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

Bill 38 Protected Areas Act

February 26, 2019

MR. O'REILLY: Merci, Monsieur le President. I wish to speak to the process that resulted in the bill. I will also provide some comments on the bill and concerns with what is there and what is missing.

This is a much anticipated bill and should be the spring board for building opportunities for public and private investment into a conservation economy. This law will help build strong and sustainable communities and promote cultural survival and economic diversification. I recognize that a lot of hard work, blood, sweat, and tears have gone into this bill and thank everyone involved for their efforts. This is the means of implementing Thaidene Nene, Edehzhie, and other protected areas that are in the queue.

The Process

ENR's approach on the development of its environmental legislation appears to have been similar to other departments in the post-devolution world, but there were some significant differences. ENR created a two-level approach for consultation. A large Stakeholder Advisory Group consisting of NGOs, industry, and others was invited to a series of three large workshops that were held October 12, 2017; February 28 and March 1, 2018; and May 9 and 10, 2018. Participants were promised a chance to review the draft bills before introduction into the House, but this was not done.

There were broader public engagements for four of the five bills under development in November and December 2018. Bulleted lists of possible principles and content were posted to the ENR website. "What We Heard" reports were promised but never delivered publicly. Submissions were also not posted. Public consultation and engagement appears to have ended in late 2018.

Technical working groups were also established for each of the five ENR bills being considered. Indigenous governments were invited to participate in detailed discussions and exchanges of proposals and drafts, at least as I understand it. Co-management bodies were eventually allowed to participate in the technical working groups, as some of them would be expected to implement parts of the bills. Indigenous governments who were not members of the Intergovernmental Council and some NGOs without paid staff were provided some limited financial assistance from ENR, and that was a good step.

As I understand it, notes were kept for all of the Stakeholder Advisory Group and technical working group meetings. ENR did not share any of its research, best practices, or cross-jurisdictional analysis publicly. Despite repeated attempts by standing committee and Regular MLAs, the Minister did not share anything substantive from the consultation and drafting process with Regular MLAs. The Minister said in writing in March 2018 that he was "committed to provide SCEDE with updates on ENR's legislative initiatives and the technical working group and Stakeholder Advisory Group

meetings." That never happened, despite several reminders to the Minister and even the Premier.

The standing committee had no idea what the actual bills would contain or what stakeholder and Indigenous government feedback that ENR had received. This is much worse than the ITI bills, much worse, and will make the job of standing committee that much more difficult. To be clear, I don't fault the hard-working ENR staff in any way for not sharing the consultation work that they undertook with very limited resources. It was the Minister who did not share the information, and this is not how consensus government is supposed to work.

ENR does not seem to have had access to the bottomless pit of communications funding that ITI had in developing its very slick, plain-language materials for the mineral rights legislation. It is not too late for ENR to produce some plain-language materials to explain what it is proposing in its legislation. This is complicated stuff, Mr. Speaker, and the public needs help to participate democratically in its review. Plain-language materials would help with that. There are lots of lessons we can learn about the development of these bills, and there is a need for formal review across departments of how we did with our first steps in the post-devolution world. I will now turn to the principles and merit of the bill.

GNWT has a Territorial Parks Act, and four regulations under it. This legislation allows for the establishment of various classifications of parks by regulation. Indigenous peoples may hunt and fish in territorial parks, and consultation may be required for the establishment of parks, changes to boundaries, and repealing regulations. Permits may be issued for park users, and entry may be controlled or prohibited. The positions of superintendents and park officers are created. Offences and penalties are set out, along with regulation-making authority.

Modern parks legislation should establish a park planning and management process, and the bill largely does this.

The Protected Areas Act sets out a rational approach to the establishment and maintenance of a network of conservation areas for the Northwest Territories. Some more work may be required to make sure we adequately protect wetlands. A public registry is to be established. It will contain information on areas nominated for protection, and the movement of those areas through the process of notification, evaluation, and public engagement that leads to a candidate area becoming of protected area or not. An establishment agreement between public and Indigenous governments will be required for each area, and the formal step of setting up each protected area will be through a regulation. There is provision for notice to be provided to relevant co-management bodies established in the lands rights agreements at some points in the process. The administration and management of protected areas is covered in the bill, with a potential to establish management boards, advisory bodies, and management plans. The activities that are and are not permitted in protected areas are also set out in the bill. There is a lot of detail around enforcement, offenses, and penalties. A report of the Legislative Assembly is required at least every five years. There are sweeping powers for regulation-making. Lastly, there are some consequential amendments to the Territorial Parks Act to allow it to focus on smaller recreational and

historic sites.

There are two main issues with this bill, as I see it. Again, there is a very troubling pattern of extensive and sweeping Ministerial power and discretion without many checks or balances. I will highlight some of these matters a little later. The bill does acknowledge and recognize Indigenous rights and the prevailing co-management system established under constitutionally entrenched land rights agreements. It does not fully embrace or support the role of the land use planning boards or renewable resource boards and councils. Notice to the co-management bodies of candidate areas, establishment, and potential changes to protected areas is a start, but hardly the kind of incorporation of their true jurisdiction and roles. Why would the Minister not want to seek the views of, and consult with, relevant co-management bodies with regard to nomination of candidate areas for consistency with existing land use plans, seek the views of these bodies with regard to park management plans, and more? The Minister may actually be obligated to make joint management proposals to the renewable resources boards for protected areas establishment and management. In any event, I recognize this is a complex area and that the bill likely represents a compromise position that was met under tight timelines. I certainly look forward to hearing from Indigenous governments and co-management bodies about the way in which they had been built into this bill, or not.

I strongly support the concept of protected areas public registry. The problem is that it is not clear what information will actually make it into the registry. In my view, all the correspondence among the GNWT, Indigenous governments, and other interests regarding the nomination of areas, candidate area evaluation, public engagement submissions, final and amended establishment agreements, management plan development materials, and any changes to protected areas should be documented on the public registry. This should be available to everyone and made available online, similar to the public registries of the land and water boards or the Mackenzie Valley Review Board.

There appears to be very limited ability to expropriate land for protected areas. Such an arrangement is already in place for the mining industry, whereby rights holders can effectively expropriate, with compensation, surface rights holders.

Earlier, I mentioned the overwhelming Ministerial power and discretion found in the bill. The Minister appears to have unbounded ability to reject areas that may be nominated, without any appeal or dispute resolution, or even public notice with reasons and a public comment period. We may also need to consider if others should be able to nominate areas for protection. While I can appreciate that regulations could help clarify public engagement around protected areas establishment, there should at least be an onus on the Minister to seriously consider and provide reasons publicly for any decisions on the nomination and evaluation process. Those decisions should be placed on the public registry to build transparency, accountability, and confidence.

Cabinet can only reduce the size of a protected area or de-register a protected area with the consent of Indigenous governments. This reduces one of my greatest fears about what might be in the bill. This is a strong and necessary provision to ensure that there is permanency and clarity. However, I am alarmed with the provisions in the bill

that would allow the Minister total and unfettered discretion to establish transportation and transmission corridors through and within protected areas. Now, that is expropriation and needs to be fixed.

This bill is a good start, and again, I acknowledge all of the hard work that went into it. 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 about improving this very important piece of legislation. Mahsi, Mr. Speaker.