamentally disappointed in the third party in this Legislature. This party has been apparently a very aggressive proponent of fundamental environmental principles. Well, they voted for this Bill on second reading, Mr. Chairman. This Bill in reality had them voting for the Al-Pac review panel despite the fact that all they have to do is look at that experience and see, one, that it was not set up to be objective and, two, that it failed because it had absolutely no power to do what has to be done in this area of environmental policy. By voting for this, they endorsed a board that is without – that is without – the proper elements to make that board operate as effectively as it must.

Mr. Chairman, we voted against this Bill on second reading because it was fundamentally and horribly flawed. It was horribly flawed for these reasons, reasons which have not been addressed successfully in this Legislature throughout the committee hearing. This legislation does not provide adequate powers to the board to choose itself those projects which it will determine to review. That power will be held by government. This board will be held hostage to the Neanderthal, to the backward, to the 1950s view of environmental policy that is heart and soul of the government members. It clearly and explicitly and in a calculating manner omits the power for this board to review forestry management agreements, so we will be left, as is now the case, with reviewing an agreement once it has been signed. That, of course, is nothing more than an exercise, fundamentally, in futility.

It has not provided proper specification of the publicness necessary for the hearings and other proceedings that should be integral to the processes by which the natural resources conservation board would properly operate. It does not assume on behalf of the board the current environmental review responsibilities that lie with the Energy Resources Conservation Board. There *is* no justification for the Energy Resources Conservation Board to be reviewing the environmental implications of energy

projects and for the natural resources conservation board to be reviewing the environmental implications of other projects.

It is consistent, however, with this government's desire to create more bureaucracy. We see that in so many instances. In fact, Mr. Chairman, by the time this Act is passed, as it surely will be, and by the time the Alberta environmental protection and enhancement Act is passed, as it probably will be, there will be a morass of environmental review mechanisms that will be incomprehensible to anybody short of those who might have a PhD in government administration of some kind, that will be incomprehensible to anybody in this province practically, and that will be fraught with opportunities to hide away, to scurry around, to lose decisions, to lose facts in all kinds of boards and review mechanisms. Once those two Bills are passed, the environmental policy process in this province will contain the ECA, the Environment Council of Alberta, a wonderful body, the ERCB; the NRCB; the Ministry of the Environment; the Minister of the Environment, of course, in certain distinct ways; advisory committees; referral committees; review committees, all under this new environmental protection and enhancement Act; the sustainable development co-ordinating council; the reclamation and conservation council; and I could go on. Those are a few of the things that come to my mind by virtue of the fact that all those other boards, some of them necessary but so many of them not necessary, will exist. We will have a complexity that in and of itself will be mind-boggling for people attempting to utilize this process for the good of the environment.

But it will also be the case that by definition, inherently, those boards will disperse the powers and disperse the focus of an environmental review mechanism and review process in this province that will fundamentally undermine whatever hope a board like the natural resources conservation board ever had of operating effectively. There are in this legislation still no guidelines for environmental impact assessments against which the board could determine whether an environmental impact assessment was done properly in the first place. The board is without the power to decide. It is, in fact, left only with, I don't want to say the power, but with the mandate to recommend. That is extremely weak, the weakest of all possible alternatives with which we could present the natural resources conservation board. It is a calculatingly weak determination by this government. They do not want this board to make decisions which would be much more politically difficult for them to overrule.

At the same time, without the power to decide, the natural resources conservation board is hardly worth the paper it will be written on. There is no objectivity specified as a criterion for the appointment of board members, critically important to the effectiveness with which this board might be able to operate. It has insufficient powers to make its rulings stick and to levy fines or levy penalties against those businesses or other organizations who determine not to follow the rulings of this board.

#### 10:10

The purpose of this Act is weak. It's weak because it doesn't specify, among other things, that this board must have as a clear objective the control of pollution, the protection of the environment, the conservation of our environment. It has skirted those particular words, which are concrete and specific and should be essentially elements of the purpose of an Act of this nature. It doesn't specify that EIAs must be done not by the proponent but supervised by government, done possibly and probably by independent consultants paid for by the proponent, with the final safeguard of objectivity resting with a powerful, objective environmental assessment board, the natural resources conserva-

tion board, so that it could ensure that there were not gaps or omissions originally in the environmental impact assessment. Finally at this time, among other things it is weak to the extent that this Bill does not properly define "direct interest." Instead, what it does is it limits the definition of those people who would have direct interest which would qualify their appearance before this board and would qualify them for public intervenor funding.

Mr. Chairman, I and my caucus are not going to propose the almost infinite number of amendments that would be required to make this Bill in any measure acceptable, and we are not going to do that because it would be tantamount to throwing this Bill out, which is all that it deserves, and to rewriting it from scratch. It is with a great deal of disappointment, dismay in fact, and grave concern that I must say on behalf of my caucus that this Bill is not adequate. It is fundamentally inadequate. It is probably worse than useless, and at the very best all it does, this Bill that was voted for by the New Democratic caucus in principle, is enshrine in legislation the clearly flawed process that was established and was called the AI-Pac review panel.

Mr. Chairman, thank you.

MR. CHAIRMAN: The hon. Minister of Energy.

MR. ORMAN: Mr. Chairman, thank you. First, before I respond to the comments from the Member for Edmonton-Meadowlark, I gave a half-answer to the Member for Edmonton-Jasper Place. In section 39(2) I indicated that a portion of that section is pursuant to the Evidence Act, and the portion that is subject to the Evidence Act is the matter of information that will be subject to that section. With regard to the word "service" in that section, that has to do with secondment. So the point I want to make there is that ministers have the right to block a secondment. They have a first call on their staff obviously. If it's subject to the minister's approval that a secondment has been called by the NRCB and the minister approves *it*, then that's sufficient.

Mr. Chairman, it's quite surprising to hear the Member for Edmonton-Meadowlark's debate on this Bill in committee. The Member for Edmonton-Meadowlark stands for the Minister of the Environment having almost complete control over the public review process. The Member for Edmonton-Meadowlark stands for the Crown having ultimate power in approving, amending, or denying a decision. He also would give Executive Council the power to confirm, amend, or annul a decision or an order of the board. The Member for Edmonton-Meadowlark would give more control to the Crown under the NRCB Act. He would not provide a clear framework, and additionally, he would allow

ministerial discretion by allowing exemptions to certain projects. The Member for Edmonton-Meadowlark suggests that all hearings should not necessarily be public. Finally, the Member for Edmonton-Meadowlark would allow for any five MLAs to cause a board decision to be reviewed by Executive Council.

Do you know how I know that, Mr. Chairman? Because it was in Bill 272, sponsored by Mr. Mitchell, called the Environmental Assessment Act, tabled in this Legislature earlier this year. How can he stand here and totally ignore a Bill he had before this Legislature in his comments about the NRCB? This Bill 272, modeled on the Ontario legislation, gives power to the Executive Council, to the minister, and to five MLAs to have a review overturned. How can he be so pious and stand in his place and make the comments he did on a piece of legislation that goes much further towards independence of the board and the review process than what he suggests to this Legislature? For him to stand here, bald-faced, and offer up contrary views to what he put... I would like to know: where does he stand, by his comments today or by Bill 272?

MR. CHAIRMAN: The hon. Deputy Government House Leader.

MR. STEWART: Mr. Chairman, I move that the committee now rise and report.

[Motion carried]

[Mr. Speaker in the Chair]

MR. SPEAKER: The hon. Member for Drumheller.

MR. SCHUMACHER: Mr. Speaker, the Committee of the Whole has had under consideration certain Bills; that is, Bill 52. The committee wishes to report progress on Bill 52. I wish to table copies of all amendments considered by the Committee of the Whole on this date for the official records of the Assembly.

MR. SPEAKER: Thank you.

Does the Assembly concur in the report?

HON. MEMBERS: Agreed.

MR. SPEAKER: Opposed? Carried.

[At 10:17 p.m. the Assembly adjourned to Friday at 10 a.m.]

