

Consideration in Committee of the Whole of Bills and Other Matters

Bill 27, An Act to Amend the Environmental Protection Act

October 3, 2017

CHAIRPERSON (Mr. Simpson): I will now call Committee of the Whole back to order. Committee, we have agreed to consider Bill 27, An Act to Amend the Environmental Protection Act. I will ask the Minister responsible for the bill to introduce it. Minister McLeod.

HON. ROBERT MCLEOD: Thank you, Mr. Chair. Mr. Chair, I am here to introduce Bill 27, An Act to Amend the Environmental Protection Act.

This bill makes several amendments to the act. It will:

- remove the non-application provision;
- authorize the Minister to determine that discharges are nuisances;
- authorize the Minister to establish and make publicly available a register regarding environmental contaminants;
- authorize the Minister to exempt persons from complying with the act or regulations in accordance with the regulations in place;
- create a new exception to the prohibition against releasing contaminants for discharges authorized under other legislation, and provides that the exception to the prohibition does not apply to nuisance discharges;
- allow for regulation of the manufacture, use, installation, removal, and modification of equipment that discharges contaminants, including measures designed to control the release of contaminants; and
- provide the Minister with regulation-making authority, particularly for making air regulations.

The amended EPA will also require persons intending to discharge a contaminant:

- to be authorized by this act or the regulations,
- to register with the Minister,
- to obtain a license or permit, and/or
- to provide the prescribed information.

With air quality in the NWT presently unregulated, the amendments I have described will enable the air regulatory gap to be closed through development of air regulations that are tailored for the Northwest Territories context. Significant consultation and engagement on these amendments has been conducted. We feel these amendments

strike a good balance between flexibility and reflecting a modern environmental regime. Thank you, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Thank you, Minister. I will turn to the chair of the Standing Committee on Economic Development and Environment, the committee that considered the bill, for opening comments. Mr. Vanthuyne.

MR. VANTHUYNE: Thank you, Mr. Chair. Mr. Chair, the Standing Committee on Economic Development and Environment concluded its review of Bill 27, An Act to Amend the Environmental Protection Act on September 26, 2017, with a public clause-by-clause review held here at the Legislative Assembly building. This followed an initial public hearing on the bill held on August 29, 2017. The committee received no public submissions on the bill and carried one motion to amend the bill during clause-by-clause review.

Individual members may have additional comments or questions as we proceed with consideration of this bill. Thank you, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. Vanthuyne. Would the Minister like to bring any witnesses into the House?

HON. ROBERT MCLEOD: Yes, I would, Mr. Chair. Thank you.

CHAIRPERSON (Mr. Simpson): Thank you. Sergeant-at-Arms, please escort the witnesses into the Chamber. Minister, would you please introduce your witnesses for the record?

HON. ROBERT MCLEOD: Yes, thank you, Mr. Chair. Mr. Chair, to my right, I have Dr. Joe Dragon, who is the Deputy Minister of Environmental and Natural Resources; to my left, I have Lisa Dyer, who is the director of Environment, Environmental and Natural Resources; and to my far right, I have Mr. Thomas Druyan, legislative counsel, Department of Justice. Thank you.

CHAIRPERSON (Mr. Simpson): Thank you, Minister. The general process for this is that we will have general comments, and then we will go into a clause-by-clause review of the bill. We can begin with general comments. Does committee have any general comments on Bill 27? Mr. O'Reilly.

MR. O'REILLY: Thanks, Mr. Chair. We have had quite a bit of discussion around this; so I will try to keep it brief. I think that everybody would agree that we have a common and shared interest in protecting the environment and making sure that we get this very first piece of post-devolution environmental legislation right and that it should really reflect best practises.

I think it is fair to say that the one remaining area where concerns have been expressed is around ministerial authority to grant exemptions from any or all provisions of the act and its regulations. During the public review process of earlier versions of the bill and, indeed, parts of the one that are before us today, concerns have been raised around this exemption authority by the Inuvialuit Regional Corporation, Fort Chipewyan Metis, the Wek'eezhii Land and Water Board, the West Point First Nation, the Independent Environmental Monitoring Agency, myself, and the standing committee as well.

I agree that there have been some improvements made as a result of the clause-by-clause review, and I thank the Minister for that, but I think there is one remaining area that I would like to deal with when we get to the appropriate place in the clause-by-clause review of the bill. I think it is important that we do try to move this forward, and I think that one further improvement will even keep me happier. With that, Mr. Chair, I would like to hear from the Minister, and maybe we can proceed, unless other Members have comments. Thanks, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Any other general comments? Seeing none, we can proceed to a clause-by-clause review of the bill. We will defer the bill number and title until after consideration of the clauses. Please turn to page 2 of the bill. There are seven clauses. We will go through each individually. I will call them out. If committee agrees, please say "agreed." Is committee ready? Clause 1.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Thank you. Clause 2.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Thank you. Clause 3. Mr. O'Reilly.

COMMITTEE MOTION 111-18(2):
BILL 27, AN ACT TO AMEND THE ENVIRONMENTAL PROTECTION ACT –
AMENDMENT TO CLAUSE 3 –ADDITION OF SUBCLAUSE 3.1,
CARRIED

MR. O'REILLY: Thanks, Mr. Chair. Yes, I would like to move an amendment to clause 3. I believe the amendments are at your table, and then you are going to be passing them out. Shall I wait until it is passed out, or shall I read it out?

CHAIRPERSON (Mr. Simpson): Please read out the motion.

MR. O'REILLY: Thanks, Mr. Chair. I move that Bill 27 be amended by adding the following after clause 3:

3.1. The following is added after section 2.01:

(1) The Commissioner in Executive Council may, in accordance with the regulations, exempt any person or class of persons, equipment or contaminant from all or any provision of this act or the regulations.

(2) If the Commissioner in Executive Council intends to exempt any person or class of persons, equipment or contaminant from all or any provision of this Act or the regulations, the Commissioner in Executive Council shall

(a) make notice of the proposed exemption publicly available; and

(b) provide the public with a reasonable opportunity to make representations with respect to the proposed exemption.

(3) Notwithstanding subsections (1) and (2), if the Minister is of the opinion that an emergency situation requires an immediate response, the Minister may exempt any person or class of persons, equipment or contaminant from all or any provision of this Act or the regulations, without providing either notice of the proposed exemption or an opportunity to make representations with respect to it.

Thank you, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. O'Reilly. There's a motion on the floor. The motion has been distributed. The motion is in order. To the motion. Mr. O'Reilly.

MR. O'REILLY: Thanks, Mr. Chair. I'll try to keep this brief as well. I think it's important to understand that there is no ability to make exemptions in the act as it stands today. The Minister would like to include an exemption making authority in the act. I would prefer if it was restricted to emergency situations alone, but the way that it reads now is that the Minister would have the ability to make exemptions for emergencies, but if it's not an emergency situation, the Minister would have that ability to make an exemption by providing public notice and providing reasonable opportunity for the public to make representations.

That exemption-making authority is not found in some of our other environmental legislation, most notably the Water Act. Certainly, when committee was studying the bill, we understood that in most other Canadian jurisdictions, the authority to make exemptions is with Cabinet, not the Minister alone. Given that we have a consensus government here and that there are other departments that would have an interest in making or in weighing in perhaps on an exemption. I'll give one example: Health and Social Services. It's certainly in my view that a decision to make an exemption in a non-emergency situation does require serious consideration and involvement of all Cabinet. It's my view that the authority should properly rest with the Cabinet rather than the Minister alone. That's what this amendment is about. I think those are all the comments that I have for now, Mr. Chair. I appreciate the opportunity to bring this forward. Thank you.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. O'Reilly. Mr. Testart.

MR. TESTART: Thank you, Mr. Chair. I support this amendment. It strikes a good balance between the need for expediency in emergency situations while still allowing collective decision-making at the Cabinet level when a request for exemption comes forward. The reason why it's important to have that collective decision-making in my perspective is exemptions may come from any area and it may be a low-emissions industrial actor, something like that where these regulations might unduly impact their economic success.

Having the perspective of more than one department – sorry, I should say more than one Minister who has of course advised by the department, but having more than one perspective on the issue whether it's the Department of Health, whether it's the Department of Industry, Tourism, Investment and represented through their Ministers, it allows for a broader range of opinions on proposed exemptions. It allows sharing of that important power. We are talking about exempting people from law. I think kicking this to

the commissioner and executive counsel encourages collective decision-making is more in keeping with consensus. As we've seen from issues very close to my heart such as the arsenic in Kam Lake, we have often been in the situation where one branch of government is well aware of the issues of contaminants in the environment and another branch of government is not aware of those issues.

To break down the silos and bring a whole government approach to exemption making authority, I think is the real spirit of our intent of this amendment and I do support it for those reasons. For anyone who's concerned that there might be an urgent need to grant an exemption, that power is also contemplated here in this amendment as well. It does strike that balance. That's exactly the purpose of good legislation is to balance all interest equally and to ensure that authority is shared appropriately. You never know, you may have one Minister with a different perspective on the environment and the economy and how they need to work together that might need help from colleagues on the executive council side to make an informed decision about exemptions. This allows that to happen. I do support this. I encourage honourable Members of this House to do so as well. Thank you, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. Testart. Mr. Vanthuyne.

MR. VANTHUYNE: Thank you, Mr. Chairman. Similarly, during the debates around this when the standing committee was discussing it, this was something that I had considered and supported at that time. I just think that when you're giving consideration to essentially our first post-devolution bill that this just makes good sense. It's good communications practice, quite frankly.

As others have alluded to, there can be circumstances where an environmental situation overlaps a number of our departments whether it's lands, ENR, ITI, Health. For those reasons, it makes sense to me that we would want it to be Cabinet. That allows these exemptions to take place. This motion still, as others alluded to, covers off on the emergency aspects that will still come under the Minister responsible.

For those reasons and lastly I actually want to add that I think it's important that Cabinet knows so that they can report accordingly through and down to their respective – not down, that's the wrong word to use – but report accordingly to their respective departments just in case there's any need for their department to be prepared in any way, shape, or form if an exemption were to be had. For those reasons, Mr. Chair, I'll be in support of this motion. Thank you.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. Vanthuyne. Further comments to the motion? Mr. McLeod.

HON. ROBERT MCLEOD: Thank you, Mr. Chair. Mr. Chair, one of the reasons we wanted this motion or the Minister to have the authority to grant the exemptions is in emergency situations, there may be exemptions that may need to be granted. I can assure Members that and it is tied to regulations. Bill 27 received assent. I can't go out tomorrow and start granting exemptions. We have exemptions. I think we had a discussion when we brought this before committee. We have talked about making it a public process and we did manage to get that amendment into the bill where we go

through a public process if time permits, but there are times where a Minister will need to make a decision.

One of the things we don't want to do too is, you waste a lot of things by unnecessary processes or red tape, try and have things flow through smoothly. A Member made reference before about the comments that were received by some organizations across from the Northwest Territories as to the bill. We got feedback. There was some concern raised with the Minister's ability to grant exemptions. We responded to them and we explained to them how the process was going to work. We have not heard back from them. We take that as they're comfortable with the fact that exemptions will be tied to regulation. There are also opportunities again if time permits, to have a lot of public input, and I made that commitment when we made the amendment to Bill 27 for our consideration in committee. We have heard from a number of people across the Northwest Territories. We heard from Aboriginal governments and organizations, 265 stakeholders, and 99 Aboriginal governments and organizations were involved during the second round of consultations.

We are obviously not going to support the motion. I have a lot of trust and faith in our department and the Minister's ability to do what is right for the people of the Northwest Territories. Thank you.

CHAIRPERSON (Mr. Simpson): Thank you, Minister. Seeing no further comments, I will allow the mover of the motion to close debate. Mr. O'Reilly.

MR. O'REILLY: Thanks, Mr. Chair. I just wanted to address one item that the Minister raised, and that was about emergency situations. The amendment would preserve the ability for the Minister to make exemptions in emergency situations, and I think that is a good thing. It is still in this amendment, but where an exemption is not based on an emergency situation, the issue is where that authority should rest. Should it rest with the Minister or Cabinet as a whole? I still believe that it should rest with Cabinet as a whole. It is a collective decision and make sure that all the Ministers are involved in that. I would hope that my Cabinet colleagues could support this in the spirit of consensus government. Thanks, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. O'Reilly. To the motion.

SOME HON. MEMBERS: Question.

CHAIRPERSON (Mr. Simpson): Question has been called. All those in favour? All those opposed?

---Carried

The motion is carried. Clause 3, as amended.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Thank you, committee. Clause 4.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Mr. O'Reilly.

COMMITTEE MOTION 112-18(2):
BILL 27: AN ACT TO AMEND THE ENVIRONMENTAL PROTECTION ACT –
AMENDMENT TO CLAUSE 4 – DELETION OF SUBCLAUSE 4(2),
CARRIED

MR. O'REILLY: Sorry. Yes, there is one other amendment here, Mr. Chair. It is just to tidy up what we did with the last amendment, and if I may move it, Mr. Chair, that subclause 4(2) of Bill 27 be deleted. Thank you, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. O'Reilly. There is a motion on the floor. The motion is being distributed. The motion is in order. To the motion. Mr. O'Reilly.

MR. O'REILLY: Thanks, Mr. Chair. All this motion really does is delete the part of the bill that would have had the authority rest with the Minister to make exemptions. We have now changed that already; so this is just a consequential amendment. I do not think I need to say anything further. Thanks, Mr. Chair.

CHAIRPERSON (Mr. Simpson): Thank you, Mr. O'Reilly. To the motion.

SOME HON. MEMBERS: Question.

CHAIRPERSON (Mr. Simpson): Question has been called. All those in favour? All those opposed?

---Carried

The motion is carried. Clause 4, as amended.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Thank you, committee. Clause 5.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Clause 6.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Clause 7.

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Committee, to the bill as a whole. Does committee agree that Bill 27, An Act to Amend the Environmental Protection Act, reprint, as amended, is now ready for third reading?

SOME HON. MEMBERS: Agreed.

CHAIRPERSON (Mr. Simpson): Thank you, committee. Bill 27 is now ready for third reading. Does committee agree that this concludes our consideration of Bill 27?

SOME HON. MEMBERS: Agreed.