



# **STANDING COMMITTEE ON THE ECONOMY**

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## STANDING COMMITTEE ON THE ECONOMY

Mr. Darryl Hickie, Chair  
Prince Albert Carlton

Mr. Ron Harper, Deputy Chair  
Regina Northeast

Hon. Dustin Duncan  
Weyburn-Big Muddy

Ms. Laura Ross  
Regina Qu'Appelle Valley

Mr. Lyle Stewart  
Thunder Creek

Mr. Len Taylor  
The Battlefords

Ms. Nadine Wilson  
Saskatchewan Rivers

[The committee met at 19:00.]

**The Chair:** — Well welcome everybody. Seeing as though it's now very close or at 7 o'clock, the chosen hour for the committee to begin its meeting tonight, I will call the committee to order. Good evening, everyone, and to those of you at home who are watching as well. I'd like to welcome you all to the deliberations of the Standing Committee on the Economy.

We seem to have a very busy agenda this evening, considering a number of Bills before this committee tonight. Before we begin though, I'll take a minute just to introduce the members. Tonight we have from the opposition side, Mr. Taylor. We have Ms. Morin is substituting for Mr. Harper. We have Mr. Vermette and Mr. Forbes as well. Thanks for that. On the government side we have Mr. Duncan, Mr. Stewart, Ms. Wilson, and Ms. Ross.

**Bill No. 131 — *The Conservation Easements Amendment Act, 2009***

**Clause 1**

**The Chair:** — Committee members, the Assembly has referred Bill No. 131, *The Conservation Easements Amendment Act, 2009* to our committee. This is what we will now be considering and by practice the committee normally holds a general debate during consideration of clause 1. Before we begin, Ms. Minister, would you please introduce your officials to the committee.

**Hon. Ms. Heppner:** — Thank you, Mr. Chair. To my right is Lin Gallagher, assistant deputy minister, resource management and compliance branch. To my left, Todd Olexson, acting director, lands branch. Behind me is Mark Wittrup, assistant deputy minister, environmental protection and audit division. There are quite a few other officials with me this evening as well, and if they are required to come up to the mike, they will identify themselves before speaking.

**The Chair:** — Thank you very much for that, Ms. Minister. That does in fact solve a logistics issue. As you mentioned, when you do come to the mike for the first time, please introduce yourself to the committee for Hansard.

Okay, we will now consider clause 1, short title, *The Conservation Easements Amendment Act, 2009*. Ms. Minister, if you have any opening remarks, you may proceed with those right now.

**Hon. Ms. Heppner:** — Thank you. The Act before us today will create a new class of easements, a Crown conservation easement that the Crown will grant to itself prior to sale of particular lands. Instead of relying on Crown ownership as a primary means of managing ecological values, this new approach relies on additional tools such as conservation easements that allow for land to be sold subject to provisions that will protect important values.

To successfully administer a growing number of conservation easements covering thousands of hectares of land, more effective and efficient compliance and enforcement options are

required under *The Conservation Easements Act*. Some of those new and expanded compliance options that ensure obligations contained in the easement are followed include stop-work orders, seizing equipment, court ordered injunctions, and court levied fines for breaching terms of a Crown easement.

Conservation easements are agreements between a conservation agency or government authority and a landowner that secure and protect conservation values on private lands even if the land changes ownership. Landowners continue to own and manage the land, agreeing to preserve natural habitat, retain elements of historic or archaeological significance, or protect air, water, and soil quality as defined within the agreement.

And we'll open the floor to questions.

**The Chair:** — Well thank you, Ms. Minister. I guess we begin with the questions from Mr. Forbes.

**Mr. Forbes:** — Yes. I have a couple and we can see if more come forward but I do have some specific ones as we go through the different sections. But right off the bat I'm concerned about this as an opportunity to maybe put into this Act the policy around no net loss. The fact that as you do take things out of or move them from, in this case, wildlife habitat protected areas, I assume that — and I guess it could be others — but there could be a net loss. Or how will you monitor the impact? Because this Bill's tied very closely to the other Act so I'm assuming that there's some latitude to talk about that one and this one. But the no net loss policy . . .

**The Chair:** — Sorry, may I interrupt you?

**Mr. Forbes:** — Yes.

**The Chair:** — I'll just let the minister decide, I guess, if there's a way to . . . these Acts are linked or not. As in other committee members, committee time, the minister can inform the committee how she wishes to proceed in these questions. And I'm sure there's some latitude given in both the questions and the answers then if the door's opened up.

**Hon. Ms. Heppner:** — Thank you for the question. The question itself actually would apply to *The Wildlife Habitat Protection Act*. This is a companion piece to that as *The Wildlife Habitat Protection Act* that is currently still before the House would allow for the sale of some Crown land. So I'm thinking a lot of those questions could probably be answered when that Bill comes before committee.

On the no net loss as it pertains to this piece of legislation, I would say that our view of this is that there would be a no net loss on protection because of the conservation easement, the, I guess, tightening up of the rules around that, the fines and penalties and the expectations in this particular conservation easement, as opposed to easements that existed in the past, that we are anticipating no net loss on protection.

**Mr. Forbes:** — Sure, and I appreciate the answer. But I'm curious: is there or will there be a registry or some sort of keeping track of how many conservation easements are out there, what type? Because it sounds like when you're doing this

evaluation of all lands, Crown lands, some will be moved forward through Crown . . . these easements. So you'll have a sense of how many acres are protected through these easements, and then you'll be tracking whether they're stable and nothing is happening, no ranchers are selling the land or trying to remove the easements. Who knows? If we see a real move 10, 20, or 40 years from now where all of a sudden the easements are starting to disappear, is there a way for us to track what's happening with easements?

**Hon. Ms. Heppner:** — The conservation easements as proposed will be kept track in two ways. One would be internally within the ministry, and the other would be registered with land titles. The conservation easement does not go away if and when the land is sold, so if a person applies to purchase land, that will be made available with a conservation easement. If in the event that they decide to sell that property to somebody else, whether the year after or 30 years down the road, the conservation easement is still attached to that piece of property, so it needs to be registered with land titles. And that will be happening so the conservation easement carries on with the sale of that property.

**Mr. Forbes:** — And so I appreciate that you have two lists — one is the external one and the internal one. What will the internal one be called? Do you have . . . Will there be something that somebody can call up and say, what about that list of conservation easements? What's the handle?

**Hon. Ms. Heppner:** — The list on the number of hectares under conservation easement is currently under the RAN [representative area network] program, part of our annual report. That will stay. As for a name for it, I suppose it could be the conservation easement registry. We haven't come to an agreement on that yet, but I'm sure we'll give it a name.

And if people are interested on information concerning conservation easements, they could contact the office.

**Mr. Forbes:** — Thank you, and I appreciate that. And I think it's important in some way to keep track of it so we can see. Initially I think as this goes forward . . . And I've been watching conservation easements for a while, not so much through the Crown, but through Ducks Unlimited and Wildlife Federation and other groups who've done it. So I think it's a very important initiative. I don't necessarily agree with . . . I would prefer to see the land staying with the Crown.

Now as I understand it though, another question just for information: will the value of the Crown land be diminished when it goes on the market because it has now a conservation easement against it?

**Hon. Ms. Heppner:** — A lot of the land that would be sold and have a conservation easement attached is actually agricultural land that's currently housed under wildlife habitat protection. That would be sold at a fair market value. There has been work done between our ministry and the Ministry of Agriculture and there's no indication to us that the value of the land would be diminished because it has a conservation easement on it, I guess mainly because the land use doesn't change.

If you're selling somebody grazing land that they had been

leasing, they'll be using it for grazing land. So the value of that land is the same and it would be sold at a fair market value.

**Mr. Forbes:** — From what I understand, and I could be wrong, but from what I understand that the enticement of buying land with an easement on it is the fact that it's actually valued less because you're getting something that has a lien on it as opposed to land that may be of the same worth but without a lien on it. That's not the case in this circumstance?

**Hon. Ms. Heppner:** — The land sales that we've seen to date, you would know that WHPA [*The Wildlife Habitat Protection Act*] land has been pulled out for sale for years, and it hasn't been our experience that the land value is at all diminished because an easement would be placed on it.

**Mr. Forbes:** — Yes, but you haven't sold any with an easement on it.

**Ms. Gallagher:** — What we have been tracking is any of the . . . There hasn't been a lot of sales through the NCC [Nature Conservancy of Canada] or the Ducks Unlimited conservation easement. But what we have seen . . . We have been watching that and the sale price hasn't been diminished because of the easement. That has been a concern, but we haven't seen, you know, significant decrease in price because an easement exists on the land. But it would be fair to say that there hasn't been a lot of land with conservation easements that has been sold.

[19:15]

**Mr. Forbes:** — Okay. My next question really is around section 11.42, the amendment or termination of a Crown conservation easement. And of course, it's the intention I understand that there will be very few terminations of the conservation easement, but this goes through that process and if you could explain that and how that process will work and how you foresee that playing out.

**Hon. Ms. Heppner:** — On the removal of a Crown conservation easement, it goes beyond a landowner simply requesting that the Crown remove the easement. As it states, it would have to be in the public interest to do so. Public interest in legislation limits the activities which would constitute public interest. It would have to be significant.

As a couple of examples, if a city needs a new bridge, and the one end of the bridge hits a piece of land that has an easement on it and, obviously, then the land would be affected, that would be in the public interest. If a community needed power lines put in and the only option for those power lines would be on a piece of land that had a conservation easement on it, so therefore the land use would be changed, that would constitute public interest.

But the parameters that would enable a minister to remove a conservation easement are pretty restrictive, based on the legal definition of public good.

**Mr. Forbes:** — And so in what legislation are you quoting when you say, it's in legislation?

**Mr. Olexson:** — I'm still Todd Olexson. I'm still the acting

director of the Ministry of Environment for the lands branch. I would like to, I guess, add we were referring to, it specifically states in this legislation that it's for the public interest that it could be removed or amended in the conservation easements.

**Mr. Forbes:** — Could you speak up, please. I didn't hear you.

**Mr. Olexson:** — Sorry. I guess I'll try a little harder. I would like to say that we were referring to this legislation specifically, which states that, in the public interest, the minister could amend or terminate a Crown conservation easement, and it would be up to the minister to, you know, judge what that public interest would be. Generally speaking those tend to be large items of broad public interest.

**Mr. Forbes:** — And that leads me to my next question, and that's in subsection (10) where it talks about the minister's decision to approve or reject an application as final and conclusive. You know, when you have a discussion about a public interest and it's not laid out what the parameters are around what that means, and then you have I think a pretty heavy decision there, or clause, that you can't even challenge it in court, that's pretty strong. I don't think that's the usual way of phrasing that in many circumstances. So there's no recourse to debate the public interest.

**Mr. Moran:** — My name is Garry Moran. I'm a lawyer with the civil law division, Department of Justice. Every decision of a minister, even with the clause as you've read, is always subject to challenge by way of a judicial review. If the minister makes the decision by considering improper factors or doesn't consider all relevant factors, a court can set that decision aside.

**The Chair:** — Mr. Nilson, will you join us?

**Mr. Nilson:** — Yes. Can you tell us how many pieces of legislation have this particular clause in them?

**Mr. Moran:** — I don't have a number. I don't think it's a particularly unusual clause. And when you look through legislation, there are many cases where ministers are called on to make decisions, but there's no explicit right of appeal from those decisions to a court. And in all of those cases, the minister's decision, you know, would be subject to challenge by way of judicial review.

**Mr. Nilson:** — But if I read this correctly, you're attempting here to add an extra layer of protection to the minister's decision that might not be there in other pieces of legislation. Can you explain the rationale for that as it relates to these particular decisions, as opposed to what might be commonly in other places?

**Mr. Moran:** — Mr. Nilson, I wasn't involved in the development of this legislation. My colleague who was is unfortunately away from the office today. Even with that sort of clause, court supervision is always available. There's no constitution ability in legislation to exclude court supervision.

**Mr. Nilson:** — Yes, I understand that, and I agree with your comment about that. But it strikes me as this is somewhat unusual for legislation because the lawyers that draft it know exactly what you just told us, is that these clauses are

reviewable. And so therefore I'm wondering what's the rationale for placing that in this particular legislation. Would it be possible to amend it and just take it out so that this legislation doesn't look as draconian as it might be with that clause that's there?

**Hon. Ms. Heppner:** — Mr. Chair.

**The Chair:** — Yes, Minister.

**Hon. Ms. Heppner:** — I think we've got it figured out. As was stated, unfortunately we called Garry up here and he wasn't the person helping us with the legislation.

If you start at section 11.42, it would be at the request of a landowner that was asking for a conservation easement to be removed. I think that's the premise behind this particular section.

And the intent on having that clause or the part (10) on there is so that it wouldn't actually be easy for a landowner to request the removal of an easement. They would have to go through a series of requests, reviews. All information would have to be reviewed by the minister, and the part (10) is in there so that landowners couldn't come and on a whim have somebody remove or on a whim ask for the removal of an easement.

I believe that the intent behind that part (10) was actually put there in order to maintain an easement on a piece of property so that if a landowner came to us and asked for the removal of that easement, it would be very difficult to remove it and they would have to have some pretty justified concerns or reasons for the removal of that, that power then resting with the minister.

And then if the landowner still wanted to pursue the removal of an easement, it would have to go to court, which was mentioned. That option would be still open. But it was put in there not to give the minister the power to remove, but more the intent behind that was to . . . in order to give the minister the power to keep the easement in place if there was a request to remove it.

[19:30]

**Mr. Nilson:** — Well I understand that explanation from the perspective of the minister, but I think the issue here becomes more, if a conservation easement is removed at the whim of the minister and then there's somebody who wants to challenge it, this makes it doubly difficult to challenge it.

And so I still ask my same question. Is it necessary to have such a draconian clause here which is different than other legislation that protects the minister's decision from other parties? And I'm thinking for example of Nature Saskatchewan, Ducks Unlimited, Saskatchewan Wildlife Federation, or other groups who are very opposed to the minister acceding to the request of the landlord to remove this easement. And so it's not the reject side that I'm worried about, it's the approved side by the minister. So perhaps you can explain that.

**Mr. Olexson:** — I think we have a response.

**The Chair:** — Okay.

**Mr. Olexson:** — In essence, you know, what we were trying to do with this clause was identify that the minister may make these choices. There are certain words there and they go on potentially longer than some other pieces of legislation, but as was pointed out earlier by my colleague, this type of decision making is not uncommon in certain pieces of legislation and it is not different than many other pieces either.

**Mr. Nilson:** — Well I think my question was: can you provide other examples of where this type of language is used and is it possible that the legislation could be amended to get rid of this draconian language here? And I suppose also if there is somebody else who actually knows a clearer answer as to why this was placed here and not in some other places, it may be the best idea, Mr. Chair, that we set that clause aside, that we don't proceed with the whole piece of legislation until somebody comes later tonight or maybe tomorrow and provides an answer. And if that's agreeable, then we could go on to some other questions on this legislation but reserve that one for the time we get somebody with a better answer.

**The Chair:** — Okay, Mr. Nilson, thank you for that option. I think what I would like to ask the minister and her officials is this . . . and the legal counsel that was at the table prior to this: can we get the counsel who actually provided this advice and helped to draft the Bill, can we get that counsel here tonight?

**Mr. Moran:** — We can see if she or he is available.

**The Chair:** — Thank you for that. If the committee will allow it then, maybe we should proceed, just for the sake because we're on this Bill, and as soon as you find out, please advise the Chair and we'll make a decision at the time with two other options that are available to us based on procedures. If that's fine with the committee? Okay. Then we can proceed I guess on to the next set of questions. Ms. Minister, are you okay with that? I should ask . . . Sorry, I'm just kind of taking over here, but if we're okay with that, I'll think we'll proceed on and we'll get an answer shortly. Thank you.

**Mr. Nilson:** — Thank you, Mr. Chair. I have a question that relates to this area and what is trying to be done here. As I understand it, the Crown used to just have an easement like everybody else, and so what this legislation does is create a specific Crown easement. Would it be possible to explain what a Crown easement is and what powers and conditions are attached to it, versus some of the other conservation easements that wouldn't be on Crown land. Because I think that goes to the heart of what the Bill's all about.

**Mr. Olexson:** — Sure. I guess starting with the previous conservation easement, it was a voluntary agreement between two parties to conserve certain values through an agreement on a piece of land. That agreement was registered with land titles and the ministry did keep track of those agreements as well. The existing or previous legislation only allowed for any enforcement of those agreements through the Court of Queen's Bench.

The proposed amendments provide for increased enforcement by getting court injunctions on the existing easements. So it provides more tools for environmental groups that are entering into the existing easements, as well as we've provided

additional opportunity for the amendment by both parties agreeing to those easements if there are changes that are required.

So we've provided some increased efficiencies for environmental groups for the use of the existing conservation easements. In addition we've created, as you've pointed out, a new category of easement called a Crown conservation easement. The Crown conservation easement would be placed upon lands prior to the Crown selling them if they chose to sell lands and there were ecological values we wished to protect. It is not a voluntary agreement. It is an easement that is . . . And they are mandatory. So they are placed upon lands. They are providing protection for ecological values and it's not something that simply is a voluntary agreement.

As well there are significantly greater enforcement powers for these easements. They provide for the ability to issue stop-work orders if someone was violating the conditions of that easement; go on, potentially seize equipment. There are enhanced penalties. As well there are the standard procedures through the Court of Queen's Bench as well, but in essence those are the fundamental differences between the two types of easement.

**Mr. Nilson:** — Okay. Thank you very much. That's very helpful because it gives an explanation about what we're doing here. So the goal is to have, what I understand to be a stronger, more robust conservation easement as it relates to these Crown conservation easements, if I can put it that way.

Is it possible that a person who now is in a situation where they have land which has a conservation easement on it and they want to give an extra layer of protection to that conservation easement, is it possible that they could make an agreement with the Crown, have the land go to the Crown so that one of these super easements or extra-special easements could be placed on it, and then in turn have the land go to somebody else who would then accept the land with the super Crown easement on it?

**Mr. Olexson:** — Well thank you for calling our new easement super, but I guess . . . what you're suggesting or what you're asking is, if somebody or a conservation group or landowner with an existing easement could upgrade or move to the super-easement, the Crown conservation easement, the answer to that would be no, because we've defined a Crown conservation easement as something that's placed on by the Crown on Crown land prior to sale.

We had reviewed a number of options but we were . . . We kind of went down that path as the only way we could make the easement as super as it is. We couldn't upgrade existing voluntary agreements in a legal manner, but we have enhanced the provision's enforcement and efficiency in terms of modifying agreements of the existing easements. So we currently have that broader flexibility and do have some enhanced enforcement procedures and tools for the existing easements as well.

**Mr. Nilson:** — Thank you for that response. I think that's your intention, but I guess my question was if in fact there was an agreement with the government to transfer the land to the Crown. They could hold it for a week, put the super-easement

on, and then sell it back to the person with all of that. So I guess what I'm saying is, legally there are some ways to do this and comply with your legislation. Would you agree with that?

[19:45]

**Mr. Olexson:** — Ultimately if, by definition, there's Crown land that we chose to sell with ecological values and we wanted to protect it with a Crown conservation easement, we could do that regardless of where the land came from.

**Mr. Nilson:** — Okay, thank you for that response. Now I have a question sort of on the other side. Is there anything in this legislation that weakens previously existing conservation easements in the sense that they're easier to amend or easier to change than they might be now?

**Mr. Olexson:** — Well this will be my shortest answer of the night. It'll be no.

**Mr. Nilson:** — Thank you very much. That's what I was hoping and expecting you to say, but I'd like to have that on the record, so if there is something that comes up where it seems like changes have been made that weren't contemplated by the legislation and there was a challenge, well we'd at least know clearly what the intent of the minister and the ministry are. So thank you for that.

Now another question that I have related to the conservation easement goes back to a question I asked two years ago in this committee when we were looking at estimates. But the question was really about the possibility of developing broad zoning regulations that would deal with some of the kinds of issues that you're trying to deal with here in *The Conservation Easements Act*. Has there been any policy development in that area since 2008? I know at that point the response was, well this was something we were trying to figure out how to do. And just the example I would give is, in Alberta they've been moving along that path in not necessarily the easiest ways, but they at least have identified that as an issue and are proceeding.

**Mr. Olexson:** — So in terms of new legislation that may or may not have been developed, we haven't developed a new piece of legislation that provides broad zoning capabilities beyond, you know, those existing pieces of legislation that were there. What we have done as a ministry over the last year has been to, you know, conduct some reviews across Canada in terms of what other jurisdictions are doing with regard to broad land use policies and frameworks. And we do have that commitment to review and update our land use planning framework.

**Mr. Nilson:** — Okay. Thank you for that because I think that in Saskatchewan, when we can get to that point where we would have broader community agreement about land use, it would make this kind of legislation stronger, but it also would assist everybody who works with and deals with land in having a clearer system, if I can put it that way. So I think subject to getting an answer on this other question, I think that I don't have any more questions because I think that my main question was whether or not this in any way weakened the previous system. And my read of it was that that was not the intention at all but that the intention is clearly to strengthen the whole

conservation easement system and then add a further Crown easement system.

**The Chair:** — Did you want to go right now, Ms. Morin, or do you want an answer?

**Ms. Morin:** — I can't see the light's on. Now it is. Okay, so I just have a few questions before we can get the response from the legal counsel who, I understand, is in the building. And that is with respect to the minister's remarks about the Bill on second reading. The minister said, "This approach will begin with the comprehensive ecological assessment of all surveyed Crown land." So I'm just wondering if you could explain what that comprehensive ecological assessment entails. What system is being used and if you could give some explanation about that.

**Hon. Ms. Heppner:** — The tool that we're using is called the Crown Land Ecological Assessment Tool. It is actually something created through the ministry to assess the values of land. When I became minister, one of the first questions I had is if we had a values inventory of Crown land. There was none. We had millions of acres in wildlife habitat protection without any clear indication as to what the ecological values of that land was. And I thought it was important to actually know what we're protecting, if it still had a place within wildlife habitat protection, if there was other land that could go in, just to make sure that we knew what we had in actual inventory. And I found it interesting that that hadn't been done.

So the ministry has been working on this. There's been input from, obviously, my ministry; from Agriculture; Tourism, Parks, Culture and Sport; Saskatchewan Watershed Authority, as well as experts within the ministry, including agrologists, biologists, and ecologists. And so they had gone through and looked at values and exactly what this land was like, and then followed up on that to make sure that the modelling had been done correctly. We did truthing. We actually sent people out into the field to verify land against the modelling that had been done in order to verify that our modelling was accurate. And indeed it was.

And I'm going to let Lin follow up if there's anything that I missed.

**Ms. Gallagher:** — So I think that, just to follow up a little more little technical, and if I get too technical, I can . . . or you guys can flag me. But it was a two-step process where we used the model that was science based. And we categorized land. We wanted to get to a point where we could categorize land into different areas. And so we used a logic flow, where we looked at criteria identification. We had design considerations, and we used available data sets. And then we went through a process where we did weighing and scoring, depending on the analysis.

So the model is clearly based on ecological concepts. It's completed but also limited by the data that is available to us, both the quality and the quantity. The principle components analysis was also used to test for redundancy in the model to assure that we got it right. Minister Heppner referred to the point that we actually went out and conducted ground truthing on 272 parcels to ensure that the work that we were doing was accurate.

What we went through is, the two criteria was an ecological criteria as well as a risk-value criteria. And the variables that we used around the ecological criteria was looking at natural cover. So was it native prairie? Was it wetland? We looked at what kinds of unique features were on the landscape, so soil development, parent materials, surface form, slope. We looked at intactness. Was there significant road development in the area? And we also looked at species at risk. And for those of you who are familiar with biodiversity, those are all important criteria around determining the value or the ecological value of that land.

We also then brought in some spatial characteristics which included size. In particular with prairie habitat, continuous large areas are more valuable to us than small areas. But we also are able to point out where there were important small areas that were significant as refugia. You know when you have a lot of disturbed area and there's one little natural area we want to make sure that we keep it. We also looked at shape, edge to area ratio, as part of this.

And then we took . . . Context was the third and final category that we looked at, where we looked at the neighbouring distance. So a piece of land that was actually, let's say, next to a provincial park or next to another large natural area would be more significant to us again than an area that was not adjacent to conservation lands. And then lastly we looked at species refuge as I talked about again, but bringing in to the extent of cultivation that was surrounding the area.

So then coming out of that work, we also brought in the risk value, so that was the second piece of this. So we looked at the land use category and then the magnitude of the impact. So if it had high agricultural capability, it actually would have rated higher for risk, so if we thought there was a risk that the land could be cultivated or used in a different mechanism. So we looked at, did it have sand and gravel? Did it have existing pit mining? What kinds of existing and potential development for subdivisions or recreational usage were on the land? So that would have raised the risk value. And then we looked at existing or potential oil and gas, potential acreage developments, as well as brought in some other extraneous factors like was there wind farm or anything like that on the area.

So we used the two pieces where we used the . . . as I mentioned, we had both the ecological values as well as then the risk values, and we factored those in and generated two sets of data sets, and then came out with some definitive responses around what was the ecological land values of those pieces, and as I mentioned, ground truth them. And that's where that material would come from.

**Ms. Morin:** — Thank you, that's very helpful. So now I note that Agriculture, Tourism and the Sask Watershed Authority were all part of the comprehensive team to come up with CLEAT [Crown Land Ecological Assessment Tool]. Where there any other stakeholders that were contacted with respect to bringing together the CLEAT format?

**Hon. Ms. Heppner:** — There was, actually. We had a variety of meetings, actual workshops on CLEAT to explain it to various agencies. Environment and Agriculture met in June of

last year with Nature Conservancy, Saskatchewan Wildlife Federation, Nature Saskatchewan, and Ducks Unlimited. We held a workshop on CLEAT to go this proposal and explain the methodology and have input from our stakeholder organizations. Those organizations that were provided information are the Saskatchewan Wildlife Federation, Nature Conservancy of Canada, Nature Saskatchewan, Ducks Unlimited Canada, Canadian Parks and Wilderness Society, Federation of Saskatchewan Indian Nations, Métis Nation of Saskatchewan, Saskatchewan Stock Growers Association, Saskatchewan Cattlemen's Association, Bison Association, sheep development board, and the Saskatchewan Association of Rural Municipalities.

There was also a presentation in July of last year to a SARM [Saskatchewan Association of Rural Municipalities] meeting by folks from my ministry on CLEAT and how this was going to work. And also in July, there was a technical meeting to discuss CLEAT and the folks that were invited were from Nature Conservancy of Canada, Ducks Unlimited, and Nature Saskatchewan.

**Ms. Morin:** — Thank you. I'm curious about . . . You've gone through the list of stakeholders that were contacted with respect to bringing out the development of CLEAT. Were there any concerns that were raised in those consultations?

**Hon. Ms. Heppner:** — Yes. The response that was received back from the stakeholder groups, that we had met with, was generally supportive of the fact that we were actually doing evaluations of land in Saskatchewan.

**Ms. Morin:** — But you don't have any specific examples of some of the concerns that were expressed?

**Hon. Ms. Heppner:** — I'm just trying to track down some specifics, if there were any specifics. There was obviously . . . Any time that you change a policy or initiate something new, people can tend to be a bit cautious and I understand that. And we're waiting to see how the process unfolds. And we're concerned that this be balanced out with enhancing *The Conservation Easements Act*.

And I can also say, since the consultations occurred last year, I have checked with my office and I've received no official complaints or concerns into my office from any of the stakeholder groups. They have not contacted me.

[20:00]

**Ms. Morin:** — So there weren't any specific concerns that were raised, as I asked?

**Ms. Gallagher:** — The only specific concerns that we heard was many of the ENGO [environmental non-governmental organization], much of the ENGO community is aware of the data sets that are available, and so there was a concern raised about the quality and the quantity of our data in some specific areas. And so how we were able to compensate that is we used our science capacity to do literature searches and to make technically aware decisions around how to compensate for those pieces.



We've also, as I mentioned earlier, factored in both the risk value with the ecological value. So the data limitation is what it is, but it was in key areas, and that would be the only concern that we did hear from specifically around the work that we did on CLEAT.

**Ms. Morin:** — So with those stakeholders that contributed to the existing format of CLEAT, particularly those that might have had some issues around the data sets that were used — because you're using existing data sets — and that there may be some underestimation perhaps of some of the sensitive areas that, for instance, wetlands that are available and such, was there any return consultation after CLEAT was, the format of CLEAT was encompassed and composed in terms of getting back to those stakeholder organizations to ensure that they fully understood how CLEAT was going to function and give them a better understanding so that they could have a comfort level with it then.

**Ms. Gallagher:** — So the specific response to your question is, this is an ongoing process. We've just actually had the opportunity to finalize the CLEAT to do all of the verifications so that we know that the work that we're doing is accurate. So that's quite recent work.

So we will continue to go back to our stakeholders now that we have the outcome of the model. But one of the rationales for why we didn't feel an urgent need on going back is that the model has actually confirmed that much of the WHPA land is of high ecological value and important to maintaining biodiversity in Saskatchewan. So there wasn't any surprises there that this land was all of low ecological value or something along that line, so it was consistent with the rationale for why WHPA was put together in the first place.

**Ms. Morin:** — Forgive me for seeming a little confused here. But there is this level of uncertainty that exists in terms of what's going on with the other piece of legislation, which happens to be WHPA, and the methodology that's used to assess those lands under CLEAT. And so it's interesting that, you know, the same groups that were contacted to have input on CLEAT are the same groups that are now concerned about another piece of legislation that's going to be using this methodology. So I'm not quite understanding how there is this level of comfort with CLEAT when clearly there isn't this level of comfort with the other piece of legislation which is going to be using CLEAT to potentially remove those lands for sale. So I'm wondering if you could give me some clarification on that.

**Hon. Ms. Heppner:** — As I stated earlier, there was initial consultations done on workgroups and workshops to explain the approach that we are going to be taking with southern Crown land. And the CLEAT system, that happened last year as an overview of how our modelling was going to take place. As Lin has just said, that modelling system has only recently been completed, partly because we had to do the ground truthing and making sure that we had everything right going into this.

And our consultations with stakeholders will continue. I've spoken to stakeholders very recently, including today, to explain that to them and that we are not done the consultation process on this. And as I said too, since our initial consultation last year, my office hasn't received any concerns over this. And

we'll continue to meet with stakeholders because my concern on this to make sure that everybody has the accurate information going forward.

I know that there has been a lot of misinformation on this issue as of late, and I think it's important that the ministry and I continue to work with stakeholders to make sure that the information they have is accurate and up to date. And I have confirmed that with some of our stakeholders, like I said, as recently as today, and we'll continue to work with them to make sure they understand the process going forward.

**Ms. Morin:** — Well you're absolutely correct that there is a lot of confusion about what's going on right now, and unfortunately it's because there has been very little clarity on the issue so far. The people, the stakeholders that don't have issues with the methodology and the few pieces of legislation that are connected to this particular piece that we have in front of us right now, with all due respect, seem to be the organizations that are wanting to see the land up for sale. And the organizations that have issue with the methodology of assessment and the legislation are the ones that are wanting to ensure that there is a protection of these lands for wildlife habitat. So there seems to be a serious disconnect.

When I speak to Ducks Unlimited as recently as today, as I know the minister has as well, on two separate occasions — and we weren't speaking to them at the same time I'm sure — I'm told that they're very concerned about the data set, because again they say, "... that it grossly underestimates the number of wetlands." So there's those concerns. And then we also know from Brent Kennedy from today's *Leader-Post* from Ducks Unlimited, who says that "We're not convinced that they have the means to be able to accurately define which lands have greater or which lands have lesser ecological value."

So I'm concerned, obviously, as the person who is responsible for the Environment portfolio and is supposed to be the one who's giving a critical eye to this on behalf of the NDP [New Democratic Party] caucus, why there is such a large disconnect between stakeholders and why there is so much confusion.

If the minister is so confident about the fact that these lands are going to stay protected and that there's going to be this wonderful concern for the environment and the ecology that exists on those protected lands, why there is such a serious disconnect, and why we are then not taking some more careful thought or making amendments necessary to ensure that there is a higher level of comfort with the people of Saskatchewan who have obviously a large vested interest in these pieces of legislation.

**Hon. Ms. Heppner:** — I'm not going to get into a back and forth on what Brent Kennedy said to whom. I did have a conversation with him today, and I understand he has some concerns. And as I said, we will continue to work with stakeholders. The modelling on this has been done, finalized very recently, and stakeholders will continue to be engaged in this process as we go forward.

The legislation's in place. If it passes, it will pass by the end of May. But we still have an opportunity to meet with stakeholders to explain the system. There's not going to be "for sale" signs

on pieces of property come June 1st. We'll continue to meet with stakeholders to make sure that they understand the process. And there are people who are very supportive of this. And they are, for the most part, the people who are currently using this land and protecting that land. And they are the ranchers, and I'm glad that they're supportive of this.

I have said this in the House before. We have ranchers in committee right now who I'm sure would . . . I don't want to put words in his mouth but that the people who use the land for their livelihood are the best stewards of that land because anything that goes wrong with that land negatively affects their livelihood. So the fact that the ranching associations and cattlemen associations are supportive of this should come as no surprise. But I've got to tell you, I'd be pretty happy with ranchers buying land because I'm pretty sure they're going to take care of it. But that being said, all I can say is we'll continue to work with our stakeholders. But I'm not going to get into a back and forth on what Brent Kennedy may have, may not have said to each one of us today.

**Ms. Morin:** — I'm certainly not willing to go there either, Madam Minister. But with all due respect, you're putting words in other people's mouths as well. There is no way that anyone has said that the ranchers aren't taking care of the land. We fully concur with that.

What we're saying is that there shouldn't be this level of disconnect between the two sides of the stakeholder organizations that are interested in these pieces of legislation. There should be a higher comfort level. The comfort level doesn't exist because a number of the stakeholder organizations are telling me that the only time that they were contacted was to discuss how CLEAT might be brought into existence. They were not provided with any type of really concrete information that they could use to provide really a comment on.

They're certainly concerned with the data set that was being used. I understand that there's been some mitigating circumstances dealing with that existing data set because there is obviously an awareness in the Ministry of Environment that that may not be the best data set to be using at this time.

So what I'm saying is there was this concern; there is this concern. They haven't been consulted since. They haven't been consulted when the legislation was drafted. They weren't consulted when CLEAT was formulated. And so there is a serious disconnect because there has been a great degree in terms of lack of consultation with these particular stakeholder organizations that have been contacting me.

So, Madam Minister, that's why there is such a great degree of scrutiny that the opposition is applying to this, because we're trying to provide some more clarity for those stakeholder groups that are watching this evening and to ensure a greater level of comfort in terms of what the changes might bring about.

The minister also said in her second reading remarks that "This assessment, developed in consultation with stakeholders, will determine which parcels of land require the protection afforded by a conservation easement." So now when you talk about the assessment which was developed in consultation with

stakeholders, I'm assuming then you're talking about the original discussions with the stakeholders with respect to formulating CLEAT. Is that correct? Or am I missing something in terms of other consultations that took place with stakeholders with respect to this comment in the second reading?

[20:15]

**Mr. Olexson:** — I guess I can add a little bit of information in terms of some of the presentations that were prepared and provided to the various stakeholder and interest groups. Certainly from day one, it was unravelled and unveiled as a strategy that would see an assessment of Crown lands in the southern part of Saskatchewan. There would be amendments to the conservation easement legislation and WHPA.

There would be a classification of lands in three categories from the very earliest presentations. Those that would be potentially available for sale with no restriction if there was very little ecological value. There would be some mid-range of ecological value where they would be for sale with a conservation easement. And some land would certainly be retained, that very high value land that's just not appropriate to sell.

So those were all parts of the overall strategy that was unveiled and discussed from the very beginning of discussions and consultations with stakeholder groups.

**Ms. Morin:** — Okay. So again what you're saying is, is confirming what I just asked. In other words, the consultation with stakeholder groups was done around the formulation of CLEAT, but there hasn't been any consultations since that formulation of CLEAT in terms of the input of those stakeholders. Is that correct with respect to this legislation?

**Mr. Olexson:** — I guess I thought I was almost saying the opposite, that the legislation was being consulted on as we discussed CLEAT throughout the process. There was proposed amendments — and that was right up front from day one — going to be made to conservation easements and WHPA along with the whole assessment process. That information was presented kind of from the early stages on through . . .

**Ms. Morin:** — Okay. So which stakeholder groups did you contact or were contacted after the CLEAT process was formulated and then going forward into developing this Bill?

**Mr. Olexson:** — Again I guess I would respond by saying at the June 29th workshop we did outline an entire strategy that identified we would be amending conservation easements. We would be amending the WHPA legislation. Generally what those amendments would look like is part of a strategy in terms of enhancing some of the management capabilities and efficiencies in conservation easements and allowing for the designation of different categories of land under WHPA to enhance this management. But beyond that, there hasn't been, you know, a great deal of additional work.

However we also did not receive a lot of additional concern or comments from any of these groups as well. I can say, before I came to this meeting for sure and earlier on, I've also searched kind of all of the responses and my branch's records. I don't

have anything on record that would say these groups are writing in, identifying concerns.

**Ms. Morin:** — Okay. So in June 2009, there was a letter that was issued to some of the stakeholder organizations looking for some input on an overview of what the ministry was going to be looking at in terms of evaluating the ecological attributes of all its Crown land holdings. I understand that. And then there was the input that was provided or the request for input that was provided with respect to the formulation of CLEAT, and then there was the Bill that was introduced in the fall session in 2009.

So am I correct then in understanding that since, as you said just now, June 2009, from the initial discussion about that, there was going to be an evaluation of the ecological attributes of these lands, that there hasn't been any contact with any stakeholder groups since then on this particular Act and the WHPA Act?

**Mr. Olexson:** — With regard to the conservation easement legislation, that would be correct. Effectively whatever comments we got with regard to conservation easements, as was pointed out earlier by some of the other questions, there is a lot of support for strengthening and enhancing the conservation easement legislation which is what this amendment does.

**Ms. Morin:** — Okay great, so I'm correct in understanding then the consultative process and what happened after CLEAT was formulated. My colleague John has, Mr. Nilson, I should say, has a few more questions to ask, so I'm going to pass it over to Mr. Nilson at this point.

**Mr. Nilson:** — Thank you, Mr. Chair. Can you tell me how many parcels of land are included in the CLEAT evaluation?

**Hon. Ms. Heppner:** — I think we found this in the smallest font possible — 28,695 parcels.

**Mr. Nilson:** — Okay, thank you very much. I knew you probably had the answer somewhere, but I thought it would be a little easier to find. So there are 28,695 parcels and from what you said earlier, you've checked by actually going to see the parcels, 272 parcels. Is that correct?

**Hon. Ms. Heppner:** — Yes.

**Mr. Nilson:** — Okay. So then am I correct in understanding that the information that you're using is existing information from a whole number of information sources that have been around for quite awhile?

**Ms. Gallagher:** — So we use databases that are gathered through land classification. We have satellite imagery. We continue to . . . we have species at risk inventories. But you know, when you say they've been around for awhile, we continue to update our databases where the appropriate one's ongoing. So it's not like it was all outdated information. And some of the information doesn't change significantly over time, but where the databases need to be updated, we would use the most update and current information.

**Mr. Nilson:** — Okay. Yes, that's what I would understand, but I guess my point is that some of the land assessment, in other

words, the soil types and things like that might have been done 30 years ago, but it's still valid because the soil doesn't shift around. And is this the same information that . . . where the intention was to create an e-portal where people could go and enter and get into all of the databases that Environment had? And this is one other version of using that and as a project that's been going on for quite a number of years?

**Ms. Gallagher:** — So where the data sets are available, they would be available on our website.

**Mr. Nilson:** — And so that what's really new here isn't the valuation of the land. It's the new name and the new consolidation. Would that be correct?

**Mr. Olexson:** — I'm assuming you may be referring to kind of past analysis that was done as part of the RAN program in terms of the enduring features and some of those protected areas analysis.

That type of information is one of the components that is part of the criteria that make up the ecological evaluation, but it is not the only information that was used. The RAN enduring features analysis does focus solely on kind of soil development, parent material, surface form, and slope which does persist and endure over time, and that certainly was part of the unique features considered. But there were a number of other criteria that were listed earlier as part of the presentation, and they included kind of the natural cover, intactness, kind of road density, other linear features, species at risk from the CDC [Conservation Data Centre] database you're probably familiar with as well.

In addition there were other characteristics in terms of the size and shape of the parcels, so they evaluated some of that, as well as the distance to other protected areas and kind of the extent of cultivation that surrounded parcels as well — so other surrounding land uses. So this would be a new tool that wasn't pre-existing. So it is something new, and it is more complex than the enduring features analysis which was a very coarse filter type of model or indicator. And it is still a very good indicator, but it is a very broad, landscape-level type of model.

**Mr. Nilson:** — But I think you've already told me, though; you've only gone to 272 of the pieces of property since you've got the new tool. And so I guess my question is, really relates to the fact that Sask Environment and predecessor departments have been keeping good information about land and land use, especially the Crown pieces. And I guess I would say 15 years ago, when I first saw an application to assess land that the Crown owned as to its status, they might not have had all of the fancy names, but they had all of the information that you've described there. And I know from land that I own, you could see the various pieces of information you've talked about 30 years ago.

So I guess the point I want to make is that this work that you're doing is good work. I don't have any question about that. But it's very clear that it's not new work. It's a continuation of many things that are being done, and in fact it's enhanced because of the electronic databases that we now have which makes it much easier to pull information together.

**Ms. Gallagher:** — You're correct that it's enhanced. It's using

the tool in a . . . It's taking a different tool and pulling that in as well as, when you referred to the number of samples, what we did was we looked at a scientifically valid model. It was random and scientific and statistically valid. So we would never go out and check every land parcel, but we randomly selected throughout the whole area to assure that we could validate the findings throughout the land base that is represented through WHPA.

**Mr. Nilson:** — No, no, I understand that. And I know there are tools available now that allow for basically IT [information technology] or technological assessment of land based on digital photographs and all the other information.

But I guess I just wanted to make the point though that this may be a new name and new term, but it's a continuation of a process which is a good process, and it then goes back to the whole question of land use and appropriate assessment of land, whether it's Crown land or just land within the community. It is correct though that it's part of a long-term process.

[20:30]

**Mr. Olexson:** — I guess if I'm understanding your question correctly it would just be yes. We, you know, we're using data sets. Many of these have been around . . . We're analyzing these in current technologies and current, you know, modelling, GIS [geographic information system] solutions that hasn't always been done in the past. You know, certainly, you know, folks knew where the roads were 30 years ago when there was a road map. Now we're combining that different data sets to try and provide better advice to decision-making processes.

**Mr. Nilson:** — Would it be possible for the minister to acknowledge that?

**The Chair:** — I guess the question, Mr. Nilson, again is . . . I was following along with the official answering, but you're asking what question again, sir?

**Mr. Nilson:** — Well basically the question is that this process is not a new process, but it's an enhancement of work that's been done for many years within the department.

**The Chair:** — I believe the official has indicated that has agreed that, yes, that's . . . We can check with *Hansard* tomorrow of course, but I believe it's been asked and answered, sir.

**Mr. Nilson:** — Okay. Well thank you. I will just note then that the minister did not want to say that, given, I think, some of the things she said in the House. That's why I think it's . . . She does not want to say it.

**The Chair:** — Okay, Ms. Minister, take your time.

**Hon. Ms. Heppner:** — I will just add to what Todd had said. There is information that we obviously had on file. As he said, the filter was not quite as refined as the filter that we have. Some of this modelling as a reference point came from the Nature Conservancy of Canada but we made it into a made-in-Saskatchewan tool. This is specific to Saskatchewan. It is a new tool. It's a new direction. And as Todd said, it will help

us make our directions, make our decisions when it comes to policy and new directions with far better and more information on hand.

**Mr. Nilson:** — Thank you very much. I have one final question in this area and then we'll go back to the legal question. Has the project which involves opening to the public an e-portal or an e-green portal which allows for the public to go and get information such as is available, say, on the Great Sand Hills, is that project continuing? Because I know that people were working on that within the department three years ago.

**Hon. Ms. Heppner:** — I guess the short answer to that is, because I know that you have asked this question before, and as an update, the work is continuing on that. And I know that government overall is looking at more of an e-portal approach to information sharing, not just within my ministry but with others. But specifically to that, the work is continuing.

**Mr. Nilson:** — Thank you very much. I appreciate that. Then I guess if we can go back to the question about the section 11.42(10).

**The Chair:** — If I may, if I may begin I think with the fact that, for the record, legal counsel is in the building, we've been told. So if the members want additional information, that can be provided. I'd like to get that counsel here again. She shouldn't have left.

**Mr. Moran:** — Sorry. Ms. Amrud wasn't the legal counsel involved with this. The legal counsel is sick today, so unfortunately she's not available and I don't know when she would be available.

I had a discussion with a couple of my legal colleagues and I believe I can provide a legal response that I think is accurate.

The clause that we're talking about, 11.42(10) is, as you're aware, Mr. Nilson, a privative clause. And privative clauses occasionally are put in statutes to defend decisions. And the one privative clause that I'm aware of is the clause in *The Trade Union Act* protecting decisions of the Labour Relations Board.

I think when you look at its utilization in this section, what this clause is doing for the most part is protecting the minister's decision when the minister declines to accede to the landowner's request for an amendment or termination of the conservation easement. And I presume there was a thought given that, you know, that decision should be not vulnerable to court challenge.

**Mr. Nilson:** — If that is the explanation, then this is not drafted correctly. Because if that's the explanation, you would remove the word "approve." You would just have the word "reject." So it's only the rejections that are protected. Is that what the intention is here?

**Mr. Moran:** — It's the decision that's protected. Now when you look at it practically, who is going to challenge the decision? The person who has the legal opportunity to challenge the decision. It's the person affected by that decision, and in this case that's the landowner.

**Mr. Nilson:** — Okay. Well then maybe that raises the bigger question that I was wondering about. And is there an ability for the public, whether that's in a group like Nature Conservancy or whether it's in a group of citizens, can they challenge a decision of the minister? Because when I read this, I thought it was to try to . . . this was set up to prevent that from happening. But maybe there's some other place in here that allows for the public's interest to be presented.

**Mr. Moran:** — As you're aware, Mr. Nilson, it's normally only parties to a decision that have the opportunity and ability to challenge that decision to a court of law. A party who is not directly affected by it doesn't have standing to, you know, to challenge that decision.

In the context of your question, if there is a third party that has an interest, they would have to convince the court their interest is sufficiently important and otherwise qualifies as a public interest that the court would grant them standing. But the normal rule is third parties wouldn't have the ability to challenge the decision because they're not directly impacted by it.

**Mr. Nilson:** — But my understanding of the purpose of the legislation, and using the term again, super easement, that's for the public. It's a protection of the public in general. And so the question becomes, is that role totally given to the minister? Or is there some way that there's a requirement here that the minister protects that, or is there an opportunity for the public to have another avenue? And I guess reflecting what happens in society now, these kinds of easements, I think, belong to everybody. They belong to the whole community, and so if there's a particular protected piece of land and there was something going to be done to it, if this legislation doesn't have the ability for that other group of people to participate, then we maybe want to take another look at the legislation.

**Hon. Ms. Heppner:** — I'm no lawyer, but I think we're starting to talk in circles because if the question is about the public good and public interest, the decision made has to be the minister, it's (3)(a), the minister is satisfied that it is in the public interest to do so. So if you're arguing public interest, the public interest is protected within this section.

**Mr. Nilson:** — I guess my concern is that the public's interest may not be interpreted correctly by the minister according to the overall community. And so what remedies are there available to deal with that? Normally it would be a court application, much as Mr. Moran has said, allowing for groups that have an interest to show that they have an interest in the court. But my concern about this clause is that it seems to try to give an extra protection to both approval or rejecting of an application. I think I might have less trouble with it if it only related to rejecting because then practically the conservation easement would stay there.

**The Chair:** — I guess we have a point of . . . Mr. Stewart.

**Mr. Stewart:** — Thank you, Mr. Chair. Clearly in circumstances like the ones that Mr. Nilson is outlining, the minister has the responsibility to protect the land and the easement. And the remedy, I guess, in a democratic system is an election. Surely we don't need to go around in circles on this

all night.

**The Chair:** — Mr. Stewart, thank you. On that point, Ms. Morin.

**Ms. Morin:** — I'm sorry, John will . . .

**The Chair:** — Mr. Nilson wants to go first and then Mr. Taylor.

[20:45]

**Mr. Nilson:** — Yes. I guess what I would say is that there appears to be an agreement on the intent of what is happening here, but the legislative use of this clause seems to be a little bit excessive. And so the suggestion is, why don't we fix it so it gives more opportunity for review?

And I think on the point that the member from Thunder Creek has made, I think that goes to the fundamental concern that everybody has about conservation legislation, environmental legislation, is that we don't want it to be the subject of the whims in an election. You want to set up processes that everybody will support and that can go through the 50-year cycle as opposed to the four-year cycle. So I don't think that kind of response, as it relates to these particular issues that relate to 100- and 200-year questions, is very helpful at all.

**The Chair:** — Again I recognize you, Mr. Stewart.

**Mr. Stewart:** — Mr. Chair, thank you. The question has been asked several times in several different ways and it's been answered I think now several times and as clearly as can be done, I believe. If the opposition is not satisfied with that, their remedy comes in another year and a half when there is an election. And I don't know how many times this question can be asked in different ways and answered in pretty much the same way before we're spinning our wheels here and wasting the time of this committee, and the finances of the public in this province.

**The Chair:** — Thank you, Mr. Stewart. Recognizing Ms. Minister.

**Hon. Ms. Heppner:** — One of the additional questions that Mr. Nilson had previously was, does this exist in other legislation, and indeed it does. There's a similar clause in *The Trade Union Act* which has been there for, I understand, decades, as it relates to the Labour Relations Board. So similar legislation and wording does exist in existing legislation.

**Mr. Nilson:** — And I guess Mr. Moran would agree with me that that relates to a court-like institution as opposed to an individual minister. And I don't recall this protecting ministers' decisions and that was my question.

**The Chair:** — I have . . . Ms. Morin is next.

**Ms. Morin:** — Point of order. Point of privilege I should say. Sorry. We have a situation right now where Mr. Nilson is asking a very serious question about a legal component of this particular Bill, and failing getting an actual response from the person who drafted the Bill in terms of the legal component, all

we have right now so far, with all due respect to the people who have been trying to answer the question, is a response that, we believe the intent or we believe this to be. That unfortunately is not of great comfort to us in terms of what is actually going to happen with this particular clause in this Bill.

As my colleague has already pointed out, if the default was to keep the land protected with an easement, in other words remove the word “approve” by amending this clause, there would be less concern. But unfortunately because we don’t have the legal counsel here to be able to definitively answer this question, there is concern and lack of clarity on what this is actually going to entail.

**The Chair:** — Thank you, Ms. Morin. I’ll go back on Mr. Stewart, and after Mr. Stewart, we have Mr. Taylor.

**Mr. Stewart:** — Thank you, Mr. Chair. The members asking questions on the opposition side have got responses and appropriate responses from Environment officials and the minister. The question has been answered. If it’s not to their liking, I sympathize. But any more badgering of these officials over this question that’s been asked and answered several times now is excessive, to say the least.

**The Chair:** — Thank you, Mr. Stewart. I’ll go to Mr. Taylor.

**Mr. Taylor:** — Thank you very much, Mr. Chair. I was quite pleased with the dialogue that was taking place between legal counsels for the ministry and the former member of the bench who sits on the opposition side here. They were working together to deal with intent, understanding, precedent. This was not a simple matter.

I don’t understand why the member from Thunder Creek wants to move this along more quickly when there was a very good dialogue taking place. The minister was actually involved in trying to ensure that there was a complete understanding of this clause. This clause may in fact be one of those points that is challenged down the road and it’s absolutely essential that we have a full understanding of the implications of it. I think the minister is even anxious to know that.

So we’re a couple of minutes away from concluding the Bill. All the other questions have been asked and answered. And in fact it’s not, on this clause, it’s not the same question that’s being asked over and over again. It’s a dialogue that’s evolving. And I think most members of the committee were pleased with the progress that was being made in this regard.

Indeed, once the explanation has been fully provided to everyone’s satisfaction, the member from Thunder Creek is right. The opposition may not like it. But we weren’t quite there yet. So I think the member from Thunder Creek needs to have just a little bit more patience and this matter will be resolved.

But the unfortunate thing is, as the minister’s officials have indicated, the person who drafted this is not available to us tonight. So there are still some uncertainties as to what was behind this. And if the actual intention was a rejection, but the language is approval and rejection, we have a responsibility on both sides of this committee table to make sure we’re doing the right thing by the legislation.

**The Chair:** — I see Mr. D’Autremont first, Mr. Stewart. Mr. D’Autremont, you have a question?

**Mr. D’Autremont:** — Thank you very much. Sitting and listening to the discussion when the legal counsels were debating the issue, from what I heard was the officials and the legal counsel for the Environment presented the argument and the rationale and the reasonings for the clause. Also though . . . And that seemed to get somewhat resolved, I thought.

Then the question came in though about the public good, as to determine where the public good fit into this. And so I think that’s where Mr. Stewart was getting involved, that the determination of the public good has been given to the minister, whether it’s this minister or any other minister under any government by the people in the previous election — not the future election but the previous election — to represent their interest. The public good from government is always represented by government, scrutinized by the opposition, and that’s where the public good determination is made.

We always have the remedy as was initially outlined in the discussion when the legal counsel for the Environment came forward and said that it’s . . . The remedy is always for the court, that even though, if I understood what he said properly, that even though this clause in the Bill may be there, there still is a judicial remedy in place.

So I think we’re simply arguing semantics here on this issue in trying to make a determination as to what the public good is and who makes that decision as to what is the public good. And I think that the general public of the province makes that direction at the previous election. It’s always questionable though by the courts.

**The Chair:** — Thank you, Mr. D’Autremont. I want to go to the minister now. You had your hand up to have a point.

**Hon. Ms. Heppner:** — I’m hoping this clarifies a little bit. This goes back to my very original answer on this. The minister has to retain the power to approve a termination, and if you go back a couple of steps back, if it’s in the public good.

And I had used the examples of, if a bridge is coming across a river, say in south Saskatoon, and it’s going to hit a piece of land that has an easement on that, the minister has to be able to approve the removal of an easement for the public good.

There’s a town that has power lines that can only go on a piece of land that is owned by a private citizen. SaskPower wants to buy that. It has an easement on it. It’s going to change the land use. There has to be able to be an approval mechanism within the minister’s power to remove an easement.

Therefore the minister must retain the power to approve an application for termination or amendment to a conservation easement when it’s in the public good. So to remove the approval part of an application for termination or amendment to a conservation easement, I don’t think is in our best interest. I hope that helps.

**The Chair:** — I have Mr. Stewart next, and then we’ll go to Mr. Nilson.

**Mr. Stewart:** — Thank you, Mr. Chair. In response to Mr. Taylor, I would say that I believe that I understand this completely, but I accept his premise that there's a couple more minutes of questioning before he thinks that it'd be clear to everyone. So I'm willing to sit back and allow that to happen.

**The Chair:** — Mr. Nilson.

**Mr. Nilson:** — Yes. I thank the minister for the explanation of that part. And I think Mr. Moran understands my question which is, it's a bit unusual to have the extra overlay, or as he called it, the privative clause here as it relates to minister's decisions. And that was the question that I had. It was a simple, simple question. And I don't think we have an answer to that particular question. And I would appreciate at some point getting that.

But I mean his point is: if the minister does something blatantly wrong, you can ride right through this clause. But it just seems a bit stronger than is normally the case. And there may be some valid reason for it, but I haven't heard it yet.

**The Chair:** — If I may ask then to the committee members, especially opposition, to clarify a point for me then. Do you have any more questions — notwithstanding this clause that we returned back to — are there more questions on this Act? Do you want to keep on at this time?

**Ms. Morin:** — No. I think we're still waiting clarification on this last point that Mr. Nilson just made. Other than that we're . . . [inaudible].

**The Chair:** — Okay. Thank you. I think what I need to do is I need a 10-minute recess to consult with the Clerks on procedures to move forward on this now. So if everyone can take a recess, please, we'll get back to committee at 10 after 9.

[The committee recessed for a period of time.]

**The Chair:** — Thank you, everybody. The committee is now called back to order from the recess of 10 minutes. Please if I can have everyone take their chairs and I will begin.

I see we have some additional members as well sitting in. That's fine. Just got to say, it's fine.

Well thank you everyone for indulging very much a new Chair to a committee. And on the advice of the Clerks, I want to make a couple of statements. One major statement here is that the Chair, in this case, wishes to open it to the floor again for additional discussion. The Chair is going to be non-partisan in this matter at this time and moving forward because we do have an issue involving one subsection of a clause I think needs to be discussed further by the committee members. And the Chair will then move forward based on what comes out of this discussion. Okay?

I think I will also like to tell that, with permission of the committee, that I would like to see that maybe we move the issue of those people without standing, members without standing may also discuss procedural matters if we get there — so be it if the committee members are in favour of that — as opposed to just having what is procedurally the standing

members or those who have substituted discussing procedure. I will look to the committee for that.

If the committee agrees with that, then we can move forward. And so can I get a consensus of agreed to that then by committee members? Seeing that, all members here right now on the committee have the floor then when it comes to open discussion, procedural matters included. Mr. Taylor.

**Mr. Taylor:** — Thank you very much, Mr. Chair. I appreciate your comments. We took some time to review this matter as well and trying to understand where we are at in the process. And we have concluded that there may be another way to resolve this matter, and my colleague, Mr. Nilson can probably explain it better than I. And so therefore, given your ruling about open to the committee, I wonder if you could recognize Mr. Nilson. He'll make some comments and put a suggestion on the record, and perhaps we can resolve this and move on.

**The Chair:** — Absolutely, Mr. Taylor. I think Mr. Nilson, if you can speak now please. Like I said, now after this point, the floor will be open for back and forth on this issue before I proceed any further after that.

**Mr. Nilson:** — Well my suggestion would be, given that we're trying to get at the intent of this particular clause, that if we could request the legal counsel who worked on this to provide us with a letter tomorrow, say before the time that you have to report this Bill or whenever, or maybe it's the next day if it's . . . I guess it can't be the next day. It would have to be Monday. And basically the questions to be addressed would be, what is the intent of this particular clause? So that's one of the legal . . . [inaudible].

The second point is, provide examples of other pieces of legislation where this type of rather draconian privative clause is used for a minister's decision. And I think, you know, I think there may be some, but we don't have that information. And if I had that information or I think if we had that information here as a committee and there was a reason why this clause is as it is, then the Bill would go forward. It's just that we haven't been able to get a clear answer as to why it's drafted like this.

**The Chair:** — Thank you, Mr. Nilson . . . [inaudible interjection] . . . a written legal opinion. I would like to ask . . . This is probably . . . Give me one second. I'd ask for procedural advice.

If I can have the committee's attention again, Mr. Taylor, you wish to say something before I proceed?

[21:15]

**Mr. Taylor:** — I think I should . . . just to put it fully on record and to ensure that Mr. Nilson's comments were very well understood by the members of the committee, the staff, and the minister and officials. We on the opposition side are prepared to move this legislation through tonight, if the minister would give us her undertaking that a letter describing the intent and precedence were provided to us, John said by tomorrow or at the earliest opportunity and, you know, a day or two. So just to ensure that there's no misunderstanding, that indeed we're prepared to move through this as long as we have the minister's

agreement to an undertaking to provide us with some additional information in writing.

**The Chair:** — Thank you, Mr. Taylor. I see the minister would like to respond. Ms. Minister.

**Hon. Ms. Heppner:** — I am in agreement with that approach, and our Justice officials here have said that they will undertake to get the information to committee members as quickly as possible.

**The Chair:** — Well I want to thank the committee and the minister for this. It looks like the resolution's come sooner than I had thought it would and very thankfully at that, I might add as well.

I did ask, before we took a recess. I'll ask again. Are there any more questions from committee members to this minister on this particular Act? No. So seeing none, clause 1, short title, *The Conservation Easements Amendment Act, 2009* is agreed?

**Some Hon. Members:** — Agreed.

[Clause 1 agreed to.]

[Clauses 2 to 10 inclusive agreed to.]

[Clause 11 agreed to on division.]

[Clauses 12 to 21 inclusive agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 131, *The Conservation Easements Amendment Act, 2009*. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. So seeing agreement, I would ask a member to move that we report Bill No. 131, *The Conservation Easements Amendment Act, 2009* without amendment. Mr. Stewart moves this. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — And that's carried. Well thank you, Ms. Minister. I think if everyone would like to, again, we can take a quick two-minute recess just to kind of get ready for the next Bill to move forward. And thank you for the committee members for their help in resolving this issue tonight. And we'll take a two-minute recess. We'll come back at 9:23.

[The committee recessed for a period of time.]

**The Chair:** — Thank you everyone for coming back on the . . . Well I guess we're just about on time. We're a little bit behind. If I could ask the members to take their seats please, and we'll proceed.

Just a procedural matter. I did notice, and I've consulted with the opposition members on this, when going through the clause by clause on the Bill 131, *The Conservation Easements Amendment Act, 2009*, at clause 11 the members indicated

division. Through clarification, it's actually clause 15, section 11.42(10) that you wish to state division on. Is that correct?

**An Hon. Member:** — Correct.

**The Chair:** — Noting that correction, I would like to ask the members of the committee if that can be agreed to then, division on clause 15, section 11.42(10).

**An Hon. Member:** — Yes.

**The Chair:** — Agreed.

[Clause 15 agreed to on division.]

**The Chair:** — Thank you very much for your indulgence in that, and we'll move forward now.

### **Bill No. 121 — *The Environmental Management and Protection Act, 2009***

#### **Clause 1**

**The Chair:** — So we're here now because earlier today the Assembly referred Bill No. 121, *The Environmental Management and Protection Act, 2009* to our committee. This is now what we're going to be considering. And by practice, as stated before, the committee normally holds a general debate during consideration of clause 1.

So we will now consider clause 1, short title, *The Environmental Management and Protection Act, 2009*. I see, Ms. Minister, you've had no substitutions or changes of officials, so no reason to do the introductions yet again, I guess, unless you so choose to as part of your preamble, which you can now proceed with.

**Hon. Ms. Heppner:** — Thank you, Mr. Chair. I'll keep my comments relatively short. The piece of legislation in front of us today is part of the ministry's move towards a results-based regulatory system. Because we have adopted the results-based regulatory system, there is a need to update and modernize various pieces of legislation. This is one of a few that will eventually be coming before committee for examination.

*The Environmental Management and Protection Act*, the purpose of it is to support and promote protection, management, and wise use of the environment in a manner that will ensure Saskatchewan's environment will continue to sustain a high quality of life including social and economic development, recreation, and leisure for current or future generations.

The new Act will be consolidating *The Environmental Management and Protection Act*, *The Clean Air Act*, *The Litter Control Act*, and *The State of the Environment Report Act* into a single piece of legislation. This will enable us to reduce duplication and establish the results-based regulatory framework.

That framework will modernize a provincial air quality management program, establish environmental auditing processes, enhance environmentally impacted or contaminated site management, clarify and expand requirements for financial



assurances for decommissioning and reclamation of industrial and commercial operations, reduce permitting requirements, expand requirements for qualified persons, authorize the ministry to establish the Saskatchewan environmental code, enhance drinking water and waste water programs, modernize litter and beverage container programs, improve public reporting, and it will authorize the ministry to create a revolving fund, if and when necessary, to assist in the cleanup of environmentally impacted sites.

The Act will provide transparency of information to Saskatchewan citizens regarding the protection of the environment and the requisite environmental performance of those carrying out activities in the province. The Act will be supported by enforceable, demanding, and up-to-date risk-based objectives, standards, codes, regulations designed to manage activities that may cause adverse impacts on the environment. Thank you.

**The Chair:** — Well thank you, Ms. Minister. I'll just make a statement. Is anyone warm in here? So any members that wish to take off their suit jackets, as well, officials, feel free. We're here to be comfortable, not to be stifled. Trust me.

I guess we'll move on now to questions. Ms. Morin, do you have questions? Okay.

**Ms. Morin:** — Thank you, Mr. Chair. Thank you for the opening comments, Madam Minister. With respect to the Bill, it's going to be based on a results-based model that the minister has spoken about being . . . it's going to be more responsive to increasing demands on the environment while allowing for increased economic activity.

I'm wondering if you can just give a bit of an overview, besides the opening remarks that were made so far, with respect to what is currently impeding increased economic activity with respect to the existing standards that are in place.

[21:30]

**Hon. Ms. Heppner:** — Thank you for your question. There are some key elements to what we're going to be doing. One of them is trying to eliminate or decrease wait times in the Ministry of Environment. Much of that is going to be done through IT systems in order to offer better service to our clients and those interacting with the Ministry of Environment.

There will be clarity of environmental objectives and expected outcomes, which clears up any kind of confusion for proponents who are looking to do business in our province. There's going to be consistency of regulatory expectations. And because the permitting system is seen by some to be quite cumbersome, it's going to help to clean up and clarify some of that system as well.

**Ms. Morin:** — Just on the point of establishing consistency of regulatory expectations, can you give an example of some of the inconsistencies that currently exist?

**Hon. Ms. Heppner:** — I was trying to get a specific example for you, as well as kind of an overarching response to your question on potential for inconsistencies. There are areas within

the ministry where there are very clear protocols for what the expectations are. Drinking water is one of those. So when there's enforcement officers going out, there are very specific guidelines to go by.

In other areas the enforcement would be up to interpretation because there aren't those protocols in place and so you don't always have the same level of interpretation of the regulations or legislation, depending on who was doing that. This will have a . . . Going to this system there will be a basic expectation which would apply to everybody, which would take out the ambiguity.

**Ms. Morin:** — Thank you for that response. So as I can appreciate, it's getting difficult to find examples when the hours drag on and unfortunately it's a lot easier to absorb sometimes the explanations when there are examples. So when we're looking at consistency of application, which is I'm assuming what we're looking for with this legislation, how do you have consistency of application when there are a number . . . I mean the Ministry of Environment is very broad based and this Act is going to apply to a fairly broad section of the Ministry of Environment. So how do you have standardized applications when it does cover such a broad spectrum of unique situations?

**Mr. Wittrup:** — Mark Wittrup, assistant deputy minister, environmental protection and audit. I mean one of the issues with the current regulations is that they can be interpreted for every single situation and you often get a different environmental outcome. What results-based regulation is attempting to do is standardize the outcome that you wish to achieve in the environment, therefore it's easier to apply it in a broader manner. As mentioned, the water-based or the water regulations are a good example of where you have an outcome-based regulation in place and everybody must apply to that.

So through the development of the code, that code would be defining the outcome, defining the qualified persons that accrue to that outcome, and the compliance that the proponent or the undertaker would have to meet.

**Ms. Morin:** — I appreciate that. So we're looking at developing, then, a results-based environmental code through this legislation which would then be the governing system that is going to be used. How far into that process are we now in terms of developing that code, and when will it be available for public scrutiny?

**Hon. Ms. Heppner:** — Thank you for the question. The development of the code is ongoing. There is, because it's a fairly large project, there are existing in regulations now some of the regulations which are more of an outcome based. Those can be dropped directly into the code because they are already achieving kind of what we're looking for.

But there's a lot of work to be done. We are currently establishing a code development committee and technical committees. The work will be ongoing. There's going to be requests sent out to various organizations and stakeholders and others who would be interested in this to help us with the development of the code.

It's not being done in isolation just within the ministry or within government. It is really done in consultation with industry, including mining consultants, NGOs such as the Saskatchewan Environmental Society, Saskatchewan Institute of Agrologists, consultants from the National Building Code. The building codes are a results-based format already so they can . . . although it's buildings, not the environment, they can give us some insight on code development.

Representatives from chambers of commerce, legal advice, oil and gas folks, forestry, the Council of Saskatchewan Forest Industries, representatives from the city of Saskatoon, Nature Conservancy, and then we're also looking at Fisheries and Oceans and the Canadian Environmental Assessment Agency to help us with this as well. So there's a broad base of people. And then that's for the code development team.

And then the code will be developed also in consultation with others, including First Nations, other stakeholders, other interested groups, so that we keep them in the loop as we go forward and make sure that we get their input on these things. But I do want to point out one thing because there's been some confusion with stakeholders — and we've worked pretty hard to make sure that they understand — if the legislation is passed in this sitting, it doesn't come into force until the code is done.

The current regulations will stay. This is enabling legislation to enable us to use the code when the code is ready. So we wanted to have this in place, but it's just kind of going to sit as a placeholder for now until we have the code developed. And once that is done, then we would have this legislation come into force. I think that's the right terminology.

**Ms. Morin:** — So when are we anticipating to have this legislation come into force in terms of its application? What's the timeline for the code in terms of the development of that, or I should say the completion of that?

**Hon. Ms. Heppner:** — As I said, there's a lot of work to be done. We don't want to rush into this. There's not a lot of jurisdictions. I think we're the first in Canada that is going to a results-based regulatory system wholesale within the Ministry of Environment. And so we want to make sure that we have as much input as possible.

So the timeline right now that we're working on is to have the majority of this work done by the spring of 2011, but if it's not done, we'll take extra time. We want to make sure that it's done right the first time, and so we will take additional time if required. But our target date right now is spring of 2011.

**Ms. Morin:** — Great. I have one more question on this particular subject, and then a colleague of mine has a few. So I'm just going to ask one more question about this.

I was encouraged to hear that there's going to be an extensive list of participants that you're inviting to be part of the code development committee, and I'm assuming that includes a technical committee as well.

**Hon. Ms. Heppner:** — That's a different list, the technical committee.

**Ms. Morin:** — It is. Okay. Well maybe if I could place my question. Is it possible for the minister to provide a list of the invitees to the development of the code for the development committee and for the technical committee? Would it be possible to provide the opposition with both of those lists of people that are going to be . . . well I should say industry, NGOs, [non-governmental organization] and others that are going to be invited to be part of that process?

**Hon. Ms. Heppner:** — The requests haven't been sent out to specific people yet and I would not want to pre-empt them hearing about it first. But we can supply to the committee through the Chair a list of the, we'll say, organizations that we're pursuing to sit on both of these, if that would work. But like I said, the individual people haven't yet been asked. But I can get you a list of the organizations and industry stakeholders, those in more of a broad sense. We can supply that.

**Ms. Morin:** — I completely understand the circumstance and I would appreciate that. And then when those invitations have gone out, perhaps at some point in the future we could be provided with an updated list for both the developmental committee and the technical committee. Thank you.

Mr. Forbes would like to ask a few questions on this right now too.

[21:45]

**Mr. Forbes:** — I just have a few quick questions in terms of the development. I have to say I didn't hear, but I maybe just didn't hear. On the list, was there labour groups part of the groups that you're going to be inviting in terms of the development? These are the people, I know, CEP [Communications, Energy and Paperworkers Union of Canada] will be very interested in this; the Steelworkers would be.

**Hon. Ms. Heppner:** — We don't have any plans currently to have them as official members of the committee, but they would be involved in the consultation process, so they would still have input into the development.

**Mr. Forbes:** — That's the part that I was concerned about, that they would be part of the consultations. Now CUPE [Canadian Union of Public Employees] because . . . and CEP work with water, clearly, and the Steelworkers, in terms of the mines, have an awful lot to offer in this. And the other group that I think is very, very important is just the general public and to have public meetings on this because this results-based . . . This is a pretty much paradigm shift in how we're approaching environmental assessment and I think the general public needs to know about this as well. It's a real opportunity. And I am talking about the general public, not organized stakeholders.

**Hon. Ms. Heppner:** — On the issue of public consultation on this, we haven't had meetings, like an open house, specifically on this. All the information that we have that we've been presenting to our stakeholders . . . We started consultations in 2008, so we've been working on this for quite some time. And all the information is available online. There's a link for public feedback page online that goes back to the ministry. So the public does have an opportunity to comment, having all the information in front of them. So they're not commenting on an

unknown. All the information will be listed. They can read through it and then offer their feedback.

**Mr. Forbes:** — I would encourage the ministry to think about some public meetings. I know that the information is there, and I've seen it. And I think that it's a pretty daunting task to read through it all and try to make sense of it, and it's much better to have some staff people to help people work through it. And some people, I think the majority of people, have access to web information, Internet information, but some don't, some have chosen not to, and I think it's important to have that as accessible as possible.

The other question, I know that there's been an awful lot talked about how this is very similar to the National Building Code, which is an interesting comparison, but also the Swedish environmental code. And so I'm curious to know what you're taking from the Swedish environmental code. I had a chance to take a look at that on the Internet today. And I thought, oh this is interesting. What parts of that are you taking? Or what have you been looking at?

**Hon. Ms. Heppner:** — On the Swedish environmental code, that was actually looked at when we started this endeavour. It's always helpful to go and examine what somebody else has done, as you had mentioned. This is unprecedented in our country. And where we don't have to reinvent the wheel, that's kind of handy and see what others have done. So it was part of the examination going into this.

**Mr. Forbes:** — So will we see parallels or will there be . . . I think we need to take a look at the preamble in Sweden. And you know the minister's been pretty clear about how this code is being developed in terms of the role of the economy and the environment. And if you look at the Swedish environmental code, it doesn't take up that same sort of approach. In fact I don't think that . . . In the preface, which I'm looking at right now, it doesn't talk about the economy. It doesn't talk about the marketplace.

**Hon. Ms. Heppner:** — I don't know that our code is going to talk specifically about the economy either. The code is an environmental code. But I will say this. As a messaging from our government, that I don't know that you . . . There's the three Es — the Triple-E used to be talked about in the Senate, and now it's moved on to something else — but it's energy, environment, and economy. And it's near impossible to separate one of those from the other. If you are pursuing energy needs, you have to protect the . . . Well you have to protect the environment anyway. But the environment has to be part of that discussion. If you're looking at economics, the environment has to be part of that discussion. I don't know that those can be separated. But as far as the wording within the code, it will be an environmental code. It's not an economic code.

**Mr. Forbes:** — Fair enough. Then I'll give this back to my colleague here. But I do think that . . . I'm more familiar with a triple bottom line, I guess, than a triple E. But I appreciate that, and I agree that you can't separate the economy away from the environment or energy obviously. But if there are strands of the European codes in here, this would be very interesting for sure.

**Ms. Morin:** — Actually I'm just going to ask a follow-up

question to what Mr. Forbes was asking. So the response was that labour would be included in the consultative process but not included in one of the lists of invited groups to be part of the code development committee.

So can you just clarify for me where they're fitting in, like in terms of the consultative process. Is that going to be after the code has been developed? That's when they're going to be consulted?

**Hon. Ms. Heppner:** — The consultation process is ongoing for the development of the code, not after the fact. But we want their input all the way along. And so it's an ongoing process. It won't be the committee sits down and develops the code and then takes it out for consultation. The consultation will be ongoing as the development continues. And that's what role labour and other stakeholders would play, those who are not part of the technical committee or an actual member on the other committees. But the consultation will be ongoing as the code develops. It's kind of in step with the development.

**Ms. Morin:** — So as part of the code development committee, I know you had rattled off a list there, and I wasn't able to take shorthand quite that quickly, but that's okay. But I do recall you having said various organizations, both industry, NGOs, and you did mention First Nations and Métis organizations. Is that correct?

**Hon. Ms. Heppner:** — As part of the consultation process.

**Ms. Morin:** — Okay. Would they be part of the code development committee?

**Hon. Ms. Heppner:** — Not a member on the actual committee, but part of the development process. The code development, we are seeing that as a very interactive process. And so whether you're a member of the actual committee or a stakeholder who's involved in that process, there is a great opportunity for involvement and input.

And I think it's an unusual form of consultation because a lot of times the end result just will be handed over and ask whatever stakeholder it happens to be, First Nations or otherwise, and ask, what do you think of that? This is more of a development along the way with their input along the way, so they'll be part of that.

**Ms. Morin:** — Is it possible . . . I understand . . . Like I said, I'm not looking for any specific names. But could you just maybe just, you know, reiterate some of the organizations that are going to be invited to participate on the code development committee? Just some, you know, some broad-based invited organizations.

**Hon. Ms. Heppner:** — I'm sorry. I missed the first part of your question. You were asking again for the list on the committee, like the . . .

**Ms. Morin:** — On the code development committee because I think I might have mixed up who's going to be included in the consultative process as to who's going to be invited to participate in the code development committee. So I'd like just a little more clarification on specifically who's going to be

invited to participate on the code development committee.

**Hon. Ms. Heppner:** — I'll go through the list. I'll try to . . . I know I read far too quickly. Without mentioning any names, from the mining sector, specifically potash. We'll have our consultants. Clifton Associates has been working with us, so they'll obviously be part of that.

NGOs — we're going to be looking to the Saskatchewan Environmental Society. On the issues related to where there's overlap with agriculture, the Saskatchewan Institute of Agrologists. A consultant from the National Building Code.

Representation from the environmental committee for the, I think, I believe it's Saskatchewan Chamber of Commerce. Legal advice, obviously. Oil and gas, forestry sector, the Council of Saskatchewan Forest Industries. Representation from the environmental side from the city of Saskatoon and the Nature Conservancy of Canada.

**Ms. Morin:** — Is that list going to be expanded, or is that pretty much the finalized list that is going to be asked to participate in the code development committee? Is that a finalized list?

**Hon. Ms. Heppner:** — This is the list that we're looking at now. And it's important to note too that there's like an org chart that goes along with this because this is a pretty big job. So this would be the committee at the top, and underneath this would be working groups, and that is far more broad based and would be more sector specific because obviously we have to look at every sector individually. So this would be the committee at the top. There would be working groups that work underneath this main committee.

**Ms. Morin:** — Thank you very much. That clarifies things for me quite a bit. Now I noticed in your remarks on this Bill that it says:

The code will establish objectives that regulated parties must meet to engage in particular activities, which they will achieve through best management practices identified in the code and through the preparation of environmental protection plans by qualified persons.

So given that that's going to be the framework, what type of monitoring plan is going to be in place to ensure that that takes place?

**Mr. Wittrup:** — It's a long answer so I'll sort of wade in. One of the benefits of the results-based regulation is that it allows faster approvals often through a computer notification for low-risk, routine, very well-understood activities. And there are a lot of the activities that eat into proponent time and ministry staff time right now. It takes a lot of energy to do those, so one of the benefits of results-based regulation is to remove that burden, if you will, for the most part.

Now that doesn't obviate the proponent from compliance. They have to comply with the code. And many of those permissions are facilitated by the use of qualified professionals and qualified persons. So it allows a better focus on compliance for higher risk activities by ministry staff. That's one major component of RBR [results-based regulation]. The other is that we've added

more compliance instruments to it, including the compliance audit program. And so using a risk-based criteria, we would be auditing selected licensees, permittees in the regulated community for their compliance with the code and code activities. And that's in addition to the normal mechanisms of complaint-based initiation as well.

So it's a move to focus on high-risk activities. So they'll get a better review by ministry staff, but ministry staff will also be available for more inspections and then also for compliance audits. That's part of it; the proponent gets more responsibility, but we get to check up on them.

[22:00]

**Ms. Morin:** — Thank you for the explanation. I also want to twig on, that the minister also referred to the fact that this system is going to require proponents to register with the ministry before engaging in particular activities. I'm curious as to what type of penalty will be in place, or if we even know that, for those that are in non-compliance.

**Mr. Wittrup:** — Well first and foremost, a responsibility of the ministry is to work with proponents to move them to compliance. And we would hope that, with the mechanisms that are available to us, we will be able to move proponents to voluntary compliance, either through the results of inspections, audits, or compliance mechanisms. Failing that, the Act proposes increased penalties, \$2 million a day per offence and with the potential for jail time as well. In addition it also enables the ability to develop administrative penalties for the environmental equivalent of traffic tickets, if you will, if necessary. So there are penalties involved.

And so there's the full range of compliance and enforcement tools available through the Act where we think we've proved things. If the proponent is going to be responsible and more responsible under the Act, we have to provide them with the capacity to comply. So that's first and foremost. But if they're reluctant to go there, and unfortunately some are, we have a wider range of enforcement tools as well.

**Ms. Morin:** — So what you're saying in a nutshell — and I'm sorry because there was a little bit of disturbance — the tools that you're going to have are more far reaching than currently exist, and that will be something that would be applied through the compliance audits that would then be conducted through the ministry. Is that correct if I assume that?

**Mr. Wittrup:** — That would be correct, yes.

**Ms. Morin:** — Okay, great. Now I notice also that it says, in the minister's comments again, that in developing the code the ministerial seek advice of various organizations and that an advisory committee consisting of representatives for these groups will make recommendations to the ministry and me as minister on the content of the code.

Now I'm assuming that those are the consultations that will take place prior to the code being established. Am I correct in that? Okay. Then one of those, one of those groups that was mentioned in that was the First Nation and Métis communities. And the comment of course that I've heard is that because the

partnership agreement for that type of research to be done that existed is no longer in place and therefore they won't have the ability to conduct that research with the various First Nations, then that they're going to be impeded in terms of being able to fully participate in the process. Is there something that's being done to mitigate those circumstances?

**Hon. Ms. Heppner:** — Our approach to this is to work not just with FSIN [Federation of Saskatchewan Indian Nations] but individual First Nations tribal councils, and there is funding within the Ministry of FNMR [First Nations and Métis Relations]. There's a \$3 million consultation fund which they can access if there's a capacity required. But it's more broad-based consultation than just FSIN. We're reaching out to individual First Nations as well.

**Ms. Morin:** — That is the concern of FSIN, is that FSIN does not provide feedback based on the organization as the FSIN, but rather that they have the ability to be able to contact the various First Nations that they represent, collect that information through the research that they conduct, and then present that information on behalf of those First Nations. And of course FSIN also informs me that the individual First Nations don't necessarily have the funds to be able to really, you know, do some of the studies for themselves, in terms of wanting to provide that feedback to the ministry.

And so I'm encouraged to hear that there are some funds that they're able to access through FNMR, but is there any thought to providing extra funds through the ministry to be able to assist these individual First Nations with the costs that they may need to incur to be able to provide proper feedback or through the FSIN to do so for those First Nations?

**Hon. Ms. Heppner:** — As I said, there's a \$3 million consultation fund through FNMR for this. Money has already been dispersed through that fund for some First Nations to participate, and we in fact had offered FSIN some funding for review of the legislation, and they turned down our funding offer.

**Ms. Morin:** — Do you know why they turned down that funding offer?

**Hon. Ms. Heppner:** — No.

**Ms. Morin:** — You have no knowledge of why they turned down the funding offer?

**Hon. Ms. Heppner:** — I don't know.

**Ms. Morin:** — And how much of that \$3 million that they're able to access from FNMR — First Nations and Métis Relations for those individuals who are watching and don't know what our acronyms are all the time — how much of that \$3 million has been accessed so far through those requests?

**Hon. Ms. Heppner:** — About \$70,000 to date. But as I said, this consultation is going to be over the next several months, and we would obviously expect more requests to be put forward from First Nations tribal councils and FSIN for additional funding.

**Ms. Morin:** — And one last question on this particular topic. So just for clarification, is that \$3 million specific for this particular project, or is that \$3 million available for accessibility on research on any topic, or is it specific to the RBR information that's being requested?

**Hon. Ms. Heppner:** — The \$3 million through FNMR is for all consultation requests. It's not \$3 million specific to this project.

**Ms. Morin:** — Okay. Thank you very much. Now in your response, I mean your second reading remarks I should say, you also describe the fact that this Act will describe the authority to establish a new air management system. The emphasis of this system will be on action and accountability. I'm just wondering how this will weave together with the Western Economic Partnership Agreement that is currently being looked at, being signed by the Premier.

Clearly there are some implications potentially that could happen through that type of an agreement with respect to the airsheds. I'm wondering if Environment has already seen that agreement and has a comfort level that there won't be any compromise of future implications for Saskatchewan people with respect to the airshed pollution from other provinces.

**Hon. Ms. Heppner:** — I'm happy to talk about an air management system. As for an agreement that the member had posed, I'm not in a position to discuss that. But like I said, I'm happy to talk about the air management system.

It's an airshed management approach that we're going to be taking. And we'll establish baseline emission requirements for industry. There are national air ambient quality standards that are being developed in consultation with stakeholders and jurisdictions because airsheds are kind of like water — you share them amongst jurisdictions as well. So we're looking at national standards because what happens in one province filters over to the other. It happens with water as well. What happens in one province comes into the other. So nationally we are looking at having some national standards across the country.

**Ms. Morin:** — I am somewhat concerned with that response for one very simple example. For instance, we know that 70 per cent of the air emission pollution that is emitted from Alberta directly affects the airshed in Saskatchewan. And we know that there may be some implications that are already taking place and future implications that occur from that airshed pollution that is coming from our neighbouring province. So when we look at a western economic partnership agreement with Alberta and BC [British Columbia], I'm very hopeful that there would be discussions with the Environment ministry as to what implications that would hold for a situation as I just gave the example of.

So I understand that the minister can't divulge the details, given that the Premier's response in question period today and in other question periods has been no response in terms of information on the western economic partnership agreement, but I would like to know if the minister has at least had some input with respect to her concerns, like I've just given an example of, with respect to how that agreement with those two other provinces might have on the future implications of the pollutants that are affecting Saskatchewan.

**Hon. Ms. Heppner:** — As I said, Mr. Chair, I'm happy to speak to the Bill and the air quality examples that are put out in here. I know that there's concerns with Alberta and the emissions that are coming into our province from Alberta, which is why it's very important to work with the federal government on this to get all jurisdictions onside so that we do have national air quality standards which will then reduce what's coming in from Alberta and help protect our North because we are affected by that.

But if the member has questions about an agreement that's between Saskatchewan, Alberta, and BC, I don't believe that this is the place for those discussions. It's not in the Bill.

[22:15]

**Ms. Morin:** — Well thank you, Madam Minister. I'm actually, like I said, not looking for any particulars on WEPA [western economic partnership agreement] because I don't imagine I'm going to get them anyways, as you just alluded to. But I don't think hanging our hat on hoping that the federal government will do something to protect our province is something that I, that anyone in Saskatchewan would be comfortable with either.

It is a responsibility of the ministries in Saskatchewan and the Premier to look out for the best interests of Saskatchewan and Saskatchewan people, so I'm just curious as to whether the minister has been included in discussions with respect to this agreement to ensure that there is no compromise for the province if this agreement is signed.

**Hon. Ms. Heppner:** — Mr. Chair, I would say again the question that the member has asked is specific to an agreement between Saskatchewan, Alberta, and BC. It really has very little, if anything, to do with this Bill. Her question was specific to that agreement, and I'm not in a position to answer those questions.

**Ms. Morin:** — All right. Well I'll pose the question perhaps a little differently then. Since this Bill is going to describe the — these are the minister's own words — will describe the authority to establish a new air management system, clearly there is . . . And it goes on to say, actually, in the minister's words, the emphasis of this system will be on action and accountability. Maybe the minister can clarify for me then what type of action and accountability the minister is looking at with respect to the authority of establishing a new air management system under this Bill.

**Ms. Gallagher:** — So we are proposing a new air management system as part of the legislation. *The Clean Air Act*. The previous clean air Act was quite outdated and difficult to use from a legal standpoint, and so we will modernize it and bring it into the system.

But in addition, the legislation will be enabling an air management system that has a number of interrelated elements. And so base-level requirement emissions for all major industrial emitters will be one key component of that. There will be three. And this is to ensure that . . . And we are working through the Canadian Council of Ministers of the Environment, and so other jurisdictions are working along with us so that we can ensure that similar industry standards are in the province and Canada.

So they're all required to meet a base-level environmental performance. All sources of emissions will be managed to achieve the desired air quality results. In this context, industry will be asked to make reductions beyond the base-level requirements where needed. That's not a particular concern in Saskatchewan, but we have worked with the other jurisdictions, so, for example, Ontario, they would have that opportunity.

The additional piece here is a national air ambient air quality standard that we're working with the federal government which will be established in consultation with other jurisdictions and stakeholders. And these initial standards will look at fine particulate matters and ground-level ozone. There are already standards in place so those will be incorporated into the national ambient air quality standard.

We'll also be looking at the establishment of air management zones or airsheds across Canada. This would be done in consultation with local governments and neighbouring provinces and states and territories so that the province . . . In particular though it enables us to set our own air quality results, so what we want to see achieved in the province of Saskatchewan. And so the federal government, they're an important partner in this, and as well as the other jurisdictions. So we're working as part of the Canadian Council of Ministers of the Environment and enhancing the work that we're also going to be doing on public reporting, etc.

So that would be the comprehensive piece that would be incorporated into the new EMPA [*The Environmental Management and Protection Act*], 2009.

**Ms. Morin:** — And maybe could you just expand on the accountability piece because I didn't quite catch how the accountability works into all of what you've just described.

**Ms. Gallagher:** — So as part of the national ambient air quality standards and the airshed zones, there would be a requirement for public reporting through a simplified and harmonized model. You are already starting to see components of that in the work that we do that we've worked with the federal government. We now have a . . . What do you call it? It's late; I'm losing the word here. But it's a real time air quality on our website. We work with the federal government to do that so that's available across Canada.

So that's a start of some of the national reporting and how it's linked directly into the province. So, you know, we think real time data is something that will be important to the people of Saskatchewan.

**Ms. Morin:** — Thank you very much. Yes, it is late and I'm sorry for that. Five hours is a long duration of time to have to sit here and answer questions, and you're doing a very good job, and thank you very much for that.

Now while I was asking some other questions, I was handed a note, and it's amazing how quickly information can be disseminated nowadays, as well. So I was asking about the request that was made that the minister had referred to by the FSIN, that was then turned down once the offer of money was made. Now I was informed that they were offered \$50,000 to provide feedback, I guess, on a number of Bills and they felt

that that was not even going to come close to being adequate and decided to finance the research themselves.

So out of that research I'm sure the minister is aware of the Lands and Resources Secretariat submission to the Minister of Environment regarding Bills 121, 122, and 123. Has there been any dialogue with FSIN about this submission? Because I guess I am kind of surprised that if there has been dialogue that there wouldn't have been a knowledge about the fact that the FSIN turned down \$50,000 to conduct this massive amount of research. So I'm just wondering if there was any dialogue after they submitted this 150-page document to the ministry.

**Hon. Ms. Heppner:** — I had sent a letter back to the FSIN acknowledging that we received that and we are currently in the process of trying to set up a meeting date with them to discuss that with officials in the ministry as well.

**Ms. Morin:** — Can the minister or one of the officials give me the date on which this document was received, given that it's showing that the submission document . . . the date on this submission is February 25th, 2010.

**Hon. Ms. Heppner:** — Mr. Chair, we are trying to track that down, but we don't have that information in front of us.

**Ms. Morin:** — Thank you. I'm assuming that I can get that forwarded to me at some point when it's available, through the Chair.

So my concern is then, that given that the conversation has just recently taken place with the FSIN regarding this submission that they have presented to the minister and the ministry, and that those conversations are now just taking place and those consultations are now taking place, it doesn't seem, it doesn't seem prudent and wise to be moving ahead with a substantial piece of legislation when a significant stakeholder has not yet been fully consulted in terms of their submission that they've clearly put a tremendous amount of effort into.

And I want to correct what I had stated for the record before, because I just kind of lifted the document and said 150 pages but it's actually 131 pages. I want to be accurate in that. So I'm just wondering what the minister's thoughts are on the fact that this submission has now not yet been fully taken into account with respect to the Bill, given that those discussions are just commencing with the FSIN.

**Ms. McKillop:** — Jennifer McKillop. I'm the director of the Aboriginal affairs branch for the ministry. Just to give sort of a chronology or a background on our discussions with FSIN on RBR generally and the legislation more specifically.

We first engaged the FSIN in August of 2008, made a presentation, and had discussions with FSIN staff, vice-chief, and the Lands and Resources Commission chiefs at the Lands and Resources Commission meeting. We again engaged later that year — I believe it was in November — with the new vice-chief because there was a change in vice-chiefs during that time.

Subsequent to that, we had a number of meetings discussing a potential approach for working with First Nations through the

FSIN and had some discussions in that regard. Based on those discussions as well as internal discussions on the technical nature and our desire to present information directly to First Nations as well as our legal obligations to work directly with First Nations in terms of the duty to consult, we began a process of consultation with First Nations.

Notification of all First Nations in the province in May of 2009 with follow-up and invitation for consultation for further meetings, information, further discussion followed up by a subsequent correspondence in October of 2009, followed with . . . including follow-up, we held five regional information sessions for First Nations specifically in November of 2009 in Saskatoon, in Regina, in Prince Albert, in Meadow Lake, and in La Ronge, as well as five separate ones for Métis communities as well in those same locations.

We did around that time continue discussions with FSIN about what their role would be in this consultation process. And we made the offer to them based on basically discussions we had had with the Métis Nation of Saskatchewan, for example, an amount that we thought would be more than appropriate in terms of having legal and technical review of the proposed legislation and the initiative more generally, as opposed to duty to consult which we were undertaking with the First Nations directly. I made that offer to FSIN and I believe they turned that down in December or January, subsequently submitted that submission to us, and we'll get the exact date for you through the Chair.

[22:30]

**Ms. Morin:** — Thank you very much for that chronology. I'm impressed that you're able to do that without having any notes in front of you, just do that from off the top of your head. So the obvious question I guess would be then, did the FSIN feel, and the First Nations leaders, did they feel that the duty to consult had been properly discharged?

**Ms. McKillop:** — I don't know how FSIN felt about that. I do know that it was the position, it is the position of the ministry that the overall goal of an RBR environmental management framework is to enhance the protection of the environment, and so in terms of impacts of this initiative — direct impacts of this initiative — on the exercise of Aboriginal and treaty rights as per the duty to consult, we believe and were advised by Justice officials as well that the potential impact on Aboriginal and treaty rights moving to this framework is low. The potential is low. But yet it's important to engage First Nations and Métis on environmental management and the way we manage our environment, and that's what we were doing. That was our approach.

**Ms. Morin:** — Was the FSIN or any of the First Nations leaders, did they have the ability to see any of the draft legislation before it was presented?

**Ms. McKillop:** — We provided what we could in terms of being bound by the law. So policy direction papers. Yes, legislative summaries based on the side by sides, you know, the work that was being done, but we couldn't release the actual draft Bills.

**Ms. Morin:** — And so when you received the feedback through those consultations, especially when you showed them, you know, some of the drafts that you say were available to them, were there any obvious concerns that they had with any of those?

**Ms. McKillop:** — With the Bills themselves?

**Ms. Morin:** — Well specifically with Bills 121,122,123, because obviously that's what the submission from the FSIN contains.

**Ms. McKillop:** — There were a number of concerns that were identified, particularly in written submissions that we received, and those were considered by the ministry in terms of the legislation as it was brought forward.

**Ms. Morin:** — So that was at that time. And then the FSIN felt it necessary to prepare a 131-page document outlining some of their concerns on these three Bills. So I guess I'm missing a piece of the puzzle here. If there were such good communications all the way through the piece, why is it that they then felt that they had to do this substantial piece of work and submit a 131-page submission to the ministry about their concerns on these three Bills?

**Ms. McKillop:** — We asked the FSIN for their perspective. And that's what they provided to us. We asked them directly to provide that to us.

**Ms. Morin:** — And when was that request for that perspective made?

**Ms. McKillop:** — Well that's what we had been discussing since August of 2008.

**Ms. Morin:** — So the request was made since August of 2008 for their perspective in written form?

**Ms. McKillop:** — Well I think when we began . . . It depends if you mean perspective on results, moving to results-based generally, or on the Bills themselves. And I would have to check back in my notes when we started having discussions on FSIN providing a legal, technical review of the Bills themselves. But certainly when . . . It was our intent — when we first met with, when Chief Lawrence Joseph at the time was notified in July of 2008, and we subsequently presented to the Lands and Resources Commission chiefs — to get input at that time on RBR initiative generally.

**Ms. Morin:** — So I guess then the next obvious question would be then, if there were these ongoing discussions and consultations and the concerns were known as to what their concerns are in this document all the way through the piece, was it then conveyed to the FSIN and the First Nations leaders that, thank you for your concerns; here's why we're still going ahead with the legislation that we've put in place, because of X, Y, and Z? Did those discussions ever take place?

**Ms. McKillop:** — We didn't receive specific comments on the Bills until that submission that we received that's dated late February which we received March 1st.

**Ms. Morin:** — So it's on the record now you've received it March 1st because your microphone wasn't on at that point. So March 1st of 2010 was when you received the document?

**Ms. McKillop:** — Yes.

**Ms. Morin:** — And the discussions about this document are only starting to occur now though. Right?

**Ms. McKillop:** — Yes. We've responded. The minister has responded to FSIN and so, that we'd like to have discussions with you on your comments, your concerns, and the role of FSIN as we move forward in this initiative.

**Ms. Morin:** — And so do we foresee any amendments that might be coming because of the concerns that have been outlined in this document?

**Ms. McKillop:** — In FSIN's . . .

**Ms. Morin:** — Yes, specifically to the submission from FSIN regarding Bills 121, 122, and 123. And granted we're only on 121 right now, so that's the one that we should be speaking about specifically. Do we foresee any amendments coming out of the concerns that they've submitted in their document to Bill 121?

**Ms. McKillop:** — No.

**Ms. Morin:** — And has that been communicated to the FSIN, that there won't be any changes made to Bill 121 regarding the concerns that they've presented?

**Ms. McKillop:** — We've responded to FSIN, to their concerns. The legislation is enabling legislation that will allow us to move forward to develop the work. Right? And that we believe that the concerns that have been addressed can be, will be addressed in the implementation of RBR, not in the legislation itself because that is the enabling legislation, so for example in the development of the code which is really where, as they say, the rubber hits the road. Right?

**Ms. Morin:** — I just note from some of their comments that there is a feeling that this framework, you know, that they feel the framework favours deregulation and after-the-fact preventative regulation and may adversely affect treaty rights. Is that something that has been looked at in terms of maybe enshrining in the legislation? Or is that something that's being looked at now in terms of the code itself? When we look at, you know, issues like this, it's always better to have things like this in legislation because then it offers a greater level of certainty and comfort to organizations such as this one, for instance, that have expressed that concern.

**Hon. Ms. Heppner:** — On the issue of deregulation I want to make it very clear this is not deregulation, this is not self-regulation, this is not a removal of any rules. This is actually a strengthening of environmental protection. And so people raise that and say, this is deregulating. It is not deregulating. There will not be a lessening of environmental regulations. It provides clarity. It provides strong outcomes.

But I want to make sure that we don't start calling it



deregulation because that is not what it is and, as was stated, it is enabling legislation and the guts of what will be . . . the guts of this is in the code. And as the development of the code moves along, First Nations, including FSIN, will be part of those discussions and we'll continue to solicit their input into this.

**Ms. Morin:** — Well as I've just clarified, that is the concern that exists. And given that the submission was received in early March and those discussions with FSIN are only going to be initiated in the near future here, that leaves reason for concern with respect to the enabling legislation that the minister's referring to because again there is a level of discomfort with a major stakeholder with respect to this legislation. So I'm wondering if perhaps there was any consideration for potentially looking at a delay of the legislation, enabling legislation moving forward — if we're going to describe that way — given that these concerns are just now being addressed.

**Hon. Ms. Heppner:** — I'm just seeking clarification on your request. This is not deregulation. And if somebody comes to us with a concern saying you're introducing legislation that will lead to deregulation; please don't do that — we're not doing that. So I don't know where the impetus for delay or pulling this legislation would be when it is not deregulating legislation. We would be making a decision based on something that in fact is not happening within this legislation.

If it were in fact legislation to deregulate — which, I will say again, it is not — I think that concern would be valid. But it's not. This legislation doesn't lead to deregulation. So like I said, I'm just asking for clarification. I'm not sure why we would put a hold on our legislation when in fact it does not lead to deregulation.

**Ms. Morin:** — There are other concerns obviously. I mean that was just one example of one of the concerns. But there are obviously many, many other concerns that are listed, and a lot of them have to do with First Nations rights and treaty rights and such. So I'm just wondering, if they feel so strongly that the duty to consult was not properly carried out, what can be done to mitigate those circumstances?

[22:45]

**Ms. McKillop:** — As I mentioned earlier on, when we assessed the duty to consult obligations that the ministry, that the Crown would have relative to this legislation, because of the intention and the objectives of this framework, we assessed the duty to consult, at the potential to impact Aboriginal treaty rights of this framework, as low. And we carried out consultation that we feel was in fact more than adequate in terms of meeting that level of obligation.

There may be parties that don't agree with the level of consultation that we undertook or how we took a consultation, but duty to consult is about fulfilling our obligations and not, it's not about . . . Meaningful consultation is about making the effort that is commensurate with undertaking the consultation that is commensurate with the potential level of impact. And we believe that we've actually exceeded that, and if some parties don't agree with that, then that's unfortunate.

But we continue to make efforts to work with First Nations directly, continue to have discussions with the FSIN, as well as of course the Métis Nation of Saskatchewan and Métis communities in the implementation of the framework and the development of the code on the details, and the implementation of this framework to ensure that there's meaningful involvement of Aboriginal communities in the development of environmental management regimes, the new regime for this province.

**Ms. Morin:** — So will there be ongoing discussions with FSIN, or are you going to be looking at only having ongoing discussions with individual First Nations?

**Ms. McKillop:** — I believe that the minister has responded to FSIN that we are open to having further discussions on their role in RBR and implementation and code development.

**Ms. Morin:** — I want to go back to the airshed monitoring just for one small moment here because we have an airshed monitoring bus. I'm assuming that that is still in existence. Am I correct?

**Hon. Ms. Heppner:** — Yes.

**Ms. Morin:** — Yes? Okay. So I'm just wondering where has the bus been, where's the bus been monitoring in 2008 and 2009? Can you just give me an overview of where that bus has been in those two years?

**Hon. Ms. Heppner:** — I'll find out where the bus has been.

In addition to the mobile unit we have actually, the last couple of years have put a air monitoring trailer — it's more of a stationary device — in the northwest to monitor the air quality there. I believe currently it's parked at Cluff Lake. So it is there. And the mobile unit, I don't have all the locations it's been to, but it has been on the move. And I'm sure we could track down that information for committee members if they want.

In addition to that, we've recently hired two people to make the air monitoring bus available in emergency situations, so if there's a spill and there's some concern about air quality surrounding that spill, we'll make the air monitoring unit available in those situations as well. So we've actually increased monitoring on a couple of fronts.

**Ms. Morin:** — Thank you for that, and I'm assuming that we'll be able to get the list of where the bus has been in 2008 and 2009 forwarded through the Chair. Thank you very much.

**Hon. Ms. Heppner:** — Yes.

**Ms. Morin:** — I'm wondering if you have any data that's been collected over those two years in terms of the changes that we've seen to the airshed.

**Hon. Ms. Heppner:** — The overall air quality in Saskatchewan has been listed as good. Lin had mentioned earlier the real time monitoring that is done in the province, and all that information including up-to-date air quality information is available on the website, I believe.

**Ms. Morin:** — Just as a quick question then, has there been any substantial changes over the last two years, 2008 and 2009, with respect to the air shed?

**Hon. Ms. Heppner:** — No.

**Ms. Morin:** — It's been fairly stable then from 2007. Is that correct?

**Hon. Ms. Heppner:** — Yes.

**Ms. Morin:** — Okay, thank you for that. My colleague, Mr. Nilson, would like to ask a few questions at this point, so I'll hand it over.

**Mr. Nilson:** — So I won't ask an extensive number of questions. I know that this legislation replaces quite a number of pieces of legislation. You answered my question already about *The Clean Air Act* which is that this new Bill substantially improves *The Clean Air Act*. And we've heard about that; so appreciate that. When it relates to *The State of the Environment Report Act*, it looks like you just basically copy what was exactly there before. Is that correct?

**Hon. Ms. Heppner:** — Correct.

**Mr. Nilson:** — Yes. Okay. With a few minor changes. But as far as *The Litter Control Act*, is there anything that's changed there in the new legislation compared to the existing litter control Act?

**Hon. Ms. Heppner:** — The substance of *The Litter Control Act* in this new piece of legislation is substantially the same. It's my understanding that it's been reworded to make it a little bit clearer and shorter, but the substance remains the same.

**Mr. Nilson:** — Okay. Thank you for that. And then basically this is the new environmental management and protection Act with all these other pieces pulled together. Obviously the regulatory system that you talk about is a change, but otherwise you deal with the same subjects. Or are there new subjects that are in this legislation?

**Hon. Ms. Heppner:** — There are some new pieces in here. And as Lin has pointed out, we haven't lost any regulatory tools in here, but we have added the opportunity for using the environmental code.

But there are new pieces, especially on contaminated sites. There's now the potential to assign liability. There is also the potential to have an assurance fund for future cleanup of those sites, and it also enables us to establish the multi-material recycling program. Those are just a couple of examples. Oh, and one other one is an impacted site fund for orphan sites.

**Mr. Nilson:** — Yes, and that was my next question. And this is modelled — so I'm talking about section 90 of the legislation, impacted sites fund — and I assume this is modelled on the abandoned mines legislation, or does this incorporate that legislation into this?

**Hon. Ms. Heppner:** — It doesn't incorporate the abandoned mines site.

**Mr. Nilson:** — Okay. So this would be complementary to what happens with the mine site?

**Hon. Ms. Heppner:** — Yes.

**Mr. Nilson:** — And then also, I guess with the oil field legislation that works there. Anyway that's a good piece to have there, so I'm glad to see it's there.

The other question you also just answered which relates to this multi-material waste management, and I think I read this correctly in that you're given the mechanism to deal with all kinds of different material, but actually in the regulation you can designate certain types of material, and so that you actually have a lot of flexibility depending on what new types of waste show up in the next decades. Would that be an accurate statement?

**Hon. Ms. Heppner:** — Yes. I think that was the point behind this. One of the new concerns that's been raised, and we're still looking for a solution to this, is the grain bags that are being used. Currently there is no recycling opportunities. There was one company in Edmonton I believe who was doing it; they've recently shut down. So there will, I think there will continue to be new products that have to be addressed, and we can address those through regulations.

**Mr. Nilson:** — And how does it deal with the issue of newspaper, or is there anything special in this particular legislation?

**Hon. Ms. Heppner:** — Newspapers are going to be part of the MMRP [multi-material recycling program] like the rest of the products, and I guess it's the stakeholder groups that are involved in this as well. They will continue to be at the table to discuss this with us.

**Mr. Nilson:** — So you'll use this common model to deal with that as well.

**Hon. Ms. Heppner:** — Yes.

**Mr. Nilson:** — Okay. Well I wish you luck on that one. But it is good to actually have, you know, legislation that deals with a whole array of material. And so I think that'll be, that's all the questions I have. I think Mr. Forbes has some questions.

**Mr. Forbes:** — I have some questions about the environment officers section and that would be page 41, section 68, part 9, division 1. Can you tell me a little bit about how you envision these environment officers, who they are and what their roles are? I have some specific questions, but can you tell me a little bit about who these people are?

**Mr. Wittrup:** — The powers that are talked about in those sections are exactly the powers that accrue to environmental protection officers and environmental protection . . . or project officers now. And the intent of the regulations was to do several things, but one was to enforce the fact that somebody who accompanies an environment officer also accrues the same protection that they do. So if they are assisting an environmental officer, even though they're not designated formally, they'll be protected by the same umbrella . . .

[inaudible interjection] . . . Yes, it's the same powers there've always been.

But it also allows, for instance when they do the compliance audits, they need to be designated as environmental officers by the minister, but that'll be done in a narrower sense. So they'll have the protection of the Act in carrying out their duties, but they won't . . .

**Mr. Forbes:** — [Inaudible] . . . a definition, you know. And I read the definition on the front part on page 4 where it talks about:

. . . means an environment officer appointed pursuant to section 74, and includes a deputy environment officer, a member of the Royal Canadian Mounted Police or a member of a police service . . .

So there are environment officers in the ministry right now?

[23:00]

**Mr. Wittrup:** — Yes.

**Mr. Forbes:** — That's right? Now do for example conservation officers or field officers, do they do this kind of work? They do. So will they be included in this as well? Because when I read the definition, I don't see them as part of the definition.

**Mr. Wittrup:** — Right. It's not imbuing any new powers on the ministry. What it does is it maintains the flexibility to, especially on the enforcement end, is to bring in those that do enforcement, like the RCMP [Royal Canadian Mounted Police] and the conservation officers.

**Mr. Forbes:** — Talking about those people. But when you're talking about, for example section 68 talks about the audits and that type of thing. Conservation officers don't do that type of work. Is that right?

**Mr. Wittrup:** — That's right.

**Mr. Forbes:** — They do more checking on. But I was struck by this one section around deputy environment officers, and section 75:

The minister may appoint any persons or class of persons as deputy environment officers to carry out, without remuneration, the administration . . . of this Act . . .

So I'm curious, do you have a set of volunteer deputies out there that are going to be doing this kind of work?

**Mr. Wittrup:** — The intent of that section is in the event of emergency we can deputize people like fire responders, our first responders and give them the protection of the Act in carrying out duties to protect the environment. And again, those powers exist now.

**Mr. Forbes:** — I am curious that it would be without pay, why it has to be specified that you will not pay them or you may not pay them. They shouldn't expect to be paid.

**Mr. Wittrup:** — They're already usually paid positions.

**Mr. Forbes:** — A paid position. So they won't get any extra pay for doing this.

**Hon. Ms. Heppner:** — Right. It's already paid.

**Mr. Wittrup:** — Right.

**Mr. Forbes:** — Oh, okay. No double dipping and this type of thing. Okay. Now I just want to go now, as I'm reviewing the next Bills that come up, and then when we talk about designation of officers, for example, forestry resources management. I just want clarification. When in legislation that comes forward from the ministry, when it talks about the code, are we assuming that's the environmental code? And so wherever the word the code is, we know what that means. It's not an acronym. It's just that we should know. It's the word.

**Hon. Ms. Heppner:** — It's not an acronym, not an acronym. It's a real word.

**Mr. Forbes:** — It's the thing. Okay. And when you say RBR, that is . . .

**Hon. Ms. Heppner:** — Results-based regulations.

**Mr. Forbes:** — Regulations. Even though they may not be . . . its legislation is all of that all together. Okay. That may be somewhat confusing, especially when you're talking about forestry, because they deal with other . . . I mean I'm thinking of the fire code, for one thing. You know, that came to my mind right away. Now of course that's more urban than it is for . . .

But that's another Bill. That's another Bill, so maybe we shouldn't get to that, but be ready for that question. But I am thinking code and they . . . holy smokes. This is a big, big thing.

I think that's my set of questions. Well one more, one more really quick one. I noticed you have a section on terrorists. And that's a very good thing. That's very important to have. But you don't have a section about essential services. Are none of these environment officers essential? Or are they . . . I guess I'm thinking, is there kind of mixed messages here because I know this is a priority for this government to designate people. And you've taken the time to talk about terrorists, but you haven't taken the time to talk about even that some people may be designated as essential services.

**Hon. Ms. Heppner:** — Well considering there's legislation in another ministry that outlines essential services, we wouldn't legislate that in our legislation because it's already someplace else, so that would be redundant. And I don't have a list of the essential services of people from my ministry. But it wouldn't need to go into this particular piece of legislation because it's housed someplace else.

**Mr. Forbes:** — I may or may not accept that answer because I think that terrorists are probably referred to in other places. Is this the only place that . . .

**Hon. Ms. Heppner:** — But it's not called terrorist legislation. We have essential services legislation.

**Mr. Forbes:** — Okay. I think that . . . Interesting. Well with that, I'll turn it back to my colleague for further questions here.

**Ms. Morin:** — Thank you very much. Just a few more clarifications if I could. EMPA 2009 is also going to cover impacted or contaminated sites. And under the minister's remarks in second reading, there were a number of things that were laid out, and one of them that was that there would be more transparency with the creation of a public registry.

Two questions. First of all, were there concerns with respect to the transparency of the current situation, and can you maybe just elaborate on the transparency and how that's going to be expanded?

**Ms. Gallagher:** — It's twofold because one of the things that we do know is that we get a lot of freedom of information requests, etc. around where there are contaminated sites. If somebody wants to build a property where there was perhaps a facility that might have hydrocarbon contamination for example, those kinds of things are coming at us as requests. So this information being posted on the website will be valuable in that respect. And in addition, we ongoing know that the public have a concern to know where there are contaminated sites. We also want to be open and allow the public to be aware of that information.

**Ms. Morin:** — Thank you very much. Now another one of the minister's comments was that . . . I'm actually just going to read the quote. I think it would be easier to understand then. It says:

Another proposed change is added responsibilities for qualified persons in certifying the accuracy of environmental protection plans. Experienced professionals will be used to ensure that the environment is properly protected.

Are those officials, the experienced professionals and, I guess, experts that are going to be used to do this type of work, are they from within the ministry or are they going to be hired, contracted outside of the ministry. Who is going to be doing this work?

**Mr. Wittrop:** — Qualified persons will be defined in the code. As each code section is developed, there'll be a description of the outcome that's desired and the conditions that wrap around that. But there will be a section in there on what qualified person, so for instance, a water treatment plant will require a professional engineer as the qualified person to sign off on the design. But as you move forward through the operation of that plant, you might require other qualified persons for the construction, for the operation of the plant as well.

And part of the technical working groups will be to properly define in each code section the qualified persons required to meet the intent of that code section.

**Ms. Morin:** — Thank you very much. And so that just gets me back to the compliance audits that are going to occur that we spoke about earlier. Will those be done by ministry officials, or will that be something again that we are going to need some experts outside of the ministry to do as well?

**Hon. Ms. Heppner:** — Those will be done by officials within the ministry. On the audit side, Mark's title actually is assistant deputy minister in charge of environmental protection and audits, so it's actually new to the ministry.

And one of the things that we're doing within the ministry is enhancing the science capacity. Staff laughs at me because I call them -ologists because I kind of lose track of how many, but it'd be geologists and well -ologists. So we are enhancing — because I'm not one; I'm not an -ologist — but we are at the same time enhancing the science capacity within the ministry in order to do this and setting up the audit branch which obviously hadn't been there previously.

**Ms. Morin:** — Thank you very much. One thing I guess I wanted to come back to, because I'm still concerned about the disconnect again that exists between what the thoughts are of the ministry in terms of the work that's been done and the thoughts of the FSIN and the First Nations leaders in terms of the concerns that they have with respect to this Bill and a few others, so I would like to move an amendment. I'm going to propose an amendment, I should say, that I just want to give the minister the heads-up on.

And it's an amendment that actually was adopted in a previous Bill that was passed in the fall sitting in 2009. And that would provide some greater degree of comfort and understanding with respect to this Bill as well. And just to clarify what that amendment would be, it's clause 6 in the previous Bill that says:

Nothing in this Act shall be construed or interpreted so as to abrogate or derogate, directly or indirectly, any treaty or Aboriginal rights recognized and affirmed by subsection 35(1) of the *Constitution Act, 1982*.

So I'm wondering if the minister would like to give her thoughts on that, or if I should just allow the Chair to go through the Bill now clause by clause and deal with it in that fashion?

I guess to clarify further, we've already established, through comments that were made by, you know, a number of officials as well as yourself that this is, the intent of this is to actually strengthen the protections for those rights. So just to do so in a more concrete fashion, I think, would provide that greater level of clarity and comfort in terms of the intent of the minister and her officials.

**Hon. Ms. Heppner:** — Thank you, Mr. Chair. We would actually . . . We've discussed this previously about adding that to the legislation. The opinion from Justice was because it currently exists in *The Interpretation Act* that it would be redundant, but I have to say if it's an act of good faith to include that to offer some comfort to First Nations communities, I am fine with adding that reference to section 35 to this Bill.

**Ms. Morin:** — Well thank you, Madam Minister. I think that that would certainly go a long way in terms of concretizing the intent and the comments that have been made this evening, and I thank you for your comments. I want to obviously thank everyone for the work that we've done on this Bill and thank you for all your responses to our questions.

[23:15]

**The Chair:** — So I see that we probably have no more questions. Okay. So I guess what we'll do now is we'll just have the . . . give us one second with the Clerk.

Okay, if I can please have everyone's attention. Given that this is becoming a community effort — which is great to see, by the way, I might add as the Chair of this committee — we'll take a five-minute recess. We'll return back here at 25 after 11. Maybe we should take a little longer because maybe some people have to use the washroom. No? Okay, five minutes is fine; 25 after 11, return back here please. We'll let the parties confer and the Clerks can work with it too. The Clerks point out that we are a long way from close to get ready for this. So five-minute recess. Be back here at 25 after 11, please.

[The committee recessed for a period of time.]

**The Chair:** — Thank you to members. I guess as we proceed now, I see that we have no more questions, I believe, involving this particular vote or this particular Bill, so we'll proceed to vote on the clauses. This Bill has 110 clauses. Is leave granted to review portions of the Bill by parts?

**Some Hon. Members:** — Agreed.

**The Chair:** — Agreed. Carried. Thank you. So part 1, clause 1, short title, *The Environmental Management and Protection Act, 2009*, and clause 2, is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Agreed. Carried.

[Clause 1 agreed to.]

[Clauses 2 to 38 inclusive agreed to.]

[23:30]

### Clause 39

**The Chair:** — Part VI, clauses 39 to 50, Mr. Duncan. Clause 39. I recognize Mr. Duncan.

**Hon. Mr. Duncan:** — Mr. Chair, I have the following amendment for clause 39. The amendment that I would like to move reads as follows:

Strike out clause (b) of Clause 39 of the printed Bill and substitute the following:

“(b) ‘**consumer**’ means a person who purchases a beverage container containing a beverage:

(i) for use of the beverage container by that person;

(ii) for use of the beverage container by another person at the first person's expense; or

(iii) on behalf of, or as agent for, a principal for use of the beverage container by the principal or by another person

at the principal's expense”.

I so move.

**The Chair:** — Are there any questions on the amendment? Do the committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. So is clause 39 as amended agreed?

[Clause 39 as amended agreed to.]

### Clause 40

**The Chair:** — Clause 40. I recognize Mr. Duncan.

**Hon. Mr. Duncan:** — Mr. Speaker, I have another amendment for clause . . . this one's for clause 40 and the amendment reads as follows:

### Clause 40

Strike out Clause 40 of the printed Bill and substitute the following:

#### “**Obligation to pay deposit and environmental handling charge**

40(1) The following persons shall, at the prescribed times, remit to the minister responsible for the administration of *The Revenue and Financial Services Act* the environmental handling charge set out in subsection (2) and a prescribed deposit:

(a) a person who imports into Saskatchewan any filled beverage container; or

(b) a person who, as part of a manufacturing process, fills a beverage container in Saskatchewan.

(2) The environmental handling charge required to be remitted to the minister pursuant to subsection (1) is:

(a) with respect to a designated container that is a metal can, 5¢;

(b) with respect to a designated container that is a plastic bottle, 6¢;

(c) with respect to a designated container that is a non-refillable glass bottle, 7¢;

(d) with respect to a designated container that is a multi-material, shelf stable container, 3¢; or

(e) with respect to a designated container that is a paper-based polycoat gable top container, 3¢”.

I so move.

**The Chair:** — Are there any questions on the amendment? Do committee members agree with amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Is clause 40 as amended agreed?

[Clause 40 as amended agreed to.]

#### Clause 41

**The Chair:** — Clause 41. I recognize Mr. Duncan.

**Hon. Mr. Duncan:** — Thank you, Mr. Chair. Mr. Chair, I have an amendment:

Strike out Clause 41 of the printed Bill and substitute the following:

**“Obligation to recover deposit and environmental handling charge on subsequent sales**

41(1) If the person mentioned in clause 40(1)(a) or (b) is not the consumer:

(a) the person shall recover the deposit and the environmental handling charge from the person who receives the beverage container; and

(b) the person who receives the beverage container shall pay the environmental handling charge and the deposit mentioned in subsection 40(1).

(2) If the person who is obligated to pay the environmental handling charge and deposit pursuant to subsection (1) is not the consumer, the person shall recover the environmental handling charge and deposit from the person who is the consumer”.

I so move.

**The Chair:** — Are there any questions on the amendment? Do committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Is clause 41 as amended agreed?

[Clause 41 as amended agreed to.]

[Clauses 42 to 44 inclusive agreed to.]

#### Clause 45

**The Chair:** — Clause 45. I recognize Mr. Duncan.

**Hon. Mr. Duncan:** — Mr. Chair, I have an amendment to clause 45. The amendment reads:

Strike out clause (b) of Clause 45 of the printed Bill and substitute the following:

“(b) prescribing the deposit for each category of container”.

I so move.

**The Chair:** — Are there any questions on the amendment? Do

committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Is clause 45 as amended agreed?

[Clause 45 as amended agreed to.]

#### Clause 46

**The Chair:** — Clause 46. I recognize Mr. Duncan.

**Hon. Mr. Duncan:** — Mr. Chair, the amendment reads as follows for clause 46:

Strike out clause (j) of Clause 46 of the printed Bill and substitute the following:

“(j) respecting the powers and duties of a waste minimization board and the procedures to be followed by a waste minimization board in carrying out its powers and duties”.

I so move.

**The Chair:** — Are there any questions on the amendment? Do the committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Is clause 46 as amended agreed?

[Clause 46 as amended agreed to.]

[Clauses 47 to 67 inclusive agreed to.]

#### Clause 68

**The Chair:** — Part IX, clauses 68 to 83. I recognize Mr. Duncan.

**Hon. Mr. Duncan:** — Mr. Chair, I have an amendment to move regarding clause 68. The amendment reads as follows:

Strike out Clause 68 of the printed Bill and substitute the following:

**“Compliance evaluation**

**68(1)** The minister may direct, in writing, a person who has a permit issued in accordance with this Act or who engages in activities that are required to be carried out in accordance with the code or an accepted environmental protection plan to provide the minister with any compliance evaluation that the person is required to conduct as part of that person’s environmental management system.

(2) The person to whom a written direction is made pursuant to subsection (1) shall cause the compliance evaluation to be conducted at that person’s expense and shall provide the compliance evaluation to the minister within the period set out in the written direction.

(3) The compliance evaluation must contain:

(a) an assessment of how well the person mentioned in subsection (1) has complied with this Act, the regulations, the code or the terms and conditions of the permit or the accepted environmental protection plan; and

(b) if the obligations imposed by this Act, the regulations or the code or the terms or conditions of the permit or the accepted environmental protection plan have not been met, an explanation for the differences between the results and those obligations, terms and conditions”.

I so move.

**The Chair:** — Are there any questions on the amendment?

**An Hon. Member:** — No.

**The Chair:** — Do committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Agreed. Carried. So is clause 68 as amended agreed?

[Clause 68 as amended agreed to.]

[Clauses 69 to 110 inclusive agreed to.]

[Schedule agreed to.]

#### Clause 2

**The Chair:** — I call Ms. Morin. I would say it looks like it's clause 2(3). Ms. Morin.

**Ms. Morin:** — Thank you Mr. Chair. Mr. Chair I move the following clause to be inserted in 2 . . . Sorry. Section 2, subsection (3). It's getting late.

Nothing in this Act shall be construed or interpreted so as to abrogate or derogate, directly or indirectly, any treaty or Aboriginal rights recognized and affirmed by subsection 35(1) of the *Constitution Act, 1982*.

**The Chair:** — Thank you. Are there any questions on the amendment? Do committee members agree with the amendment as read?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Is clause 2, subsection (3) as amended agreed?

[Clause 2 as amended agreed to.]

**The Chair:** — Her Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows: Bill No. 121, *The Environmental Management and*

*Protection Act, 2009*. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. I would ask a member now to move that we report Bill No. 121, *The Environmental Management and Protection Act, 2009* with amendment.

**Ms. Ross:** — I so move.

**The Chair:** — Ms. Ross moves. Is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Thank you, Ms. Minister, for this Bill. I guess we're going to move right into the next Bill if it's okay with members of the committee.

#### Bill No. 123 — *The Forest Resources Management Amendment Act, 2009*

#### Clause 1

**The Chair:** — All right. So, committee members, if we can move right along, we will now consider Bill No. 123, *The Forest Resources Management Amendment Act*. By practice the committee normally holds general debate during consideration of clause 1. I guess if you want to look at . . . We're now going to consider clause 1, short title, *The Forest Resources Management Amendment Act, 2009*. Ms. Minister, any opening remarks?

**Hon. Ms. Heppner:** — Thank you, Mr. Chair. I will keep my opening remarks very brief.

The point of the legislation before us is to make the necessary changes to move *The Forest Resources Management Act* to a results-based regulatory approach. There are some key points I would like to point out.

One of the amendments removes licensing requirements for activities that pose a low risk, a low environmental risk such as berry picking and research activities. And it provides for an enhanced preparation and approval process for 20-year forest management plans to eliminate the need for a separate environmental assessment.

Mr. Chair, there is two clauses in this Bill which I will be, I guess, requesting actually get voted against. There are amendments to the Bill and I will offer brief explanations for both.

Clause 53. There were concerns raised about potential implications for trade disputes in the Softwood Lumber Agreement with the United States. The clause would have made all information submitted by the forest industry to the minister, pursuant to the Act, to be public information and releasable by the minister which possibly could have competitive implications for the forest industry. So we would like that clause removed.

The other clause is clause 61 which proposed consequential amendments to *The Parks Act*, and in that Act, sections 25 and

27 of *The Parks Act*. The decision was made to not include parklands administered by the Ministry of Tourism, Parks, Culture and Sport. This was done to reduce the administrative burden of meeting the provisions of the softwood lumber agreement and reduce the potential for sanctions against the province under that agreement. Crown timber on these lands will continue to be managed in accordance with the existing legal framework administered by the Ministry of Environment.

**The Chair:** — Okay. So I guess moving on now, are there any questions or comments from committee members? Ms. Morin.

**Ms. Morin:** — Thank very much, Mr. Chair. And thank you, Madam Minister, for the opening remarks. I'm just looking at again what the minister had explained in her second reading remarks, and I'll again quote the minister. It says, "Using the results-based framework, we will focus on achieving critical environmental outcomes while streamlining regulation and encouraging innovation."

So I wanted to split this question up into two pieces. I'm wondering if you could just elaborate a wee bit on the achieving critical environmental outcomes, some of the thought processes going into that, and what type of regulations again were needing to be streamlined.

[23:45]

**Hon. Ms. Heppner:** — Thank you for that question. On the streamlining side, the preparation of the forest management plans will be streamlined. The preparation and approval process is going to be changed so that it eliminates the need for a separate environmental assessment. All of that would be combined in one management plan.

Currently plans have to be submitted every year. We find that there are those who submit the same plan every year, and they're fine every year. So for those companies that can prove to us that they have a good performance record, we'll lengthen the submission times up to, I think, five years, instead of submitting the same plan every single year when they've already proven that they're capable of following through on the plans that they've submitted.

And similar to the discussion that we had over the environmental management Act that we just discussed, it's because we are outlining what our outcomes are expected. It takes away that room for interpretation of enforcement — same as in EMPA, as some examples.

**Ms. Morin:** — Thank you for that clarification. And I'm just curious as to the other component of that quote where you said it's encouraging innovation. And I'm assuming that you're speaking of the, I guess, the streamlining of some of the processes that are taking place. But I'm just wondering if you could maybe expand on what you were referring to as encouraging innovation.

**Ms. Gallagher:** — The advantage of the code is that we can set the code standards that have to be met. And in the code, we will establish what would be called an acceptable solution. Many of our proponents indicated that they don't just want to always have to come up with the solution themselves. They want to

know what would meet the standards. So within that, there would be acceptable solution.

But they can also provide an alternative solution, so the code allows for that. So that's one of the advantages that encourage innovation so that a company can look at a new approach to doing the work. But when we talk about qualified person, they would have to go to what's designated in the code as the qualified person, and they would indicate that their alternative approach would meet the expectations outlined in the code.

**Ms. Morin:** — Thank you. I appreciate some expansion on that. Now I also note in your comments that licensing requirements will be streamlined in a variety of ways. Can you maybe just give me a bit of example on how that's going to be done?

**Hon. Ms. Heppner:** — One example is — because it has a very low risk on any kind of environmental damage — is removing the requirement for licensing for berry picking. And another example is on processing plants. They are currently licensed under other legislation including this, so there's a duplication of licensing. So we would pull out the requirement for licensing under this legislation because it exists in other places. So it's trying to end the duplication and then remove licensing requirements from low-risk activities.

**Ms. Morin:** — Sorry. Can you just clarify again the — and I understand the berry picking one — but the other industries. So because there is duplication, you're saying, where would the licensing drop off? Would it be through the environment or would it be elsewhere? So how is that streamlining going to take place? I just need a little bit of expansion on that.

**Hon. Ms. Heppner:** — It would be, for the example of a processing plant, it would be licensed through EMPA on the environmental side for waste and that sort of thing, and also licensing through lands. So this is just one extra layer when the environmental protection aspect is being taken care of under other pieces of legislation.

**Ms. Morin:** — So what you're saying is that, like as you . . . any environmental concerns I might have, how should I say, take place with those particular industries, would take place then under the EMPA 2009 Act. Is that correct?

**Hon. Ms. Heppner:** — EMPA and, in this particular circumstance, under the lands Act as well.

**Ms. Morin:** — Okay, thank you. And then we also talk in this Act about a greater reliance on audits to ensure that licences are achieving environmental performance objectives and are in compliance. So again, I'm assuming that is going to be done on a compliance audit basis or a complaint basis similar to EMPA. Is that correct?

**Hon. Ms. Heppner:** — Yes. The auditing system under this legislation is the same auditing system as is outlined in EMPA.

**Ms. Morin:** — Okay. So again that will be done through ministry officials again?

**Hon. Ms. Heppner:** — Yes.



**Ms. Morin:** — Okay. Thank you. And now this is where there are some concerns raised again in the document that was submitted by the Federation of Saskatchewan Indian Nations. And I'll read the quote from the minister's second reading response again. It says, "It provides for an enhanced preparation and approval process for 20-year forest management plans, and eliminates the need for a separate environmental assessment."

There are some concerns about the lessening of environmental assessments in these types of situations. So if the minister could just clarify that that isn't what the intent is, that would be most helpful, given that there are concerns raised through the 130-page document that was provided to the ministry by the Federation of Saskatchewan Indian Nations on behalf of the First Nations in the province.

**Hon. Ms. Heppner:** — Okay. There is not a lessening of the requirements or the assessment or the work that goes into this. The environmental assessment requirement was fulfilled by submitting their 20-year forest management plan. So in essence, they had one plan which satisfied both requirements, so they would take their forest management plan and submit it for both of those to satisfy the requirement for a management plan and to satisfy the requirement for an environmental assessment. So that plan can now just be submitted once to satisfy both of those. So there's no lessening; it was just handing over two identical documents for two separate reasons when that can just be one document for two separate reasons.

**Ms. Morin:** — So just to expand on that, again the minister is providing that level of assurance that the treaty rights will be protected and maintained with respect to the implementation of this new Act as well?

**Hon. Ms. Heppner:** — Yes.

**Ms. Morin:** — Okay, thank you very much. Just one last question from my perspective. And that is, in the minister's comments again you talk about "... the amended legislation supports the core principles of high standards of environmental protection and operator accountability and transparency and processes and information." So can you maybe just expand on, because it sounds from these comments that there's going to be a higher level of accountability and transparency, and I'm just wondering if you can expand on that and clarify that for people to understand where that will exist and how they will be able to access that information.

**Mr. Thompson:** — Rod Thompson, manager, forest practices and science for the forest service in Environment.

We're going to achieve that greater transparency primarily through requirements we're going to set out in codes for licensees and developers to report information that will allow the ministry and the public to assess their performance.

**Ms. Morin:** — And so can you just maybe clarify how people would access that information in terms of the assessment of ... performance assessments are reached?

**Mr. Thompson:** — As the minister mentioned earlier this evening on another Bill, IT development, information technology is a big part of this results-based approach. And

we're going to be developing automated systems that make this more easily available to the public as opposed to, sort of, the paper records that we work with now.

**Ms. Morin:** — We're moving into the future here, aren't we?

I'm going to make a proposal again on this Bill as well, given that consistency is a wonderful thing for us to be able to pursue. Since we're streamlining, the minister's talking about streamlining environmental regulations, I think that streamlining the language that we put forward in our Bills is just as important.

So I'm going to propose to the minister that we again put the same language into this Bill that we just put into the last one to provide that assurance and level of comfort again. And that the minister's nodding her head, of which of course doesn't show up on the microphone, so the minister has shown us she's in agreement.

**Hon. Ms. Heppner:** — I am in agreement with your proposal, yes.

**Ms. Morin:** — Thank you, Madam Minister. So I again will want to say thank you to the minister and to her officials for answering my questions on this Bill. And I'm concluding my questions at this point. Thank you.

**The Chair:** — All right. Thank you, Ms. Morin. Again we need a slight recess here so the Clerks can prepare this document for processing. So we'll take two minutes? Five, take five please. Thank you. We'll be back at midnight.

[The committee recessed for a period of time.]

**The Chair:** — All right. Seeing no more questions, clause 1, short title, *The Forest Resources Management Amendment Act, 2009*, is that agreed?

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried.

[Clause 1 agreed to.]

[Clause 2 agreed to.]

### Clause 3

**The Chair:** — Clause 3. I recognize Mr. Duncan.

**Hon. Mr. Duncan:** — Mr. Chair, I have an amendment that I'd like to move:

Amend Clause 3 of the printed Bill by striking out clause (1)(e) and substituting the following:

**"(e) by repealing clause (f) and substituting the following:**

**"(f) "forest land" means:**

(i) any Crown resource land that is designated as a

provincial forest pursuant to the regulations;

[Clause 53 not agreed to.]

(ii) any Crown land described in a forest management agreement, a term supply licence or a forest product permit;

[Clauses 54 to 60 inclusive agreed to.]

[Clause 61 not agreed to.]

(iii) any Crown land administered by the Ministry of Agriculture or the Ministry of Environment that:

[Clause 62 agreed to.]

(A) in the opinion of the minister, has a forest ecosystem as the predominant ecosystem; or

## Clause 2

**The Chair:** — I recognize clause 2, subsection (4). Ms. Morin.

(B) is described as forest fringe timber supply land; and

**Ms. Morin:** — Thank you, Mr. Chair. Mr. Chair, I'd like to move the following motion, adding the following clause after clause 3. Add:

(iv) an undeveloped road allowance that:

(A) in the opinion of the minister, has a forest ecosystem as the predominant ecosystem; and

Nothing in this Act shall be construed or interpreted so as to abrogate or derogate, directly or indirectly, any treaty or aboriginal rights recognized and affirmed by subsection 35(1) of the *Constitution Act, 1982*.

(B) shares a boundary with lands described in subclauses (i) to (iii);

I so move.

but does not include any Crown mineral or Crown mineral lands as those terms are defined in *The Crown Minerals Act*”.

**The Chair:** — Any questions on the amendment? Do committee members agree with the amendment as read?

I so move.

**Some Hon. Members:** — Agreed.

**The Chair:** — Okay. Do committee members agree with the amendment as read?

**The Chair:** — Carried. Is clause 2 subsection (4) as amended agreed?

**Some Hon. Members:** — Agreed.

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Is clause 3 as amended agreed?

**The Chair:** — Carried.

[Clause 3 as amended agreed to.]

[Clause 2 as amended agreed to.]

[Clauses 4 to 45 inclusive agreed to.]

**The Chair:** — Her Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows: Bill No. 123, *The Forest Resources Management Amendment Act, 2009*. Is that agreed?

## Clause 46

**Some Hon. Members:** — Agreed.

**The Chair:** — Clause 46. I recognize Minister Duncan.

**Hon. Mr. Duncan:** — Mr. Chair, I have an amendment for clause 46. The amendment reads:

**The Chair:** — Carried. Agreed. I would ask that a member to move that we now report Bill No. 123, *The Forest Resources Management Amendment Act, 2009* with amendment.

Amend clause 79(1)(e) of *The Forest Resources Management Act*, as being enacted by Clause 46(1) of the printed Bill, by striking out “section 61 or 63.2” and substituting section 61, 62.1 or 63.2”.

**Ms. Wilson:** — I so move.

I so move.

**The Chair:** — Ms. Wilson moves. Is that agreed?

**The Chair:** — Do committee members agree with the amendments as read?

**Some Hon. Members:** — Agreed.

**Some Hon. Members:** — Agreed.

**The Chair:** — Carried. Thank you, Ms. Minister, for your time with us this evening and for the officials as well, and for anybody that's still watching us out there. Ms. Morin.

**The Chair:** — Carried. Is Clause 46 as amended agreed?

**Ms. Morin:** — Yes. Hard to believe that there would be. I would sincerely like to thank the minister and her officials. It's been a long evening. Everybody has been in the best spirits and I really appreciate all the responses to all of our questions. So thank you very much for all the hard work that you're doing

[Clause 46 as amended agreed to.]

[Clauses 47 to 52 inclusive agreed to.]

and being with us this evening. Thank you.

**The Chair:** — Thank you, Ms. Morin. If I can get a motion to adjourn, please. Mr. Duncan.

**Hon. Mr. Duncan:** — Don't need one.

**The Chair:** — Don't need one? So moved. We're done.

[The committee adjourned at 00:10.]