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Official Report of Debates (Hansard)

Monday 15 October 2001

Journal des débats (Hansard)

Lundi 15 octobre 2001

**Standing committee on
general government**

**Comité permanent des
affaires gouvernementales**

Subcommittee membership

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Amendment Act, 2001

Loi de 2001 modifiant des lois
en ce qui concerne
les friches contaminées

Chair: Steve Gilchrist
Clerk: Anne Stokes

Président : Steve Gilchrist
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 15 October 2001

Lundi 15 octobre 2001

The committee met at 1552 in committee room 1.

SUBCOMMITTEE MEMBERSHIP

The Vice-Chair (Mr Norm Miller): I'd like to call this meeting to order. I welcome everyone here to the standing committee on general government meeting today to consider Bill 56 clause-by-clause. We have some business to begin with.

Mr Mike Colle (Eglinton-Lawrence): I move that the membership of the subcommittee on committee business be revised as follows: That Mr Prue be appointed in place of Mr Marchese. That seems like a good thing.

Mr Rosario Marchese (Trinity-Spadina): Hear, hear.

The Vice-Chair: Any discussion? Shall I put the question? All in favour? Carried.

SUBCOMMITTEE REPORT

Mr Colle: Mr Chairman, I also have a report from the standing committee on general government.

Your subcommittee considered the method of proceeding on Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters, and on Bill 77, An Act to amend the Vital Statistics Act and the Child and Family Services Act in respect of adoption disclosure, and recommends the following:

Re Bill 56:

(1) That the committee schedule clause-by-clause consideration of Bill 56 on Monday, October 15, 2001;

(2) That the deadline for receipt of amendments be 5 pm on Friday, October 12, 2001.

Re Bill 77:

(1) That the committee schedule public hearings on Bill 77 in Toronto on November 5 and 7, 2001;

(2) That the clerk place an advertisement on the Ontario parliamentary channel and on the Internet. Additionally, notice will be provided to provincial news media by press release;

(3) That groups be offered 15 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations;

(4) That the Chair, in consultation with the clerk, make all decisions with respect to scheduling;

(5) That the subcommittee determine whether reasonable requests by witnesses to have their travel expenses paid will be granted;

(6) That each party be allowed 10 minutes to make an opening statement if they so desire;

(7) That the research officer prepare a background paper containing relevant information from other jurisdictions as well as a summary of recommendations;

(8) That the committee commence its clause-by-clause consideration of Bill 77 on a date to be determined upon receipt of a recommendation from the subcommittee on committee business;

(9) That the deadline for receipt of amendments be Friday, November 30, 2001;

(10) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of the bill.

The Vice-Chair: Any discussion? Shall I put the question? All those in favour? Any opposed? No. Carried.

BROWNFIELDS STATUTE LAW

AMENDMENT ACT, 2001

LOI DE 2001 MODIFIANT DES LOIS

EN CE QUI CONCERNE

LES FRICHES CONTAMINÉES

Consideration of Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters / Projet de loi 56, Loi visant à encourager la revitalisation des terrains contaminés et apportant d'autres modifications se rapportant à des questions environnementales.

The Vice-Chair: We will now begin clause-by-clause consideration of Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters.

Are there any comments, questions or amendments to any section of the bill and, if so, to which section?

Mr Dave Levac (Brant): Mr Chairman, do you want to review it as each section or just come up with numbers or try to chronologically—

The Vice-Chair: We'll go through the bill, starting with section 1.

Mr Levac: In section 1, I don't have a motion; a question of clarification regarding expenditure of money from the government. I understand that only a minister can

provide that opportunity. The question I have would be regarding the education portion of the tax. There was question by deputation of almost every committee during the hearings that some form of education tax process be addressed by the government other than municipalities. Could that be clarified for me as to whether or not that's amendable?

Mr Morley Kells (Etobicoke-Lakeshore): I don't have any clarification, except that we haven't addressed it. We've heard it and taken it on, but we haven't taken any action.

Mr Levac: You haven't taken any action on that. Thank you for the clarification, Mr Kells. After that, do I understand it's not appropriate for non-ministerial amendments to be presented on expenditure of monies? In other words, I could not come with an amendment that says I'd like the education tax reduced, equal to that of the municipal portion of property tax?

The Vice-Chair: I believe that's correct.

Mr Levac: Thank you.

The Vice-Chair: OK. Section 1. Shall section 1 carry? Any opposed? One opposed. I declare the section carried.

Section 2. Mr Levac?

Mr Levac: I think I've got this right, a motion to be moved in committee.

Subsection 2, section 36 of the bill, sections 168.3.1, the Environmental Protection Act—am I too far?

The Vice-Chair: We'll try to follow an order, if we can, Mr Levac.

Mr Levac: I understand.

Mr Kells: I move that subsection 2(1) of the bill be amended by adding the following definitions to subsection 1(1) of the Environmental Protection Act:

“‘certification date’ means, in respect of a record of site condition, a date determined in accordance with the regulations that is not later than the date the record of site condition is filed in the environmental site registry;

“‘fiduciary’ means an executor, administrator, administrator with the will annexed, trustee, guardian of property or attorney for property, but does not include a trustee in bankruptcy or trustee in bankruptcy representative;

“‘fiduciary representative’ means, with respect to a fiduciary, an officer, director, employee or agent of the fiduciary, or a lawyer, consultant or other adviser of the fiduciary who is acting on behalf of the fiduciary;

“‘municipal representative’ means, with respect to a municipality, an officer, employee or agent of the municipality, or a lawyer, consultant or other adviser of the municipality who is acting on behalf of the municipality;

“‘receiver representative’ means, with respect to a receiver, an officer, director, employee or agent of the receiver, or a lawyer, consultant or other adviser of the receiver who is acting on behalf of the receiver;

“‘secured creditor representative’ means, with respect to a secured creditor, an officer, director, employee or agent of the secured creditor, or a lawyer, consultant or

other adviser of the secured creditor who is acting on behalf of the secured creditor;

“‘trustee in bankruptcy representative’ means, with respect to a trustee in bankruptcy, an officer, director, employee or agent of the trustee in bankruptcy, or a lawyer, consultant or other adviser of the trustee in bankruptcy who is acting on behalf of the trustee in bankruptcy.”

These definitions are not changed at all.

1600

The Vice-Chair: Any discussion? Shall I put the question?

Mr Marchese: Yes, go ahead.

The Vice-Chair: All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that section 2 of the bill be amended by adding the following subsection:

“(1.1) Section 1 of the act, as amended by the Statutes of Ontario, 1992, chapter 1, section 22, 1998, chapter 35, section 1, 2000, chapter 26, schedule F, section 12 and 2001, chapter 9, schedule G, section 5, is further amended by adding the following subsection:

“Health or safety

“(4) For the purposes of this act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons.”

The Vice-Chair: Any discussion? All those in favour? I declare the amendment carried.

Mr Kells: I move that clause 19(5)(a) of the Environmental Protection Act, as set out in subsection 2(3) of the bill, be amended by striking out “within 10 days of taking or being appointed to take possession or control of the property,” and substituting “within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order.”

Mr Levac: Does this clarify the issue from some of the presentations that they wanted to be able to get to the property beforehand?

Mr Kells: Basically the purpose of the provision is to make applicable rules consistent with the federal Bankruptcy and Insolvency Act. I think that's the thrust behind it.

The Vice-Chair: Any discussion?

Mr Marchese: That explains it.

Interjections.

Mr Kells: You give me the script and I'm going to follow it.

The Vice-Chair: Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that subsection 148.1(1) of the Environmental Protection Act, as set out in subsection 2(22) of the bill, be struck out and the following substituted:

“Parts XV.1 and XV.2: Director may cause things to be done

“(1) If, but for part XV.1 or XV.2, the minister, the director or a provincial officer would be authorized by

this act to make an order requiring a person to do a thing, the director may cause the thing to be done.”

The Vice-Chair: Any discussion?

Mr Marchese: This doesn't appear to be legal language.

Mr Kells: It doesn't?

Mr Marchese: It's a strange thing. I've never seen it like this: “an order requiring a person to do a thing.” I think it's odd as a construction. Is this what you say in legal kind of parlance, “to do a thing”?

The Vice-Chair: Would you like some clarification on that?

Mr Marchese: Yes, sure, from anyone.

The Vice-Chair: Please state your name and position for the record.

Mr James Flagal: My name is James Flagal. I'm with the Ministry of the Environment, legal services branch.

Mr Larry Fox: My name is Larry Fox. I'm counsel for the legal services branch, Ministry of the Environment.

Mr Flagal: Mr Marchese asked about using the language “a thing to be done.” Actually in the Environmental Protection Act it does use that exact language, believe it or not.

Mr Marchese: Really?

Mr Flagal: It does track that, and in fact using the language of causing a thing to be done or referring to a thing is something that often occurs in the Environmental Protection Act. It's in order to provide for the broadest scope possible.

Mr Marchese: It's just a very odd construction; “requiring a person to do a thing” seemed to me odd, that's all. I thought I would ask for the purposes of some clarification, but if that's been accepted already in the books and by law, what can I say?

Mr Flagal: Actually using the word “thing” when doing legislative drafting has been done in many statutes.

Mr Marchese: God bless. OK.

The Vice-Chair: Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that subsection 150(2.2) of the Environmental Protection Act, as set out in subsection 2(25) of the bill, be amended by striking out “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy” and substituting “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy or of a receiver representative or trustee in bankruptcy representative.”

The Vice-Chair: Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that section 168.1 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by striking out the definition of “certification date” and by adding the following definitions:

“‘owner’ includes a person prescribed by the regulations; (‘propriétaire’);

“‘risk assessment’ means an assessment of risks prepared in accordance with the regulations by or under the supervision of a qualified person; (‘évaluation des risques’).”

Mr Levac: Can you define “qualified person”?

The Vice-Chair: Who would like to define “qualified person”?

Mr Flagal: “Qualified person” is already defined. It is defined right at the opening of part XV.1 and you can find that on page 11 of Bill 56. Page 10 is where part XV.1 begins. “Qualified person” in the bill—it's section 168.1—“means a person who meets the qualifications prescribed by the regulations.”

Mr Levac: Is that the regulation that prescribes certain groups or individuals?

Mr Flagal: Yes, the regulation-making authority in relation to qualified persons is very broad. It will set out what the qualifications are that a person has to meet, what type of insurance they may carry and which body may regulate these sorts of qualified persons. You can find that, the regulation-making authority in respect to qualified persons, on page 33, clause 176(10)(e). So I'm looking at page 33, clause (e). That's where you'll get a sense of the regulation-making authority for qualified persons.

Mr Levac: Thank you for that.

The Vice-Chair: Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that the definition of “phase two environmental site assessment” in section 168.1 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by striking out “to determine the concentration of one or more contaminants in water, surface soil and subsurface soil” and substituting “to determine the location and concentration of one or more contaminants in the natural environment.”

The Vice-Chair: Any discussion?

Mr Marchese: Mr Kells, I'm assuming the natural environment simply encompasses water, surface soil and subsurface soil, and that's why we did that.

Mr Fox: There's another reason. It also encompasses sediments, and there was a concern that the draft did not deal with sediments and contaminants in sediments. So this expands the reach. Secondly, you'll notice—this is partially in response to certain of the stakeholders—it refers to location. That's an additional element that some of the written submissions dealt with. “Natural environment” is defined in the act. It means “the air, land and water, or any combination or part thereof.” It's very broad.

The Vice-Chair: Any further discussion? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that paragraph 2 of subsection 168.4(2) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“2. The name of the person filing the record of site condition and the names of any other owners of the property.”

The Vice-Chair: Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

1610

Mr Kells: I move that subsection 168.4(6) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“Transition

“(6) If, pursuant to the ministry publication entitled ‘Guideline for Use at Contaminated Sites in Ontario,’ originally dated June 1996 and later revised, a record of site condition in respect of a property was submitted to the ministry before this section came into force, the owner of the property may, despite subsections (1) and (2), file the record of site condition in the registry if both of the following criteria are satisfied:

“1. The ministry has acknowledged in writing receipt of the record of site condition.

“2. The owner of the property files a notice in the registry certifying that the requirements prescribed by the regulations have been complied with.

“Same

“(7) If a record of site condition is filed in the registry under subsection (6),

“(a) the notice referred to in paragraph 2 of subsection (6) shall be deemed to be part of the record of site condition;

“(b) the land use specified in the record of site condition shall be deemed to have been specified as the type of property use under paragraph 3 of subsection (2); and

“(c) the record of site condition shall be deemed to contain,

“(i) a certification under sub-subparagraph 4 i A of subsection (1), if the record of site condition indicates that a background assessment or restoration approach was used,

“(ii) a certification under sub-subparagraph 4 i B of subsection (1), if the record of site condition indicates that a generic full-depth assessment or restoration approach was used,

“(iii) a certification under sub-subparagraph 4 i C of subsection (1), if the record of site condition indicates that a generic stratified assessment or restoration approach was used, or

“(iv) a certification under subparagraph 4 ii of subsection (1), if the record of site condition indicates that a site specific risk assessment approach was used.”

The Vice-Chair: Any discussion?

Mr Marchese: Could I get some clarification as to what this means by way of clarification over the transition.

The Vice-Chair: Who would like to clarify that?

Mr Kells: In one sentence—and then I’m sure the staff will clear it up—the purpose of the motion is to clarify how grandfathering would work.

Mr Marchese: That’s really great. What about another little explanation?

The Vice-Chair: Yes. Who else would like to clarify it?

Mr Flagal: Bill 56, in part XV.1, basically reflects a framework for addressing contaminations of properties that was introduced by the ministry through the contaminated site guideline in 1996. That’s where the record of site condition was introduced as concept. What this provision does is it allows a person to file a record of site condition in the registry that was actually filed with the ministry under the guideline, so long as they can certify a particular thing that’s going to be set out in the regulation.

This is a transitional provision. It allows those records of site condition to be eligible for the protections from orders that are contained in section 168.7. That was already in the bill. Then the other subsections you see added in the motion, subsection (7) in particular, basically provide some transitional matters that had not been dealt with in the original draft of Bill 56 that need to be cleared up; for instance, what happens if there is a different use under 168.7, if there is a change in use and you lose your protection from orders. That also had to be related, as an example, to the old records of site condition. That’s what you see with respect to page 11 of the motions.

Mr Fox: The terminology in the current records of site condition does not use the same words we use in the act. In a way, what you see on page 11 translates words like “background assessment” or “restoration approach” into the concepts that are used in the act now.

The Vice-Chair: Thank you, Mr Fox and Mr Flagal. Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that section 168.6 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by adding the following subsection:

“Restriction

“(1.1) A certificate of property use shall not require an owner of property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.”

The Vice-Chair: Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.7(1) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by striking out “in respect of a contaminant that is on, in or under the property and that was discharged into the natural environment before the certification date” and substituting “in respect of a contaminant that was discharged into the natural environment before the certification date and was on, in or under the property as of the certification date.”

The Vice-Chair: Any discussion?

Mr Levac: I have one—just the way my mind works—regarding “the property.” What we know now is

that with the way leaching takes place, a lot of the contaminants actually end up off the property, on other subsequent properties. Is that accounted for in the legislation?

Mr Flagal: Yes, it is. If you look at subsection 168.7(4), that relates to the situation of if, unfortunately, contaminants are left there and they start migrating off the property. That would be the motion that is on page 15. This also just basically strikes out—it was already addressed in the bill in subsection 168.7(4). This is just a clarification of what subsection 168.7(4) said.

Mr Fox: The present subsection clarifies that the record of site condition is about the property; in a way, the box. This so-called immunity attaches to that box. The language you see here in a way, if you like, shows that the RSC deals with a snapshot of the box as of the certification date in relation to a prior discharge, because the record of site condition will be linked to the certification date.

The Vice-Chair: Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.7(3) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out.

The Vice-Chair: Any discussion?

Mr Marchese: Why are we doing that, Morley? What does it say there?

Mr Kells: It says here that this motion would delete subsection 168.7(3). Are you happy?

The Vice-Chair: Would you like any more clarification, Mr Marchese?

Mr Marchese: Yes, it would be useful to have some clarification.

Mr Flagal: The reason, the clarification, is the motion you just voted on before. Because of the wording change, it is now clear by the wording in subsection 168.7(1) that your protection from orders would never cover new discharges. Because it is clear from the new wording that it is not going to cover new discharges, subsection 168.7(3) is just repetitive. It is not necessary.

Mr Marchese: That was good.

The Vice-Chair: Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

1620

Mr Kells: I move that subsection 168.7(4) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“Contaminants that move to other property

“(4) Subsection (1) does not apply if, after the certification date, any of the contaminant moved from the property to which the record of site condition relates to another property.”

Mr Levac: I need a clarification on this one then. Am I reading this right: that it basically says that subsection (1) doesn't apply—and when I say doesn't apply, that means you can't use subsection (1) after the certification

date when the contaminant moves from the box? And are we only talking about that property, or the subsequent property that it moves to?

Mr Flagal: Remember that subsection 168.7(1) is the protection from orders. When you file a record of site condition, a person gets protection from orders for contaminants that are on the property as of the date and that have already been discharged into the natural environment, meaning that they are in the water or they are in the soil. What subsection (4) says is that your protection from orders disappears if those contaminants move from your property to another property.

Mr Levac: So containment is the responsibility of the—

Mr Flagal: Exactly. So the record of site condition, once filed—hopefully the contamination has been addressed.

Mr Levac: That I understand. OK.

The Vice-Chair: Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.7(6) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“Contravention of certificate of property use, etc.

“(6) Despite subsection (1), an order may be issued under section 157 against a person who contravenes a term or condition of,

“(a) a certificate of property use; or

“(b) an order made under this act in respect of risk management measures described in a record of site condition filed in the registry under subsection 168.4(6).”

The Vice-Chair: Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that section 168.8 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by,

(a) striking out “as a result of the presence of a contaminant that was on, in or under the property before the certification date, there is danger to the health or safety of any person, including danger to any existing water supplies” in subsection (1) and substituting “as a result of the presence of a contaminant that was on, in or under the property as of the certification date, there is danger to the health or safety of any person”; and

(b) striking out “including danger to any existing water supplies” in subsection (2).

Mr Levac: A clarification on just the rationale when you replace the word “before” with “as of.”

The Vice-Chair: Who would like to respond?

Interjection.

Mr Levac: In (a), they use the words that we're taking out, “before the certification date,” substituting it with “as of the certification date,” which tells me that you are eliminating stuff beforehand. Is there a rationale behind that?

Mr Flagal: Yes. The reason you're seeing the change in wording in clause (a) is because of the way that

subsection 168.7(1), which you just voted on about two or three motions ago, was amended. The wording in this 168.8 has to mirror exactly the wording in 168.7. It used to say “before the certification date,” and in the old 168.7, again, there wasn’t that language “as of the certification date.” The reason section 168.7, granting protection from orders, was changed to “as of the certification date” is to say what Mr Fox said; you’re getting protection—it’s like a snapshot—for the contaminants that are in, on or under your property already discharged into the natural environment, water, soil, and that are there as of the certification date, which would likely be as of the date that you tested for them. So that is why clause (a) is there.

Remember, you’re taking away protection from orders at this point. So you’re only getting protection for the contaminants that are there as of the certification date. And now, in this section, which is in relation to “What if we issue this emergency order?” we can only issue these emergency orders in relation to these contaminants that are there as of the certification date. They have to mirror each other. The protection has to mirror exactly what the emergency order says.

Ms Marilyn Mushinski (Scarborough Centre): I think that this should say, “I move that section 168.8(1),” because I was looking to see—there are several different subsections to 168.8. It says, “I move section 168.8 of the” EPA “as set out under subsection 2(35).” I was busy looking to see where the wording is and it is actually under the second part, on page 17, of 168.8(1). Should that not say sub (1)?

The Vice-Chair: I’ll have the legislative counsel respond.

Mr Doug Beecroft: This motion makes a change to subsection (1) and makes another change to subsection 2. So section 168.8 is being changed in two ways. There are changes in sub (1). The second change is in sub (2).

Ms Mushinski: OK. I understand.

The Vice-Chair: Any further discussion? I shall now put the question. All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that section 168.9 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out.

The Vice-Chair: Any discussion?

Ms Mushinski: That’s the same thing as before; 168.9 has several different sections.

Mr Kells: Be that as it may, I just struck it out.

Ms Mushinski: Is the whole thing being struck out?

Mr Kells: This is the short answer. They can give you the long answer. This motion responds to the concerns of several stakeholders who were concerned that section 168.9 imposed registration on title requirements in the case of so-called level 1 risk assessments since such a requirement was not now imposed. Level 1 assessment involves no management measures.

Ms Mushinski: OK. So the whole section is being struck out.

Mr Kells: That’s right.

Ms Mushinski: All right. I certainly recall that. They’ll be happy with that, I would think; except that 168.10 will now become 168.9, right, if the whole thing is being struck out?

Mr Beecroft: After the bill goes through the committee, legislative counsel renumbers it.

Ms Mushinski: It’ll do all those corrections?

Mr Beecroft: You don’t need to worry about the renumbering.

Ms Mushinski: All right. That suits me.

The Vice-Chair: Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Levac: I move that section 168.3.1 of the Environmental Protection Act, as set out in subsection 2(36) of the bill, be struck out and the following substituted:

“Prohibition on certain changes of use

“168.3.1(1) Subject to subsection (2), a person shall not,

“(a) change the use of a property in a manner prescribed by the regulations; or

“(b) construct a building if the building will be used in connection with a change of use that is prohibited by clause (a).

“Exception

“(2) Subsection (1) does not apply if,

“(a) a record of site condition has been filed in the registry in respect of the property under section 168.4; and

“(b) the use specified under paragraph 3 of subsection 168.4(2) in the record of site condition is the use to which the property is changed under clause (1)(a).”

The Vice-Chair: Further discussion?

1630

Mr Marchese: I was just wondering whether Dave has an explanation for that. I was a bit concerned—

Mr Levac: The bill, if enacted, will require the record of site condition for every change of the use of form: industrial, commercial, residential or parkland. No definitions are provided for what is meant by industrial or commercial uses. Some commercial uses can be quite benign and this requirement can, in some cases, be unnecessarily onerous. How will these provisions be applied to mixed uses, such as conversion of the upper stories of a commercial building and a downtown area of apartments? In Brantford, for example, we have a very old downtown and there are brownfield sites designated. If you have multi-use of the building as you construct it, it may have an implication of whether you may or may not be able to use that property, even though quite clearly one portion of that building can be used under the subsection.

Mr Marchese: My concern about that was that the current provision protects a homeowner or a tenant and their children from possible contamination. I wondered whether this complicates that protection that I thought is currently in place. I’m not sure whether you have an opinion on that, but that was my concern.

Mr Kells: I could give you a couple of comments.

Mr Marchese: Or Monsieur Kells, and then, of course, whatever you feel is necessary.

Mr Kells: They can mop up. Basically this bill expresses the policy, before there is a change to a more sensitive land contamination on the site—the current provisions have a lot of flexibility. For example, if the concern is that the provision is too broad, exempting regulations can be made under the EPA, and terms not defined in the act can be defined by regulation.

I think what the honourable member here is doing is responding to situations as he sees them in Brantford.

Mr Marchese: That he sees have been—

Mr Kells: Situations that he sees are existing in Brantford. I don't think the bill can be quite that specific.

The Vice-Chair: Any further discussion? Shall I put the question? All those in favour? Opposed? I declare the amendment lost.

Mr Kells: I move that section 168.11 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out the definitions of “fiduciary”, “fiduciary representative”, “municipal representative”, “receiver representative”, “secured creditor representative” and “trustee in bankruptcy representative.”

The Vice-Chair: Further discussion? I shall now put the vote. All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.14(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “during the period described in subsection (4)” and substituting “in respect of the period described in subsection (4).”

The Vice-Chair: Further discussion? I shall now put the vote. All those in favour? Any opposed? I declare the vote carried.

Mr Levac: I move that subsections 168.14(4) and (5) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be struck out and the following substituted:

“Time period

“(4) Subsection (1) only applies to the municipality or municipal representative in respect of the period that begins on the day the municipality became the owner of the property by virtue of the registration of the notice of vesting and ends on the fifth anniversary of that day.

“Extension of period

“(5) On application by the municipality, the director shall extend the period referred to in subsection (4), before or after it expires and on such terms or conditions as the director considers appropriate, if,

“(a) the municipality intends to remediate the property and, having regard to the cost and any other factors, the municipality requires additional time to prepare for or perform the remediation;

“(b) the municipality is not using the property for a municipal purpose and is actively attempting to sell the property; or

“(c) the director considers an extension appropriate for any other reason.”

The Vice-Chair: Mr Levac, do you want to explain the motion?

Mr Levac: It's liability protection from the Ministry of the Environment on orders for municipalities on properties acquired as a result of tax sales; must be based on the nature and size of the property, and the remediation strategies selected in the period of exemption from liabilities should be negotiated prior to the commencement and should extend over the entire anticipated period of remediation; basically, in a nutshell, trying to provide the municipalities with an opportunity to encapsulate all the problems that they incur during the remediation process.

Mr Marchese: I just wanted to say that I was a bit concerned by the word “shall” in section 5, “On application by the municipality, the director shall...” It doesn't say “may”, it says “shall.” If any of those conditions apply, the director will have to do it. So I was concerned about “shall.” If it had “may,” it would be better. If you dropped (c), it could be supported by me. I don't know what the government has by way of an explanation on this. I found “shall” too prescriptive and (c) is a bit of a complication.

Mr Levac: A comment on process: is a friendly amendment or an amendment to the amendment acceptable? I don't know what the process is, so if I could get that clarified. I don't know whether or not that is permissible. I just need a clarification on that. My understanding is that I don't think it is. I don't know if amendments to the amendments are acceptable. I think that is.

The Vice-Chair: I'll get clarification from the clerk. With the unanimous consent of the committee, you can make an amendment to the amendment.

Mr Levac: I can accept those two.

Mr Marchese: But I wonder if the government is going to defeat it, so it doesn't really matter. We should hear from Mr Kells.

Mr Kells: We are going to be voting against it, but we don't really have too much conflict with it. It's just that we don't feel his amendment does what we are trying to get done in the locking up of timelines. I don't know how good that is, but that's it.

Mr Marchese: They're not going to support it.

The Vice-Chair: Would you like some further explanation, Mr Levac?

Mr Levac: Yes, so that I can take it back so people understand what the—

Mr Fox: There's a government motion on page 23 that deals with the two to five years. So that's the same. The first part of your motion is addressed by that. The difference is on the extension of period. The current provision provides for an extension in the discretion of the director, which is Mr Marchese's point. The difference is that the policy in the bill is that this can be negotiated on a case-by-case basis in relation to what is now a five-year period and that it's not a good idea as a matter of policy to require the director to extend it. That's the distinction. In a way, (c) is the same as the status quo in the bill except it's a weird mixture of a requirement when

one forms an opinion, which to me amounts to a discretion, the same thing. The difference is really (a) and (b).

Mr Levac: If I may continue, so that I'm clear in my head, so when I have to go back to my municipality and describe to them why it got defeated, (a) and (b) are the causes for concern regarding the time frame in which the government wants to proceed in this area. Too much discretion, am I getting that right, would be provided by the director, or not enough?

Mr Flagal: Yes, that's exactly it. With the use of "shall" in subsection (5), it again is not enough; "shall" is binding the director. The current provision, as you know, provides an extension that the director "may" grant. It is discretionary on such terms and conditions.

Going back to the municipality, the reasons that are put there as (a) and (b), I would envision that a municipality, if five years had elapsed and we were in the midst of remediating the property or in the midst of doing a tax sale, would go to the director and submit, "These are the actions that were taken. This is what's happening." From the ministry's point of view, the most important thing of course is that the municipality is there and basically knowing what's going on in the property and has taken control of the property. These can be completely accommodated under the current subsection (4).

Mr Levac: That last sentence probably sold me more to back off than any other reason.

Mr Flagal: The current subsection (4), absolutely the municipality can come to the director after the end of five years and say, "These are the circumstances. We need an extension." That's exactly why we put subsection (4) in there, to allow for flexibility on a case-by-case basis. Five years, automatic; after five years, let's come talk to the director, tell us what's going on with the property.

1640

Mr Levac: Very good. Thank you. I appreciate that.

The Vice-Chair: Thank you for the explanation, Mr Flagal. I shall now put the question. All those in favour?

Mr Levac: I will still vote for it.

The Vice-Chair: Those opposed? I declare the amendment lost.

Mr Kells: I move that subsection 168.14(4) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out "the second anniversary" and substituting "the fifth anniversary."

The Vice-Chair: Any further discussion?

Mr Marchese: Just a question. The municipality is not required to comply with an order if the order did not arise from their gross negligence. While I understand that—and I guess we're trying to protect the city in some way—who's responsible for the cleanup? What happens there? How is the public health protected?

Mr Flagal: What we are talking about are of course orphaned sites, abandoned sites. This is what the ministry has been doing with both secured lenders and municipalities who are often the persons left holding abandoned sites; secured lenders because a debtor has basically gone, municipalities because there's obviously

been a failed tax sale and they take ownership. It is not only in those situations of gross negligence or wilful misconduct where orders can be issued, but also in something called "exceptional circumstances." That's set out in section 168.15 of the current Bill 56. The key thing, the reason why the exceptional circumstances order is there, is exactly to address the situation.

Let us say that the municipality is suddenly left holding a particular piece of property after a failed tax sale and there are a number of drums of waste on the property. Those need to be secured. What the exceptional circumstances order tells the municipality is that they're not responsible for the historical contamination, to go in and clean up the site, but they are responsible to secure it, to make sure there is no danger to health or safety of any person, that there's going to be no danger to the environment. They'll take those immediate actions. The reasons why secured lenders and municipalities in the past were concerned about taking possession of those properties was because they didn't want to become liable for the historical contamination. That's what this clarifies. They are not liable for historical contamination, but if there are exceptional circumstances that you see—168.15—one of those dangers or risks of damage to the environment, then the director can require them to take action.

Mr Marchese: OK, seems reasonable. Thank you.

The Vice-Chair: Any further discussion? I shall now put the question. All those in favour? Any opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.15(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be struck out and the following substituted:

"Restriction if record of site condition

"(1.1) If a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property, no order shall be issued under subsection (1) unless the director has reasonable grounds to believe that, as a result of the presence of a contaminant that was on, in or under the property as of the certification date, there is danger to the health or safety of any person.

"Scope of order

"(2) An order under subsection (1) may only require the municipality, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

"(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property; or

"(b) there is no danger to the health or safety of any person if a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property."

The Vice-Chair: Any discussion? I shall now put the vote. All those in favour? Opposed? I declare the amendment carried.

Mr Levac: I move that section 168.15 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by adding the following subsections:

“Exception

“(5) A municipality is not required to comply with an order under subsection (1) if,

“(a) the order did not arise from the gross negligence or wilful misconduct of the municipality or of a municipal representative; or

“(b) not later than 10 days after being served with the order, or within such longer period as may be specified by the director in the order, the municipality notifies the director that it has abandoned, disposed of or otherwise released its interest in the property to which the order relates.

“Notice under subs. (5)

“(6) Notice under clause (5)(b) must be given in the manner prescribed by the regulations.

“Extent of obligation

“(7) The obligation of a municipality to incur costs to comply with an order under subsection (1) is limited to the value of the property to which the order relates on the date the municipality is served with the order, less the municipality’s reasonable costs of holding or administering the property, unless the order arose from the gross negligence or wilful misconduct of the municipality or a municipal representative.”

The Vice-Chair: Mr Levac, do you wish to comment on that amendment?

Mr Levac: I have to make sure I’m reading from the right notes in the pages one of these days. Municipalities should be offered the same level of protection as receivers, trustees in bankruptcy and fiduciaries when they become the owners of the brownfield site as the result of a tax sale.

Mr Marchese: What section is this again? What subsection?

Mr Levac: Section 168.15, subsection 2(38).

The Vice-Chair: Further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

Mr Kells: I move that section 168.15 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by adding the following subsections:

“When notice of order filed in registry

“(5) The director shall file notice of an order under subsection (1) in the environmental site registry in accordance with the regulations if a record of site condition has been filed in the registry under section 168.4 with respect to the property.

“Notice of compliance with order

“(6) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations.

“Filing of new record of site condition

“(7) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the

order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (6) does not apply until a new record of site condition is filed in accordance with section 168.4.”

The Vice-Chair: Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.16(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the municipality or municipal representative shall give notice” and substituting “the municipality shall give notice.”

The Vice-Chair: Discussion? I shall now put the vote. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.16(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the municipality or municipal representative shall give notice” and substituting “the municipality shall give notice.”

The Vice-Chair: Discussion? All those in favour? Opposed? I declare the amendment carried.

1650

Mr Kells: I move that paragraph 2 of subsection 168.18(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “or” at the end of subparagraph ii, by adding “or” at the end of subparagraph iii and by adding the following subparagraph:

“iv. pay taxes due or collect rents owing with respect to the property.”

The Vice-Chair: Any discussion? I shall now put the vote. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.19(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “during the period described in subsection (2)” and substituting “in respect of the period described in subsection (3).”

The Vice-Chair: Any discussion? I shall now put the vote. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.19(3) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the second anniversary” and substituting “the fifth anniversary.”

The Vice-Chair: Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.21(3) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be struck out and the following substituted:

“Restriction if record of site condition

“(2.1) If a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property, no order shall be issued under

subsection (1) or (2) unless the director has reasonable grounds to believe that, as a result of the presence of a contaminant that was on, in or under the property as of the certification date, there is danger to the health or safety of any person.

“Scope of order

“(3) An order under subsection (1) or (2) may only require the secured creditor, receiver or trustee in bankruptcy, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

“(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property; or

“(b) there is no danger to the health or safety of any person, if a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property.”

The Vice-Chair: Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that section 168.21 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by adding the following subsections:

“When notice of order filed in registry

“(8) The director shall file notice of an order under subsection (1) or (2) in the environmental site registry in accordance with the regulations if a record of site condition has been filed in the registry under section 168.4 with respect to the property.

“Notice of compliance with order

“(9) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations.

“Filing of new record of site condition

“(10) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (9) does not apply until a new record of site condition is filed in accordance with section 168.4.”

The Vice-Chair: Further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.22(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the secured creditor or secured creditor representative shall give notice” and substituting “the secured creditor shall give notice.”

The Vice-Chair: Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.22(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the secured creditor or secured creditor representative shall give notice” and substituting “the secured creditor shall give notice.”

Mr Levac: It just tweaked me when I finally realized what we’re doing here. I kind of saw it all along, but I needed to ask this question. In previous amendments, you’re taking out “or the municipal representative” as well. Can you just give us a rationale why we’re removing the representatives of these people from this legislation?

The Vice-Chair: Who would like to respond to that?

Mr Fox: One of the policy intentions was to replicate in the bill to a very large extent the agreements that the MOE currently enters into with both municipalities, in relation to contaminated land, and secured creditors. On review, after first reading, we realized that the current notice obligations extend only to the principal, like the municipality, not the representative. Secondly, there was a concern about representatives in some areas, particularly lawyers, who have confidentiality obligations, seeing them compromised.

The result is that the municipality or the secured creditor or the fiduciary is responsible for giving notice, if this representative does find something out, but the actual notice obligation would rest only on the principal. It might be the municipality and not its representative in one case, or the lender, and so on. Those are the two rationales.

The Vice-Chair: Any further discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 168.22(3) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “he, she or it shall give notice” and substituting “the receiver or trustee in bankruptcy shall give notice.”

The Vice-Chair: Discussion?

Mr Marchese: Are we making it clear that “he, she or it” is not a receiver or trustee?

Mr Fox: It’s the same explanation as before. What’s key is that the representative is not subject to the regulation, only the fiduciary himself, herself or itself. It relates to the issue to which I responded in relation to Mr Levac’s question.

Mr Marchese: No problem. Thank you.

The Vice-Chair: Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that section 168.25 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the fiduciary or fiduciary representative shall give notice” and substituting “the fiduciary shall give notice.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 2(41) of the bill be struck out.

The Vice-Chair: Discussion?

Mr Colle: Why is it being struck out?

The Vice-Chair: Who would like to respond?

Mr Fox: The paragraph that's being struck out is an amendment that deals with fees. The fees power is done by regulation. There is now a new provision enacted by the red tape bill that allows the Minister of the Environment to establish and require the payment of fees without regulation. Indeed, the current provisions that are in the act would at some time in the future be repealed as a result of the red tape amendment. So because the minister has the power now to establish and make fees without regulation, this is unnecessary and redundant.

Mr Colle: So basically the red tape bills precede this bill?

Mr Fox: I'm not sure of the sequence of introduction, but the amendments that were made to the EPA have been passed. The provision that gives the minister the power is now in force. It's section 179.1, I believe.

Mr Colle: So therefore the Minister of the Environment can set fees without regulation. That's what this says. It's compatible.

1700

Mr Fox: That is not what this says, but there's a general amendment that allows the minister to establish and set fees, and for this reason we don't need to provide for fees in this bill in relation to the new matters that—

Mr Colle: It's redundant, really.

Mr Fox: Yes, it is redundant, sir.

The Vice-Chair: Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Marchese: Mr Chair, can I propose something in procedure?

The Vice-Chair: Go ahead.

Mr Marchese: Can we just go through every government motion without voting on it and wait and vote on all of these at the end, from page 39 on, rather than having to vote on each item? Except I understand that for the Liberal motions you will want to vote on them. I'm proposing that we read them on the record.

The Vice-Chair: Yes, they have to be read into the record.

Interjection: Save the voting.

Mr Marchese: Save the voting procedure until the very end on all of them. I'm sure procedurally it's OK, so as to save some time.

The Vice-Chair: The clerk's advice is we still need to have individual votes, so we might as well proceed as we've been going.

Mr Marchese: We still need what?

The Vice-Chair: We still need individual votes on the amendments.

Mr Marchese: We need them?

The Vice-Chair: Yes.

Mr Marchese: As opposed to voting on all of them at the end? It seems very odd, Mr Arnott.

Mr Kells: I was going to say that was a happy thought you had, though.

The Vice-Chair: So we will keep proceeding.

Mr Kells: I move that clause 176(10)(o) of the Environmental Protection Act, as set out in subsection 2(46) of the bill, be struck out.

The Vice-Chair: Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 2, as amended, carry? All those in favour? Any opposed? I declare section 2, as amended, carried.

Mr Kells: I move that subclause (b)(i) of the definition of "development period" in subsection 442.7(1) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "the cost of rehabilitating the property" and substituting "the cost of any action taken to reduce the concentration of contaminants on, in or under the property."

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the section carried.

Mr Kells: I move that clause (b) of the definition of "eligible property" in subsection 442.7(1) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "paragraph 4 of subsection 168.4(1) of the Environmental Protection Act" and substituting "subparagraph 4 i of subsection 168.4(1) of the Environmental Protection Act."

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subclause (c)(i) of the definition of "rehabilitation period" in subsection 442.7(1) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "the cost of rehabilitating the property" and substituting "the cost of any action taken to reduce the concentration of contaminants on, in or under the property."

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Levac: I move that subsection 442.7(3) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by,

(a) adding "Subject to subsection (6)" at the beginning; and

(b) striking out "the taxes levied on eligible property for municipal purposes" and substituting "the taxes levied on eligible property for municipal and school purposes."

The Vice-Chair: Discussion? Do you want to explain that?

Mr Levac: I could probably guess that there's a better explanation coming shortly because—

Mr Kells: No. All you're going to get from me is that we agree.

Mr Levac: The rationale is probably provided by the government side because they're going to agree. They've submitted another—

Interjection.

Mr Levac: Wait a minute. They're going to agree, but maybe under their wording.

Mr Marchese: I have a question. Does this mean that the municipality would make the decision for the school board with respect to issues of tax levies? Does that take the responsibility or the power away from the school boards to do that? If so, that would be a problem.

Mr Levac: That's not the purpose. The purpose is to have the government side of their collection of the property tax, of the school tax portion—to use some of their portion. I'm probably going to be told that we can't do it but they can.

The Vice-Chair: Further discussion? Do you wish to add anything?

Mr Marchese: Let's hear it, Morley.

Mr Kells: We are on his side, so we'll get this one.

Mr Ted Arnott (Waterloo-Wellington): I'd just like a ruling from you if this amendment is in order or not, given the fact that it's coming from the opposition.

Mr Kells: It had better be in order.

The Vice-Chair: Yes. This amendment does not impose a tax so it can be proposed by the opposition side. The opposition party is able to move this and it is in order.

Mr Arnott: Thank you.

The Vice-Chair: Further discussion? All those in favour? Opposed? I declare the amendment carried.

Mr Marchese: Dave, that's big.

Mr Levac: I move that subsection 442.7(5) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "a bylaw under subsection (2)" in the portion before paragraph 1 and substituting "a bylaw under subsection (2) or (3)." I think that's housecleaning more than anything.

Ms Mushinski: That's 45?

The Vice-Chair: That's page 45.

Mr Kells: Page 44 was the same as theirs.

The Vice-Chair: Page 44 was the same and it was not moved. Any discussion on this amendment?

Mr Kells: They win again.

The Vice-Chair: I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Levac: I move that subsection 442.7(6) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "A bylaw made under subsection (2)" and substituting "A bylaw made under subsection (2) or (3)."

The Vice-Chair: Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

1710

Mr Levac: I move that subsection 442.7(17) of the Municipal Act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"Sharing costs, if bylaw under subs. (3)

"(17) If a bylaw is passed under subsection (3) by the council of a single-tier municipality, the amount of the tax assistance shall be shared by the municipality and the school boards that share in the revenues from the taxes on the property affected by the bylaw in the same proportion that tax assistance is provided under the bylaw.

"Same

"(17.1) If a bylaw is passed under subsection (3) by the council of a lower-tier municipality and the bylaw applies to the upper-tier municipality, the amount of the tax assistance shall be shared by the municipalities and the school boards that share in the revenue from the taxes on the property affected by the bylaw in the same proportion that tax assistance is provided under the bylaw.

"Same

"(17.2) If a bylaw is passed under subsection (3) by the council of a lower-tier municipality and the bylaw does not apply to the upper-tier municipality, the amount of the tax assistance shall be shared by the lower-tier municipality and the school boards that share in the revenue from the taxes on the property affected by the bylaw in the same proportion that the tax assistance is provided under the bylaw, but the taxes for upper-tier purposes shall not be affected.

"Same

"(17.3) Despite subsections (17), (17.1) and (17.2), if a bylaw made under subsection (3) does not apply to taxes for school purposes, the amount of the tax assistance does not affect the amount of taxes for school purposes to be paid to the school boards."

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Levac: I move that subsection 442.7(22) of the Municipal Act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"Same

"(22) Subsections (4), (5), (6) and (7) apply, with necessary modifications, to the amendment of a bylaw passed under subsection (2) or (3), and subsections (4) and (7) apply, with necessary modifications, to the repeal of a bylaw passed under subsection (2) or (3)."

The Vice-Chair: Discussion?

Mr Marchese: The government likes it too, so OK.

The Vice-Chair: I shall now put the question. All those in favour? Those opposed? I declare the amendment carried.

Mr Levac: I move that subsection 17.1(1) of the Municipal Tax Sales Act, as set out in subsection 4(4) of the bill, be struck out and the following substituted:

"Power of entry"—

The Vice-Chair: Excuse me. Sorry.

Mr Levac: Did we miss one?

The Vice-Chair: Excuse me for just a second.

Mr Levac: The government motion: is it different?

Mr Kells: We just dropped 52.

Mr Levac: Right. That's what I thought.

The Vice-Chair: That's still section 3.

Mr Levac: We're moving to section 4? So you have to—

The Vice-Chair: Sorry. You're doing page 52 right now, correct?

Mr Levac: Page 53. Which means we have to vote on section 3?

The Vice-Chair: That's right. We have to move—

Mr Levac: My apologies, Mr Chairman.

The Vice-Chair: Should section 3, as amended, carry? Any opposed? I declare section 3 carried.

Mr Levac: On section 3, Mr Chairman, I did have a note to make a comment. I understand after my discussion with the clerk and a few other people—this particular comment is based on whether the government acted on some of the recommendations that some of the committees and deputation made. That is the creation of a fund to allow municipalities to draw from, as in some of the states. Those deputations made reference to a lot of the American states where they have a fund that's drawn from in a partnership with government agency, ministry and/or private sector and municipalities. I don't know if there's comment to be made on it. I would offer it to the government side if they did contemplate that, or whether or not that was received as information versus an amendment to the bill in terms of its spending.

The Vice-Chair: Mr Kells, do you want to comment on that?

Mr Kells: I'd have to bow.

The Vice-Chair: Would you like to comment? Could you state your name, please?

Ms Katherine Beattie: My name is Katherine Beattie, Ministry of Finance. We offered these amendments in response to requests from stakeholders. We did not contemplate the development of a fund at this time. We considered that the number and size and state of contamination of brownfields in the province is currently unknown. It was therefore impossible to develop a fund that would be meaningful at this time.

Mr Levac: In that discussion from the next step that would take place—and thank you for your indulgence, Mr Chairman—I understand that there's now going to be documentation of the brownfields in the province of Ontario. Subsequent to that, would there be any discussion given to reintroducing that particular idea?

Ms Beattie: I'm afraid I'm not in a position to answer that question.

Mr Levac: Whether or not the discussions took place within the Ministry of Finance, I guess.

Mr Kells: You could put it in a suggestion box, but I'm not sure what would happen.

Mr Levac: Thank you, Mr Kells.

Mr Marchese: Just a question. Your name again?

Ms Beattie: It's Katherine Beattie.

Mr Marchese: You said, "We don't know the number of sites, therefore we can't really establish a fund." If we had knowledge of how many sites there would be, then it would be easier to establish a fund? Is that the case? Is that what you're saying?

Ms Beattie: I think it's really important that we understand the financial risk to the province. Yes, it would be easier, at the staff level, to provide information to decision-makers about the kind of fund that would be required. Staff were unable to do that.

Mr Marchese: In the US, do they have knowledge of all the contaminated sites that they have?

Mr Levac: I'll give you examples if I may, Mr Chairman, through this discussion. Of the examples that I'm aware of, you'll have some that do and some that don't. One of the states I looked at did have a brownfield registry throughout municipalities that required them to give the state the information so that subsequently this fund could be funded appropriately. In other states, there is no registry and there is no actual legacy of how many brownfields there are.

With that information, I'm saying that the discussion has taken place at the ministry level, from what I'm hearing, and that at this time the ministry has decided not to create this fund that was referred to by many of the committee members. Or am I hearing that it did not get to that level—

Ms Beattie: I wasn't present at any of those discussions.

Mr Levac: What I'm saying is that during the deputations, several of the people who came to make presentations to the government talked about the creation of a fund. What I'm trying to discern is whether it went any further—anyone on the government side, on the ministry staff, at any ministry—than just simply the people sitting at the table and saying we should create a fund. If anyone can help clarify that, I would appreciate it.

Mr Kells: I'm not at liberty to reveal all of the deliberations behind closed doors. Very seriously, I don't know the answer. I suspect that if the stakeholders gave evidence and expressed their concerns, it would be taken in for consideration. Obviously at this time it hasn't impacted enough on us to be in the bill, but I appreciate your opinion as you expressed it.

The Vice-Chair: Mr Levac, did you wish to move an amendment on section 4?

Mr Levac: Yes. Thank you for your indulgence, Mr Chairman. I appreciate that.

I move that subsection 17.1(1) of the Municipal Tax Sales Act, as set out in subsection 4(4) of the bill, be struck out and the following substituted:

"Power of entry

"(1) For the purpose of assisting in determining whether it is desirable to acquire land that is offered for public sale under subsection 9(2), an inspector may, after the end of the one-year period mentioned in subsection 9(1), enter on and inspect the land."

I do have rationale for that if it's required.

The Vice-Chair: Discussion?

Mr Marchese: I'd like to hear the objections of the government, if they have any.

1720

Mr Kells: I'd be happy to. I just happen to have them here. The above substitution seeks to extend the one-year

environmental investigation period indefinitely. There's no logical reason as known as to why municipalities cannot exercise their power to enter on to land within the one year after the failed tax sale, and given the unlimited nature of the power of entry for inspection purposes, municipalities may find that they will be expected by the public to inspect all lands that are subject to a failed tax sale. I hope that's—

Mr Levac: I can understand that. The logic for offering that is because subsequent to some of the tax sale of lands, there are people who have been literally squatting and walking in and starting to put other things on to that property that may require them to have that change during that time. The idea is to give the municipality the authority and the ability to inspect that property at will, because there could be subsequently other materials brought on to that property even before you ask the Ministry of the Environment to come in and take a look at it. The rationale, as well as I appreciate what's being said on a very linear way, doesn't give the municipalities what they were looking for in the presentation: that if they're going to buy this piece of property for sale, they want to make sure that what they're going to be offering is subsequently flippable.

Mr Marchese: Do the ministry staff have anything different to add?

Mr Mario Faieta: Not really.

The Vice-Chair: Would you please state your name for the record.

Mr Faieta: It's Mario Faieta from the Ministry of Municipal Affairs and Housing. The one-year period and this power of entry were chosen specifically for the purposes of enabling a municipality to make an informed decision with respect to whether it wishes to acquire a property. That's the purpose.

The Vice-Chair: I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

Section 4 having been completed, I shall put the question. Shall section 4 carry? All those in favour? Opposed? I declare section 4 carried.

Mr Kells: I move that subsection 5(1) of the bill be amended by adding the following definitions to section 1 of the Ontario Water Resources Act:

“‘fiduciary’ means an executor, administrator, administrator with the will annexed, trustee, guardian of property or attorney for property, but does not include a trustee in bankruptcy or trustee in bankruptcy representative; (‘représentant fiduciaire’)

“‘fiduciary representative’ means, with respect to a fiduciary, an officer, director, employee or agent of the fiduciary, or a lawyer, consultant or other adviser of the fiduciary who is acting on behalf of the fiduciary; (‘représentant d’un représentant fiduciaire’)

“‘municipal representative’ means, with respect to a municipality, an officer, employee or agent of the municipality, or a lawyer, consultant or other adviser of the municipality who is acting on behalf of the municipality; (‘représentant municipal’)

“‘receiver representative’ means, with respect to a receiver, an officer, director, employee or agent of the receiver, or a lawyer, consultant or other adviser of the receiver who is acting on behalf of the receiver; (‘représentant d’un séquestre’)

“‘secured creditor representative’ means, with respect to a secured creditor, an officer, director, employee or agent of the secured creditor, or a lawyer, consultant or other adviser of the secured creditor who is acting on behalf of the secured creditor; (‘représentant d’un créancier garanti’)

“‘trustee in bankruptcy representative’ means, with respect to a trustee in bankruptcy, an officer, director, employee or agent of the trustee in bankruptcy, or a lawyer, consultant or other adviser of the trustee in bankruptcy who is acting on behalf of the trustee in bankruptcy. (‘représentant d’un syndic de faillite’)

I swear I read that before once.

Mr Levac: Not to try to pick hairs here, but this definition seems to counter the one that we were taking things out of in the previous bill. I don't know why we need to put those in. So if you can help me with that, I would appreciate it.

Mr Flagal: Those definitions you see there are going to go at the beginning of the act. The reason for that is, when you're giving protection from orders, which is not the notice provisions that we were dealing with before where we took out “representative,” we give protection from orders not only to, let's say, the municipality but to a municipal representative. When we are saying in prescribed circumstances, which is going to be addressed in the regulations, there has to be notice given to the ministry if the municipality learns of something, then that's only placed on the municipality, but you still need the definition of “municipal representative” there, because when you're giving protection from orders, you're giving it not only to the municipality but to the municipal representative. That's why you need both “representative” and “municipality” in there; “fiduciary” and “fiduciary representative.” They are two very different provisions.

Mr Levac: I just wanted to save Mr Kells all that reading.

The Vice-Chair: Further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that section 5 of the bill be amended by adding the following subsection:

“(1.1) Section 1 of the act, as amended by the Statutes of Ontario, 1992, chapter 23, section 39, 1993, chapter 23, section 73, 1998, chapter 35, section 44, 2000, chapter 22, section 2, 2000, chapter 26, schedule E, section 5, 2000, chapter 26, schedule F, section 13 and 2001, chapter 9, schedule G, section 6, is further amended by adding the following subsection:

“Health or safety

“(2) For the purposes of this act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that clause 13(5)(a) of the Ontario Water Resources Act, as set out in subsection 5(2) of the bill, be amended by striking out “within 10 days of taking or being appointed to take possession or control of the property,” and substituting “within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 82.1(1) of the Ontario Water Resources Act, as set out in subsection 5(4) of the bill, be struck out and the following substituted:

“Ss. 89.1 to 89.14: Director may cause things to be done

“(1) If, but for sections 89.1 to 89.14, the director or a provincial officer would be authorized by this act to make a direction or order requiring a person to do a thing, the director may cause the thing to be done.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 84 (2.2) of the Ontario Water Resources Act, as set out in subsection 5(7) of the bill, be amended by striking out “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy” and substituting “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy or of a receiver representative or trustee in bankruptcy representative.”

The Vice-Chair: Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.2(1) of the Ontario Water Resources Act, as set out in subsection 5(11) of the bill, be amended by striking out “in respect of material that was discharged into the natural environment before the certification date and that is on, in or under the property” and substituting “in respect of material that was discharged into the natural environment before the certification date and was on, in or under the property as of the certification date.”

The Vice-Chair: Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.2(3) of the Ontario Water Resources Act, as set out in subsection 5(11) of the bill, be struck out.

The Vice-Chair: Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.2(4) of the Ontario Water Resources Act, as set out in subsection

5(11) of the bill, be struck out and the following substituted:

“Material that moves to other property

“(4) Subsection (1) does not apply if, after the certification date, any of the material moved from the property to which the record of site condition relates to another property.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

1730

Mr Kells: I move that section 89.3 of the Ontario Water Resources Act, as set out in subsection 5(11) of the bill be amended by,

(a) striking out “as a result of the presence of material that was on, in or under the property before the certification date, there is danger to the health or safety of any person, including danger to any existing water supplies” in subsection (1) and substituting “as a result of the presence of material that was on, in or under the property as of the certification date, there is danger to the health or safety of any person”; and

(b) striking out “including danger to any existing water supplies” in subsection (2).

Mr Levac: I’ve noticed this quite a few times and I just want to make sure I have a clarification. When we strike out (b), “including danger to any existing water supplies” in subsection (2), are we then protecting the water supply by doing so?

The Vice-Chair: Who would like to respond?

Mr Fox: This related to the interpretation provision that was dealt with by the motion that you see on page 56. By virtue of that motion, if there’s a danger to existing water supplies that are to be used by human consumption, that means in law it’s going to be a danger to the health and safety of persons. Once we have an interpretation provision earlier in the act, in the new subsection (2), the words are unnecessary in the subsection to which we’re referring because of this interpretation provision.

Mr Levac: Very good. I just wanted to make sure the people understood that we weren’t eliminating protecting our water, we were actually encouraging the protection of our water.

The Vice-Chair: Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that section 89.4 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out the definitions of “fiduciary,” “fiduciary representative,” “municipal representative,” “receiver representative,” “secured creditor representative,” and “trustee in bankruptcy representative” and by adding the following definitions:

“‘certification’ date has the same meaning as in the Environmental Protection Act; (‘date d’attestation’)

“‘Registry’ means the Environmental Site Registry established under Part XV.1 of the Environmental Protection Act. (‘Registre’).”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.7(1) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “during the period described in subsection (3)” and substituting “in respect of the period described in subsection (3).”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Levac: I move that subsections 89.7(3) and (4) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be struck out and the following substituted:

“Time period

“(3) Subsection (1) only applies to the municipality or municipal representative in respect of the period that begins on the day the municipality became the owner of the property by virtue of the registration of the notice of vesting and ends on the fifth anniversary of that day.

“Extension of period

“(4) On application by the municipality, the director shall extend the period referred to in subsection (3), before or after it expires and on such terms or conditions as the director considers appropriate if,

“(a) the municipality intends to remediate the property and, having regard to the cost and any other factors, the municipality requires additional time to prepare for or perform the remediation;

“(b) the municipality is not using the property for a municipal purpose and is actively attempting to sell the property; or

“(c) the director considers an extension appropriate for any other reason.”

Mr Marchese: Explanation?

Mr Levac: In terms of needing the explanation, same one.

The Vice-Chair: Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

Mr Kells: I move that subsection 89.7(3) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “the second anniversary” and substituting “the fifth anniversary.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.8(2) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be struck out and the following substituted:

“Restriction if record of site condition

“(1.1) If a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property, no order shall be issued under subsection (1) unless the director has reasonable grounds to believe that, as a result of the presence of material that was on, in or under the property

as of the certification date, there is danger to the health or safety of any person.

“Scope of order

“(2) An order under subsection (1) may only require the municipality, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

“(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property; or

“(b) there is no danger to the health or safety of any person, if a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Levac: I move that section 89.8 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by adding the following subsections:

“Exception

“(5) A municipality is not required to comply with an order under subsection (1) if,

“(a) the order did not arise from the gross negligence or wilful misconduct of the municipality or of a municipal representative; or

“(b) not later than 10 days after being served with the order, or within such longer period as may be specified by the director in the order, the municipality notifies the director that it has abandoned, disposed of or otherwise released its interest in the property to which the order relates.

“Notice under subs. (5)

“(6) Notice under clause (5)(b) must be given in the manner prescribed by the regulations referred to in subsection 168.15(6) of the Environmental Protection Act.

“Extent of obligation

“(7) The obligation of a municipality to incur costs to comply with an order under subsection (1) is limited to the value of the property to which the order relates on the date the municipality is served with the order, less the municipality’s reasonable costs of holding or administering the property, unless the order arose from the gross negligence or wilful misconduct of the municipality or a municipal representative.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? All those opposed? I declare the amendment lost.

Mr Kells: I move that section 89.8 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by adding the following subsections:

“When notice of order filed in registry

“(5) The director shall file notice of an order under subsection (1) in the registry in accordance with the regulations referred to in subsection 168.8(5) of the Environmental Protection Act if a record of site condition

has been filed in the registry under section 168.4 of that act with respect to the property.

“Notice of compliance with order

“(6) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations referred to in subsection 168.8(6) of the Environmental Protection Act.

“Filing of new record of site condition

“(7) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (6) does not apply until a new record of site condition is filed in accordance with section 168.4 of the Environmental Protection Act.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that paragraph 2 of subsection 89.9(2) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “or” at the end of subparagraph ii, by adding “or” at the end of subparagraph iii and by adding the following subparagraph:

“iv. pay taxes due or collect rents owing with respect to the property.”

1740

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.10(1) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “during the period described in subsection (3)” and substituting “in respect of the period described in subsection (3).”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.10(3) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “the second anniversary” and substituting “the fifth anniversary.” Happy birthday.

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that subsection 89.12(3) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be struck out and the following substituted:

“Restriction if record of site condition

“(2.1) If a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property, no order shall be issued under subsection (1) or (2) unless the director

has reasonable grounds to believe that, as a result of the presence of material that was on, in or under the property as of the certification date, there is danger to the health or safety of any person.

“Scope of order

“(3) An order under subsection (1) or (2) may only require the secured creditor, receiver or trustee in bankruptcy, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

“(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property; or

“(b) there is no danger to the health or safety of any person, if a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that section 89.12 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by adding the following subsections:

“When notice of order filed in registry

“(8) The director shall file notice of an order under subsection (1) or (2) in the registry in accordance with the regulations referred to in subsection 168.8(5) of the Environmental Protection Act if a record of site condition has been filed in the registry under section 168.4 of that act with respect to the property.

“Notice of compliance with order

“(9) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations referred to in subsection 168.8(6) of the Environmental Protection Act.

“Filing of new record of site condition

“(10) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (9) does not apply until a new record of site condition is filed in accordance with section 168.4 of the Environmental Protection Act.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 5, as amended, carry? I declare section 5, as amended, carried.

Mr Kells: I move that section 6 of the bill be amended by adding the following subsection:

“(1.1) Section 1 of the act, as amended by the Statutes of Ontario, 1993, chapter 27, schedule, 1998, chapter 35, section 77 and 2000, chapter 26, schedule F, section 14, is further amended by adding the following subsection:

“Health or safety

“(3) For the purposes of this act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons.”

The Vice-Chair: Discussion? No? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that clause 31(5)(a) of the Pesticides Act, as set out in subsection 6(2) of the bill, be amended by striking out “within 10 days of taking or being appointed to take possession or control of the property,” and substituting “within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order.”

The Vice-Chair: Discussion? I shall put the question. All those in favour? Opposed? I declare the amendment carried.

Mr Kells: I move that paragraph 2 of subsection 31.4(2) of the Pesticides Act, as set out in subsection 6(2) of the bill, be amended by striking out “or” at the end of subparagraph ii, by adding “or” at the end of subparagraph iii and by adding the following subparagraph:

“iv. pay taxes due or collect rents owing with respect to the property.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 6, as amended, carry? I declare section 6, as amended, carried.

Mr Levac: I move that the definition of “community improvement project area” in subsection 28(1) of the Planning Act, as set out in subsection 7(2) of the bill, be amended by striking out “or for any other environmental, social or community economic development reason” at the end and substituting “or for any other reason.”

The proposed amendment to the Planning Act regarding community improvement plans is appreciated by the municipality of Brant, and Brantford. However, the definition of the community improvement project area should retain the wording “or for any other reason” in conjunction with the new wording of Bill 56. It should be kept in mind that community improvement area plans can be, and are, used by municipalities for a wide variety of purposes including downtown renewal, neighbourhood revitalization, in addition to brownfield revitalization and redevelopment. This flexibility should be maintained and therefore we suggest respectfully that it should be for any other reason.

The Vice-Chair: Discussion?

Mr Marchese: I’m going to support Dave.

The Vice-Chair: I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

Mr Kells: If I may, Mr Chair, the government position is that they’ve asked for examples of what could not be covered by the broader and meaningful phrase “or for any other environmental, social or community economic development reason” and they, the government, hasn’t

received anything that says that the current wording can’t do what we want it to do. I appreciate where you’re coming from.

Mr Levac: In their submission, Brantford submitted that. Were they asked or did they come back? I don’t know that, in fact. If they did come back with it, I’d like to know if that was—

Mr Kells: I can’t enlighten you, but possibly staff could be helpful.

Mr Levac: Was there any response back?

Ms Thelma Gee: Actually, we didn’t ask Brantford. I did, in passing, talk to the city of Hamilton and asked if, in the new phrase that we were proposing—“environmental, social or community economic development”—in conjunction with the existing wording in the Planning Act, what type of project could not be captured by this wording, because the new phrase was intended to expand the reasons for which community economic activities could take place. We wanted to give meaning to the phrase “or for any other reason.” That’s where the current wording comes in.

Mr Levac: I appreciate that. I’ll take that back to my community and have that explained.

Mr Marchese: They had another comment to make. We might as well hear it.

Mr Faieta: Just so you understand, that phraseology was taken from a court decision not so long ago. The city of Toronto’s community improvement plan was challenged on the basis that those types of reasons—environmental, social, whatever—weren’t encompassed within the phraseology “or for any other reason.” This wording here makes it clear that a community improvement plan can do those types of things.

Mr Levac: It includes those.

Mr Faieta: Yes. It’s really trying to be expansive rather than restrictive, and to provide clarity.

Mr Kells: I move that subsections 7(4) and (5) of the bill be struck out and the following substituted:

“(4) Subsection 28(4) of the act, as re-enacted by the Statutes of Ontario, 1994, chapter 23, section 20 and amended by 1996, chapter 4, section 18, is repealed and the following substituted:

“Community improvement plan

“(4) When a bylaw has been passed under subsection (2), the council may provide for the preparation of a plan suitable for adoption as a community improvement plan for the community improvement project area and the plan may be adopted and come into effect in accordance with subsections (4.1) to (4.4).

“Same

“(4.1) If a community improvement plan includes provisions that authorize the exercise of any power or authority under subsections (6) or (7), or under section 442.7 of the Municipal Act, that would be prohibited under subsection 111(1) of the Municipal Act, subsections 17(15) to (22) and (31) to (50) apply, with necessary modifications, in respect of the community improvement plan and any amendments to it.

“Same

“(4.2) If a community improvement plan does not include provisions that authorize the exercise of any power or authority under subsection (6) or (7), or under section 442.7 of the Municipal Act, that would be prohibited under subsection 111(1) of the Municipal Act, subsections 17(15) to (30), (44) to (47) and (49) and (50) apply, with necessary modifications, in respect of the community improvement plan and any amendments to it.

“Same

“(4.3) The minister shall be deemed to be the approval authority for the purpose of subsections (4.1) and (4.2).

“Same

“(4.4) Despite subsections (4.1) and (4.2), if an official plan contains provisions describing the alternative measures mentioned in subsection 17(18), subsections 17(15), (16) and (17) do not apply in respect of the community improvement plan and any amendments to it, if the measures are complied with.”

The Vice-Chair: Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 7, as amended, carry? Carried.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

Shall the title of the bill carry? Carried.

Mr Levac: I will be very brief and I'll make this point on behalf of my municipality. The city of Brantford urges the province to develop a policy whereby it will remove provincial liens on properties acquired by municipalities as the result of tax sales and where a municipality has a remediation strategy in place. It is not being addressed. The city of Brantford wants me to put that forward. The removal of provincial liens has not taken place as originally indicated in committee presentation. Quite frankly, it is not good enough that the municipalities get stuck with those liens holding in place. We do encourage the province to come up with some type of mechanism to do that.

The Vice-Chair: Thank you for that point, Mr Levac.

Shall Bill 56, as amended, carry? Carried.

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

With that, it being five to six and a vote being called, I declare this meeting adjourned.

The committee adjourned at 1754.

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Mr Rosario Marchese (Trinity-Spadina ND)

Also taking part / Autres participants et participantes

Ms Katherine Beattie, economic specialist,
property tax policy branch, Ministry of Finance

Mr Mario Faieta, counsel, planning section,
Ministry of Municipal Affairs and Housing

Mr James Flagal, counsel, legal services branch,
Ministry of the Environment

Mr Larry Fox, counsel, legal services branch,
Ministry of the Environment

Ms Thelma Gee, planning policy section,
Ministry of Municipal Affairs and Housing

Clerk pro tem / Greffier par intérim

Mr Douglas Arnott

Staff / Personnel

Mr Doug Beecroft, legislative counsel