

STATEMENT AT SECOND READING—KEVIN O'REILLY, MLA FRAME LAKE

Bill 36: An Act to Amend the Petroleum Resources Act

February 22, 2019

MR. O'REILLY: Merci, Monsieur le President. Members may speak to the object, expediency, principles, and merits of a bill at second reading, and I will exercise that right with the proposed changes to the Petroleum Resources Act.

I will speak to the process that got us here. I will also provide some comments on the bill and concerns with what is there and what is missing.

The Petroleum Resources Act set the rules on the rights to explore and produce oil and gas in those lands where the GNWT owns the resources. It sets out how the GNWT will act as the owner of onshore oil and gas resources and those subsurface lands owned by Indigenous governments.

The Process

This bill will amend the Petroleum Resources Act, which mirrors the Canada Petroleum Resources Act that the federal government had used to administer oil and gas rights in the Northwest Territories prior to devolution. The federal legislation still applies in the offshore areas of the NWT. Oil and gas rights are administered much differently than mineral rights, where free entry has prevailed for hundreds of years. Oil and gas rights are only acquired through an initial expression of interest, which is decided by a bidding system. This is not a first-come, first-served approach. Benefits plans may also be required, followed by Exploration Licences, Significant Discovery Licences, and Production Licences. This is a far more rational approach to resource management than exists for mining.

With devolution effective April 1, 2014, our government has had the opportunity to develop our own legislation on oil and gas rights disposition regime. The public part of that process began in March 2018 with the release of a discussion paper, "Updates to the NWT's Petroleum Legislation." Community drop-in sessions were held March to May 2018. The scope of the discussion paper and proposed changes to the Petroleum Resources Act was limited to the following general areas:

- delegation authority of the Minister;
- confidentiality;
- Environmental Studies Management Board composition;
- Environmental Studies Research Fund accountability and reporting;
- transparency of licences;
- modernizing public notices; and
- Significant Discovery Licence options.

The department made it clear that this was the first phase of two-step process of changing this legislation. Broader changes are still to come in some key areas, including royalties. I think that a two-step process makes sense, but I would have preferred that the royalty regime be included to make sure that our government gets a fair share of our petroleum resources that are extracted.

In contrast to the approach taken by the Minister and his department in terms of developing the mining legislation, changes to the oil and gas legislation have been better managed, and more public information was made available, including cross-jurisdictional research and analysis and best practices. The Minister also provided clearer information and responses to committee requests, and I commend them for that work.

The "what we heard" report from the consultation was released on July 25, 2018. It was a thorough review of the comments submitted and rationale for preferred direction moving forward. All of the written submissions made to ITI are still available on its website, which is an improvement over the approach to the mining legislation, where such submissions are not public.

As I understand it, there was some Indigenous government involvement in the development of the bill, as is legally required. As I said last week, we are still trying to figure out how to mesh this new way of developing legislation with the public government approach of the Executive holding the pen and the Legislature conducting a review.

Clearly, a lessons-learned review is required for the development process on post-devolution legislation, as the processes across departments and even within departments has varied wildly, with different outcomes and satisfaction levels. Mr. Speaker, I want to move on to the principles and merit of the bill.

Principles and Merit of the Bill

This bill is about petroleum resource rights management. It is not about promoting oil and gas development. The department certainly does a very good job at promoting oil and gas development, even if there is virtually no production from lands that we own and little to no interest from the hydrocarbon industry, despite Cabinet's heavy promotion.

In my view, it is an inherent conflict of interest for a department to promote something and attempt to impartially regulate it at the same time. This is not good governance. Unlike mining in the NWT, there is an impartial oil and gas regulator for many aspects of exploration and development, and in my opinion, they are doing a good job. That being said, I am still of the view that oil and gas rights should not be regulated by the Department of Industry, Tourism and Investment but by the Department of Lands that already has systems and expertise in place for surface lands management. This would remove the apprehension of bias.

There are definitely some improvements in this bill to how this government attempts to manage oil and gas. The Minister will have the ability to delegate authority to departmental staff to carry out duties under the Petroleum Resources Act, including to

the Office of the Regulator of Oil and Gas Operations. There is no requirement for a notice to be issued of such delegation, which is contained in the other oil and gas bill for delegations by the regulator. A public notice of delegations under the Petroleum Resources Act by the Minister would be a good idea and should be included as we move forward.

There is the potential for improved public notice of licences issued for oil and gas exploration and production, including changes to the terms and conditions. While the discussion paper had suggested online publication, the bill, unfortunately, leaves the Minister with total discretion as to how public notice might be given. This seems to be part of a very troubling trend that we are beginning to see with this post-devolution legislation, where Ministers are increasingly being given discretion and authority, rather than setting standards of performance in the statutes themselves.

The other issue with the notice requirements in the bill is that notice is not required to be given to relevant Indigenous governments, as is the case with the proposed new mining legislation. Notice alone is also not sufficient for this government to comply with the concept of free, prior, and informed consent as found in the United Nations Declaration on the Rights of Indigenous Peoples. I understand that oil and gas rights are managed differently and that the agreement of communities is usually sought before expressions of interest are sought, but notice requirements will still need to be reviewed carefully in this bill, Mr. Speaker.

We have a very antiquated system of registration of oil and gas rights, where fees are required for examination and reproduction of records. The Oil and Gas Rights Management section of the ITI website is a model of non-disclosure, where almost no specific information can be found. There appears to be errors in the dates for the very few postings that have been made. This definitely needs a lot of work and improvement if it is to be relied upon as the major source of public notification. The bill could help with that, but reporting and notice should become mandatory and online, with provision for interested parties to register to receive notices as they are filed.

The bill will require the Minister to make all of the licences public, which is an important first step and a definite improvement over current practice. Further steps towards more responsible resource development would see opportunities for the public to review and comment on licence applications, something that the discussion paper briefly mentioned but is not reflected in the bill. There should also be a requirement for the Minister to table an annual report on oil and gas rights administration and management.

One of the most contentious issues over the years with oil and gas management has been around confidentiality of information. The current legislation is a model of government secrecy. There is a mandatory requirement to keep almost everything secret. That is not how public governments should manage public resources, and I was pleased to see that the department even mentioned the Extractive Industries Transparency Initiative that I highlighted in the House yesterday in attempting to get the Minister of Finance to provide minimal details on resource royalties. The bill may allow for the disclosure of more information. The problem is that there are some very broad categories of information that can be held back, including financial, commercial, scientific, and technical data. This definitely needs to be clarified, with the onus placed

on the parties submitting the information to prove that it should be kept secret.

There is finally a definition for hydraulic fracturing in this bill, and it will require the disclosure of chemicals that are to be used, at least to the regulators. Hopefully we can find a way to ensure that the public is informed of these operations, if they ever happen here, and despite Cabinet's efforts to avoid dealing with the issue of fracking, even though it is part of our mandate.

Changes are proposed to the Environmental Studies Research Fund in this bill. This fund is an interesting and innovative way to improve our understanding of the impacts of oil and gas exploration and production on the environment. It is also a good example of polluter pays. The holders of oil and gas rights pay relatively small levies to enable research on impacts to be funded and published. I think that this approach should also be applied to the mining sector.

The fund is managed by a board appointed by the Minister and made up of individuals nominated by industry and government. There is currently a space for someone from the public. Under this bill, Indigenous governments will be able to nominate individuals to serve on the board, which is good step and one that I urged the Minister to ensure is in the legislation. This is certainly in keeping with the co-management approach in the land rights agreements.

This part of the bill would be even stronger if half of the board membership came from Indigenous government nominees. I believe there is a strong case for improving the credibility of the board by removing the requirement for industry and government employee representatives. All of the board members can and should be there for the public interest.

The accountability and reporting of the board will also be improved under the bill, and I support and, indeed, have suggested that this needs to happen. The Conflict of Interest Act will apply to the board members under this bill, which is an interesting move, one that I will be looking to better understand. Annual reporting by the board will become more prescriptive, with information required on projects funded. I note for the record that the board does such reporting now.

I have saved the best for last, Mr. Speaker: Significant Discovery Licences. This concept arose in the federal legislation that we inherited. It allows companies to have exclusive ownership of oil and gas rights without having to do any work or pay any fees, forever. Companies can get these licences without doing anything except being near another Significant Discovery Licence. A Minister could require drilling to take place, but this has never been done. Such licences amount to a resource giveaway that does nothing for our economy or for future generations.

Unfortunately, this has happened under our watch already, where the Minister has issued ten Significant Discovery Licences since 2016. The area covered by these licences is almost 2,200 square kilometres, an area about 39 percent of the size of Prince Edward Island. This government will get no revenues, generate no taxes, and ensure no employment and no benefits from these areas that are now tied up virtually forever. The Minister had and still has options to change this bad move. This should

have been fixed right after devolution rather than waiting for five years. There was no reason to wait this long, and other options may have been open to the Minister.

The bill does try to fix this problem in some small ways. Drilling requirements will have to be completed on Exploration Licences before they can be converted to Significant Discovery Licences. This is helpful, but drilling on Exploration Licences appears to be at the complete discretion of the Minister. If the objective is to generate activity and benefits, exploration should be a mandatory requirement to maintain the rights, as is the case with mining.

Personally, I would prefer to see a cash bid system rather than the current work bid system with benefits plans. That is what the Inuvialuit did with their subsurface rights. The biggest change with regard to Significant Discovery Licences under the bill would be a term of 15 years. I am not sure why that length of term was picked, and I look forward to exploring it, but extensions to these licences may be possible, with the Minister, again, having total discretion.

In summary, I commend the department and Minister for a more open and transparent approach to amending the Petroleum Resources Act. I wish that we were also dealing with the royalty regime, but there is not as much urgency, given the lack of production and interest, so this can wait.

There are improvements in the bill, and the Significant Discovery Licence issues problem may get resolved soon. I hope for reduced confidentiality requirements, better public notice, and actual opportunities for the public to comment on and review licence applications, as is the case with our co-management regime for virtually all our other resources. There are also changes to the Environmental Studies Research Fund, and I will push for further improvements.

This bill is a good start, and I look forward to working with my colleagues on the Standing Committee on Economic Development and Environment to hear what Indigenous governments, non-governmental organizations, industry, and the public have to say. Mahsi, Mr. Speaker.