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Journal des débats (Hansard)

Mercredi 16 mai 2007

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justice policy**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
JUSTICE POLICY**

**COMITÉ PERMANENT
DE LA JUSTICE**

Wednesday 16 May 2007

Mercredi 16 mai 2007

The committee met at 0903 in room 1.

**SAFEGUARDING AND SUSTAINING
ONTARIO'S WATER ACT, 2007**

**LOI DE 2007 SUR LA SAUVEGARDE ET LA
DURABILITÉ DES EAUX DE L'ONTARIO**

Consideration of Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002 and to repeal the Water Transfer Control Act / Projet de loi 198, Loi visant à modifier la Loi sur les ressources en eau de l'Ontario afin d'assurer la sauvegarde et la durabilité des eaux de l'Ontario, à apporter des modifications connexes à la Loi de 2002 sur la salubrité de l'eau potable et à abroger la Loi sur le contrôle des transferts d'eau.

The Vice-Chair (Mrs. Maria Van Bommel): I'd like to call this meeting to order. Good morning, everyone, and welcome to this meeting of the standing committee on justice policy. The order of business is clause-by-clause consideration of Bill 198, An Act to amend the Ontario Water Resources Act to safeguard and sustain Ontario's water, to make related amendments to the Safe Drinking Water Act, 2002 and to repeal the Water Transfer Control Act.

Members have before them a package of motions that have been received by the office of the clerk. Pursuant to the time allocation order of the House dated Tuesday, April 24, 2007, the committee is authorized to sit in the morning and after routine proceedings today until completion of clause-by-clause consideration of the bill. Are there any questions or comments that a member would like to make now? Then we'll commence the clause-by-clause.

Parliamentary practice has us deal with the preamble after dealing with the rest of the bill, so we will begin with section 1 and return to the preamble after dealing with the rest of the sections. If I could start with section 1, are there any comments, questions or amendments?

Mr. Robert W. Runciman (Leeds-Grenville): I have an amendment, and I gather—I'm looking for direction from the clerk on this with respect to subsection 1(3) of the bill, subsection 1(6) of the Ontario Water Resources Act. This addresses the concerns of Invista and others, I gather. I didn't have a specific wording

from Invista. I'm assuming that this will completely address their concerns.

Interjection.

Mr. Runciman: All right, then.

I move that subsection 1(6) of the Ontario Water Resources Act, as set out in subsection 1(3) of the bill, be struck out and the following substituted:

"Lost water

"(6) For the purposes of this act, if water is taken from a water basin described in subsection 34.3(1), any portion of the water that is not returned to that basin is lost."

The Vice-Chair: Would you like to add the rationale to that?

Mr. Runciman: Yes. Very briefly, I gather numerous submissions with respect to this have come from a number of organizations and businesses, but my interest is primarily sparked by a company in my riding, Invista, formerly a DuPont property and one of the major employers in my part of eastern Ontario with 400 employees. They have written to me with respect to the bill and the legislation, the impact that, if unchanged, this could have on their ability to compete. Madam Chair, with your indulgence, I would briefly put their concerns on the record. This is a company that does strive for environmental excellence.

"The government of Ontario"—and I'm quoting from their letter—"indicated that it is proceeding carefully with the introduction of charges for water takings. Given the potential trade implications, the need to promote a strong economy in Ontario and the importance of being competitive with other jurisdictions, the charges have the potential to further reduce the hospitable nature of Ontario's business environment relative to other sites in which Invista is located around the globe. An appreciating Canadian dollar, high energy prices and low-cost labour in some parts of the world result in an increasingly competitive global marketplace. It is with this premise, along with the fact that Invista returns virtually all of the water it uses in as good or better condition, that it would only be fair and reasonable for there to be an exemption for water charges for water that is returned to the environment in this manner.

"While we recognize the need for the government ... to protect the natural resources ... and for Ontario to meet its obligations under the Great Lakes water agreement, Invista believes that Ontario must do so in a responsible manner that does not unfairly penalize companies that

borrow and return water for manufacturing processes, particularly when such water is returned with a net benefit....

“One of the primary reasons Invista manufacturing operations were established in eastern Ontario was the access to large volumes of deep, cold water. The vast majority of this water is ‘borrowed’ from the source and used as a cooling agent for our manufacturing processes. For example, at just one of our manufacturing sites, we borrow approximately 250 million litres of water a day from the St. Lawrence. Of this total, only 22,000 litres is actually consumed in the production of product.

“Invista seeks the following recognition in the development of ... regulations:”

To “recognize the difference between consumptive and non-consumptive use in terms of the water-taking fees such that the non-consumptive users are not unfairly charged” and that it does not become “a significant cost burden. This is a significant concern for Invista, which borrows large volumes of water for cooling purposes....

“Groundwater pumping that is specifically used for remediation purposes should be exempt from the proposed water conservation obligations, including paying the proposed charges. This is water that is merely transferred from the ground to the lake after treatment, and this water would have eventually made its way to the lake anyway.

“Invista is pleased that the government ... recognizes the need to promote a strong economy in Ontario and be competitive with other jurisdictions. The addition of a water charge levied against Invista Canada’s operations is counter to this position. Invista operates in a fiercely competitive global marketplace, and a charge on Invista’s non-consumptive water use for manufacturing purposes would weaken our ability to compete in the global marketplace.”

I think in essence that sums it up. As all members know, we are in a difficult situation currently with the loss of manufacturing jobs in the province. This is a company that’s very much important to my region: 400 jobs with an implication for probably another 1,200 jobs or more that are reliant on the continued existence of this firm. If this company goes down, there’s another firm, Nitrochem, which is a neighbouring company which employs close to 200 people, and another firm which is tied in. They’re all tied in in this chemical lane, if you will.

So this, I would say, is of grave significance, and I certainly urge the members of the committee to support this amendment.

The Vice-Chair: Thank you, Mr. Runciman. Debate?

Mr. Jeff Leal (Peterborough): The definition, of course, of consumptive use was first enshrined in 1980 and in the Great Lakes Charter of 1985, which was one of the first international agreements that was signed by the then Prime Minister, Mr. Mulroney. Consumptive use was again reaffirmed by the International Joint Commission in its 2000 report Protection of the Waters of the Great Lakes, which talked about both diversions and consumptive use.

0910

Consumptive use is a key principle of this bill. Even if water is returned, the resource needs to still be managed.

We take the concerns put forward by the member from Leeds–Grenville seriously, but the notion of consumptive use remains a very critical part of this bill, and we won’t be supporting this motion at this time.

Mr. Peter Tabuns (Toronto–Danforth): I would appreciate it if Mr. Runciman could explain again why this amendment—maybe I missed the point. If, in fact, you say that any water not returned to the basin is lost, how does that aid your purpose?

Mr. Runciman: As I understand it, they’re looking at the non-consumptive use; the definition being applied with respect to water that’s being used for cooling purposes and then is returned to the waterway. That’s why I questioned the Chair and the clerk with respect to whether the amendment addressed the concerns of Invista, and I was assured that it did by my colleague and the clerk and, I hope, the researcher. Perhaps legal counsel can speak to this.

Mr. Doug Beecroft: The motion that really accomplishes what you want is on page 40, but this motion is necessary to make that motion work. If you look at the motion on page 40, you’ll see that there you’re amending the provision that relates to the water conservation charges, and you would only permit charges for commercial-industrial purposes that result in a loss of water. Here in this motion that you’ve just moved, you’re defining loss of water to mean a transfer that is not returned in full.

Mr. Runciman: What you’re saying is that by rejecting this amendment that I just moved, this is lost automatically?

Mr. Beecroft: I wouldn’t say that, except that your later motion wouldn’t have as clear a meaning. The motion that you’ve just moved gives some clarity to the later motion. I think you can still try—it’s a later motion—but it wouldn’t be as clear in its meaning.

Mr. Runciman: I wonder if the government wants to respond to that to give us an indication.

Mr. Leal: I’ll have a staff person from MOE respond.

The Chair (Mr. Lorenzo Berardinetti): Would you please come up? Can you state your name, please?

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

If you look at the provision of the bill which deals with the charges authority, there’s actually no reference to consumptive use. The regulation-making authority itself says that charges can be imposed on commercial-industrial users or also on persons who take water and then pass it on to a commercial-industrial user. Plus, there’s a motion that’s being proposed that this also include persons who distribute water and pass it on to a commercial-industrial user.

The reason I point this out is just because consumptive use comes up in other provisions of the bill, such as defining what types of large transfers require review by the regional body and return flow.

The ministry's discussion paper that was posted that will lead to a proposed regulation says that the first phase for the charges would go to the commercial-industrial users who are defined as highly consumptive users, but you are right that the paper proposes that at some point the charges will apply to the larger commercial-industrial sector. These are things—what I'm trying to indicate here—that will be proposed by regulations: how you calculate a charge, to whom it applies in the commercial-industrial sector. Those will be things that will be specified in the regulation.

Mr. Runciman: So, Chair, if I get this right, then what you're saying is that there's still the flexibility through the regulatory process to exempt firms that are returning water—

Mr. Flagal: You—I'm so sorry to interrupt. I wouldn't call it an exemption, because—it's a way you can describe it. The regulation will say it applies to these people. For instance, it may say that it will apply to beverage manufacturers first, plus maybe some other highly consumptive users. What you're identifying is exactly right. Every time a new regulation comes forward, if it's going to expand the commercial-industrial users it will apply to, there will always be an opportunity for stakeholders to discuss and negotiate with the ministry what that proposal should be. So you're exactly right. This is something that would be addressed in regulation, and it would be part of the consultation process that the ministry always follows through the EBR process when going out with proposals for regulations.

Mr. Runciman: I guess that won't provide much comfort to—it still leaves a large cloud of uncertainty hanging over this issue.

Mr. Flagal: I understand that. We're hoping, though, that through regulation-consultation processes—it's the ministry's attempt to say to the stakeholders that are affected, "This is what our proposal is," and then to try to hone that proposal to be reasonable, etc. I understand what you're saying, but it's not something that would come out of the blue, so to speak, for the commercial-industrial users. It would be something they'd be consulted on. If, for instance, these folks are only using it for cooling water—I don't know much about their operations; I'm sorry—but if it is for cooling water purposes, then before the regulation would apply to them, they would be consulted along with other stakeholders about the expansion of that particular charging regime.

The Chair: Thank you. Are there any further questions?

Mr. Tabuns: Either to counsel or to Mr. Flagal, regarding the effect of this amendment, can you tell us how it would alter the legislation if this amendment was adopted? Why don't we start with legislative counsel and then go to the ministry.

Mr. Beecroft: The concept of consumptive use, as Mr. Flagal has said, comes up in various places in the bill. In all of those cases, the PC motions would change that concept of consumptive use to just any kind of loss of water. In addition, they would put this additional

prohibition on the charges that can be imposed so that those charges could not be imposed on someone who returned all the water to the basin they took it from.

Mr. Tabuns: Any difference of opinion?

Mr. Flagal: The only thing I can add, which the parliamentary assistant already identified, is that the legislation tried to track closely what the international joint commission definition of "consumption use" is, plus what's in the charter.

Mr. Tabuns: Fine. Thank you.

The Chair: Thank you. Mr. Leal.

Mr. Leal: Just a question to MOE counsel, then: If we change the notion of consumptive use—the Great Lakes Charter was signed by eight Great Lakes states and two provinces. Potentially it would have to go back to those bodies for approval because the Ontario legislation would be out of sync with what was incorporated and enshrined in the agreement of 1985.

Mr. Flagal: When we were given instructions to develop this particular legislation, the instructions were to make sure to enshrine in the legislation the commitments of the province and the commitments of the parties to the agreement, and that's why you see this definition of consumptive use. So that's why it tracks very closely what that is. But you will hear later on with respect to motions that there are already provisions in the bill; that there are abilities through the legislation to be even more stringent than what is provided for in the agreement. I'll give you an example. A big issue was return flow: When is return flow required when there's a transfer? There are mechanisms available to require return flow beyond those that are contemplated in the agreement. The answer is yes: The whole point with respect to this legislation was to try to enshrine as closely as possible, at a minimum, the provisions of the agreement.

0920

Mr. Runciman: I would like to make a request to the research folks. It would be interesting to know how the other signatories to this have interpreted this issue, especially in terms of a competitive marketplace. They're the folks we tend to be competing with to a significant degree. I think it would be helpful to see if they're treating this in a dramatically different way.

The Chair: Usually the research person is here.

The Clerk of the Committee (Ms. Anne Stokes): So the signatories to the agreement—

Mr. Runciman: This Great Lakes agreement.

The Chair: How they interpret "consumptive use." Thank you. We'll get an answer to that.

Mr. Leal: We also have staff here this morning from the Ministry of Natural Resources. They were working with staff from MOE on this bill. There may be some questions for MNR staff down the road.

Mr. Flagal: Yes, there is counsel here, whom I'll turn it over to, who was involved with respect to the negotiation of the agreement. Just one second.

Ms. Leith Hunter: Good morning. My name is Leith Hunter. I'm the deputy director of the legal services branch of the Ministry of Natural Resources. I acted as

counsel to the government during the negotiation of the agreement.

The agreement is a 10-party agreement. In the States, there is something called a compact, which is a binding agreement between the eight Great Lakes states, which needs to be approved in each of the Legislatures of the states and then will go to Congress and be approved by Congress.

The approval process has begun in the Great Lakes states. I think Minnesota has actually approved it. It has started in various other states, with varying levels of approval. What is being done there, largely, is that the compact is being adopted as drafted. It was drafted to be legislation. It's largely being adopted.

Mr. Runciman: Adopted? You mean implemented?

Ms. Hunter: Yes. There may be two stages in some of the states. They may actually approve the compact, and then, when it's approved by Congress, they may actually go and amend other legislation in their states to help in the implementation.

The compact, as drafted and approved, has this concept of consumptive use in it. The definition here flows from the agreement and from the compact.

Mr. Runciman: The question that flows from this is: Is there a commitment that we won't be ahead of the curve in the sense that if there are 10 signatories to this, does this have to be finalized before this definition that you're implementing in Ontario comes into use and starts to impact, and we'd have maybe one state in this compact that has implemented it, or do we have to have everybody on board before it actually takes effect?

Ms. Hunter: The answer to that is that the agreement is not fully effective until all of the jurisdictions have passed legislation to approve it. It's a bit of a running target, so you want to indicate that you are there approving the agreement, but you also want to ensure that some of the provisions don't come into force until there has been substantial approval elsewhere. As you read the bill as drafted, you'll see that—particularly, for instance, with respect to the in-basin uses, how we're going to manage water takings in the basin that aren't transfers—that is something which will be done later by way of regulation. The hope is that that will be done at a time that is appropriate in terms of what other jurisdictions are doing in the basin. The other thing I'd like to add is—

Mr. Runciman: Did you use the word "hope"?

Ms. Hunter: That is the intention. The other thing I'd like to add is that the concept of consumptive use is important in that context as well.

Mr. Runciman: I think it's important, when maintaining a manufacturing base in this province, that we don't get way out ahead of folks, especially if we're talking about water that's recycled into the water basin. Being ahead of the curve on an issue like this when we're seeing a hollowing out of the manufacturing sector in the province is pretty scary policy, in my view.

The Chair: Any further comments or questions or debate? None? I'll put the question.

Shall the motion carry? All those in favour? Opposed? It does not carry.

We'll move on to number 2 here. It's a government motion.

Mr. Leal: I move that section 1 of the bill be amended by adding the following subsection:

“(5.1) The act is amended by adding the following section:

““Order relating to flowing water, etc.

““33.1(1) The director may issue an order described in subsection (2) to a person described in subsection (3) if the order is necessary, in the opinion of the director, for the purposes of this act, and,

“(a) water is flowing, leaking or being released from, or is likely to flow, leak or be released from, any well or other hole or excavation in the ground; or

“(b) water is being diverted by, or is likely to be diverted by, any well or any other hole or excavation in the ground.

““Types of orders

“(2) The order may require the person to whom it is issued, in such manner and within such time as may be set out in the order,

“(a) to stop, prevent, regulate or control the flowing, leaking, release or diversion of water; or

“(b) to study or monitor the flowing, leaking, release or diversion of water, to make records of the results of the study or of the monitoring, and to report the results to the director.

““Person

“(3) The order may be issued to,

“(a) the person who owns the land on which the well, hole or excavation is located;

“(b) the person who constructed or caused the construction of the well, hole or excavation; or

“(c) the person who manages or controls the well, hole or excavation.””

The Chair: Any comments on that? Any discussion at all on the amendment? None? Then I'll put the question.

Shall the motion carry? It's carried.

Let's move on to page 3, a government motion.

Mr. Leal: I move that section 1 of the bill be amended by adding the following subsection:

“(5.2) Subsection 34(3) of the act is repealed and the following substituted:

““Water taking

“(3) Despite any other act, a person shall not take more than 50,000 litres of water on any day by any means except in accordance with a permit issued by the director.

““Exceptions

“(3.1) Subsection (3) does not apply to the following takings of water unless they are prescribed by the regulations:

“1. A taking of water by means of a well that was constructed before March 30, 1961 and was not reconstructed, improved, deepened, altered or replaced on or after that date.

“2. A taking of water by means of an intake from a surface source of supply, if the intake was installed before March 30, 1961 and was not reinstalled, reconstructed, improved, extended, altered or replaced on or after that date.

“3. A taking of water by means of a structure or works for the diversion or storage of water, if the structure or works was constructed before March 30, 1961 and was not reconstructed, improved, extended, altered or replaced on or after that date.

“4. A taking of water by any combination of the means referred to in paragraphs 1, 2 and 3.

“Exception, application for permit

“(3.2) When a person takes water by a means described in subsection (3.1) and the water taking is prescribed by the regulations, subsection (3) does not apply to the person if the person has applied to the director for a permit and the application has not yet been finally disposed of.”

To give a brief rationale, this amendment would allow regulations for charges and regulations requiring grandfathered takers to obtain a permit to be implemented together. If the bill is passed, as part of the government’s plan for imposing regulatory charges on highly consumptive, industrial and commercial uses of water, the government intends to make a regulation requiring all grandfathered water takers that fall within this class of water users to obtain a permit, in part so that their water use can be monitored and, consistent with trade law, similar uses of water should be treated similarly. As a result, currently grandfathered water users should be charged for water use similar to permanent water users.

The Chair: Further debate? Seeing none, I’ll now put the question. Shall the motion carry? Carried.

We’ll move on to page 4, a government motion.

0930

Mr. Leal: I move that subsection 1(6) of the bill be amended by striking out the portion before section 34 of the Ontario Water Resources Act and substituting the following:

“(6) Section 34 of the act, as amended by subsection (5.2), is repealed and the following substituted.”

This motion is a consequential motion to the motion that would add the authority to the existing section 34 of the Ontario Water Resources Act to require, by regulation, grandfathered water takers to obtain a permit. This will allow the government to have this authority in place when the bill receives royal assent.

The Chair: Any further debate? Seeing none, I’ll now put the question. All those in favour of the motion? Opposed? Carried.

We’ll move on, then, to page 5. It’s a PC motion.

Ms. Laurie Scott (Haliburton–Victoria–Brock): I move that subsection 34(2) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following paragraph:

“4. The taking of water for construction safety purposes related to sewers and water mains.”

This amendment was brought forward to us by the Ontario Sewer and Watermain Construction Association and supported by other groups such as the Ontario General Contractors Association and the Council of Ontario Construction Associations. When they appeared before committee, they wanted an exemption for construction safety purposes. According to the Ontario Sewer and Watermain Construction Association, “underground water infrastructure construction often involves trenching or tunnelling at depths below the water table... Water in a trench” or a tunnel “is a major safety hazard.” As well, “The cost and delays imposed by the need to prepare a detailed hydrological report and permit application ... can add huge costs to” already strapped municipalities.

The Chair: Is there any further debate?

Mr. Leal: We won’t be supporting this motion. We’ve had ongoing discussions, of course, with the sewer and water main construction folks in Ontario. The current permit to take water has a great deal of flexibility to deal with cases of emergency, and takers for dewatering can contact the regional office if they encounter water unexpectedly during an excavation.

As a former city councillor, I have witnessed trenches that fill up from time to time due to unexpected circumstances that arise. I would also like to get on the record that the Ministry of Transportation has a memorandum of understanding to deal with road construction to facilitate expedited issuance of permits for contractors if emergencies do arise due to the flooding of trenches. And I want to get on the record that this government and all previous governments in the province of Ontario take worker safety very seriously, and we would do nothing that would jeopardize the safety of workers—men and women who go to their jobs each and every day in Ontario.

Ms. Scott: I just don’t think that the comfort level for the Ontario Sewer and Watermain Construction Association was that—obviously, they appeared before the committee just last week. So I just wanted to put on the record that they still have some concerns. I hope the member opposite is correct that this will be covered off by the MTO MOU and with the permit to take water.

The Chair: Any other debate at all? None? So I’ll now put the question. All those in favour of the motion? Opposed? That does not carry.

We move on to page 6, then. It’s a PC motion.

Ms. Scott: I move that subsection 34(2) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following paragraph:

“5. The taking of water for irrigation purposes from a pond on land that is occupied by the person who takes the water.”

This amendment comes from the Ontario Federation of Agriculture, and they want it to be clear that the irrigation via personal ponds is not deemed as water-taking and irrigation from the ponds is done to alleviate the stress from other sources of water that they may face, especially in the drier summer months. So that was

brought forward by the Ontario Federation of Agriculture.

Mr. Leal: We won't be supporting this motion, but it was an issue that was brought forward by the Ontario Federation of Agriculture. I'd like to add that approximately half of the water-taking permits for agricultural uses, such as irrigation and frost protection—if irrigation from ponds was exempted from permanent requirements, the permit program would not be managing a large number of water takings and, as a result, would eliminate the program's effectiveness to manage water takings in a scientifically based and consistent manner right across the province.

The Chair: Any further debate? None? So I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on to page number 7. It's a PC motion.

Ms. Scott: I move that subsection 34(2) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following paragraph:

"6. The taking of water by means of a dam or other structure or work for which a management plan has been prepared under section 23.1 of the Lakes and Rivers Improvement Act, or for which the Minister of Natural Resources is authorized to require the preparation of a management plan under that section."

This concern was brought forward by the Ontario Waterpower Association, and it's intended to reduce the overlap and red tape that those in the water power sector are faced with under the variety of different acts in the province of Ontario. It would exempt those in the industry from the sections surrounding permits to take water.

The Chair: Thank you. Any further debate?

Mr. Leal: This organization is headquartered in Peterborough, and I've had the opportunity to chat with Paul Norris on numerous occasions. Water power dams are currently required to obtain an approval from the Ministry of Natural Resources under the Lakes and Rivers Improvement Act, as well as a permit to take water from the Ministry of the Environment. The proposed motion would provide a permit-to-take-water exemption by taking the water by means of a dam or other structure for which the management plan is completed under the lakes and waters act. The two ministries are working together to streamline the process because certainly all of us are interested in developing run-of-the-river operations as clean and green energy, and with the structure in place currently, we feel that this particular motion is not necessary at this time.

The Chair: Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move to page 8. It's a government motion.

Interjections.

The Chair: I'm sorry, my apologies. My counting wasn't accurate. Not carried. Sorry if I got your hopes up, Ms. Scott.

Ms. Scott: Yes.

Mr. Dave Levac (Brant): I wouldn't want Hansard to come back and bite us.

The Chair: Yes. Go ahead, Mr. Leal.

Mr. Leal: I move that section 34 of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by adding the following—I'm sorry. Since we've approved a previous motion, we want to withdraw this one.

The Chair: Okay, withdrawn then.

We'll move on to number 9. It's a PC motion.

Ms. Scott: I move that subsection 34.1(6) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

"Delay in deciding application for renewal

"(6) If an application for the renewal of a permit is made at least 90 days before it expires or within the shorter period that is approved in writing by the director, and the director has not made a decision to renew the permit or to refuse the renewal by the expiry date, the permit is deemed to continue in force until the date the director makes a decision to renew the permit or to refuse the renewal."

The rationale for this was again from the Ontario Federation of Agriculture, and it removes the provision that the permits expire even if applied for on time, if a year passes by. If our farmers played by the rules and applied on time, they should not be punished because government is too slow in responding.

The Chair: Thank you. Any further debate?

Mr. Leal: I happen to think this is an excellent motion, and we'll be supporting it.

Ms. Scott: Well, thanks, Jeff.

Mr. Levac: I want it noted she is shocked herself.

Mr. Leal: I can't guarantee others, but I think this is a superb motion.

Ms. Scott: Okay.

The Chair: Any further debate? None? All those in favour? Opposed? Carried.

Mr. Leal: There we go.

Ms. Scott: One for the day. At least one, right? Thank you. We try to provide things that make sense.

Mr. Leal: It's common sense. We don't want to go back to that, but it is common sense.

The Chair: We'll move on now to page 10, a PC motion.

0940

Ms. Scott: I move that subclause 34.1(9)(h)(i) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be amended by striking out "reduce the consumptive use of the water" at the end and substituting "reduce the loss of the water."

It goes back to our earlier discussion about the first motion, calling for the clarification of "water lost."

The Chair: Any further debate?

Mr. Leal: I'll be brief. Consumptive use is a key part of this bill. It's one of the founding principles articulated in this bill. We've had two legal counsel comment that this is a consistent principle that's enshrined by at least

two international agreements, and it wouldn't be appropriate for us to withdraw that concept based on the legislative commitments we've made to eight Great Lakes states and the province of Quebec.

Ms. Scott: I just want to put on the record again what was said earlier about not knowing for sure how the other signatories are interpreting the words "consumptive use" and thus, there is uncertainty for sectors of our province in that regard. I just want to put that on the record again.

The Chair: Any further debate? There being none, I'll put the question. Shall the motion carry? All those in favour? Opposed? That does not carry.

We'll move on then to page 11. It's a government motion.

Mr. Leal: I move that clause 34.1(9)(h) of the Ontario Water Resources Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

"(h) governing the use and conservation of water taken under the permit, including requiring the holder,

"(i) to implement specified measures to promote the efficient use of the water or reduce the loss of water through consumptive use,

"(ii) to ensure that an audit is conducted by a specified person or body in order to evaluate whether the water is being used efficiently, and to provide the results of the audit to the director, to other persons or both, or

"(iii) to prepare a water conservation plan and submit it to the director, to amend the plan if required by the director, and to implement the plan."

A brief explanation: This motion would amend the authority of the director to require water conservation measures as a condition in a permit to take water by expressly authorizing the director to require the permit holder to prepare and implement the water conservation plans. This is something that was advocated by the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes cities initiative and the Georgian Bay Association.

The Chair: Any further debate? If none, I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on to page 12, a PC motion.

Ms. Scott: I move that section 34.2 of the Ontario Water Resources Act, as set out in subsection 1(8) of the bill, be amended by adding the following subsection:

"Agricultural purposes

"(3.1) An order shall not be issued to a person who takes water for agricultural purposes if the person would incur any costs associated with the monitoring required by the order."

Again, the amendment was brought forward by the Ontario Federation of Agriculture. Their concern was that many of the standard pumps are equipped now to pump 50,000 litres and therefore fall under the section of the act which calls for monitoring. The Ontario Federation of Agriculture disagrees with the use of pump capacity as a sole determinant for monitoring and requests that any costs associated with that monitoring be borne by the province, not by the farmer. We should be

looking at innovative ways to lighten our farmers' loads, not burdening them further. This is brought forward as a concern that they may be into more regulation and expenses.

The Chair: Further debate?

Mr. Leal: We won't be supporting this motion. It would limit the effectiveness of the permit-to-take-water programs and to manage water takings in a scientifically based and consistent manner. As with any legislation, we want to be consistent in its application across the province of Ontario.

The Chair: Any further debate? If there's none, I'll put the question. All those in favour of the motion? Opposed? That does not carry.

Let's move on to number 13. It's a PC motion. Ms. Scott.

Ms. Scott: I move that section 34.4 of the Ontario Water Resources Act, as set out in subsection 1(8) of the bill, be amended by adding the following subsection:

"Annual report

"(3) The minister shall report annually to the Legislative Assembly on progress on the implementation of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005."

This amendment was put forward by Pollution Probe. They envisioned a tool that would allow citizens and decision-makers to see how the agreement is being implemented. We agree that this would be a great tool to see progress and analyze where more work can be done.

The Chair: Any further debate?

Mr. Leal: We won't be supporting this motion. If you examine article 300 of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, it commits Ontario and Quebec and the Great Lakes states to report to the regional body every five years, and then after that a public report is issued to provide transparency in what has occurred over that period of time.

Mr. Tabuns: I don't disagree that there's a provision in the agreement to report on a five-year basis, but there's nothing that prohibits us from reporting more frequently.

In fact, this is an amendment that would allow for greater openness and better ongoing monitoring, so I think it would be to the government's advantage, as well as to the advantage of Ontario as a whole, for it to be adopted.

The Chair: Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on, then, to number 14. It's an NDP motion. Mr. Tabuns.

Mr. Tabuns: I move that clause 34.6(1)(a) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

"(a) any of the water, including any wastewater produced from the water, would be transferred; and."

The idea here is that we ensure that wastewater is not diverted into another basin.

There was certainly a concern on the part of a number of deputants who appeared before us and certainly a concern that I raised in the Legislature—as did, I believe, the opposition—that large-scale transfers can have a negative effect on different lakes in the Great Lakes basin. I think we have to be very vigilant on this, both because of its impact on the upper Great Lakes and also because of its long-term political impact on our relationship with American states whose support for our action is necessary to protect the Great Lakes from diversion to the southwestern United States or the southern United States.

I think we have to do everything we can to have very clean hands. This amendment is meant to reduce transfers. Actually, I want to eliminate transfers, but this is part of the process of making sure that the upper lakes are protected.

The Chair: Any further debate?

Mr. Leal: We won't be supporting this motion. Bill 198 already includes the return of sewage as a return flow and when there is a new or increased transfer of water from the Great Lakes watershed to another of 379,000 litres per day. Additionally, we have ongoing negotiations, because this impacts municipalities in this area, and part of the MOU with AMO is that we need to continue to have these negotiations. If this NDP motion was passed at this time, it would have implications for our municipal partners in the province of Ontario, which would be contrary to the MOU that we have signed with AMO on legislative impact on municipalities in Ontario. But I do take the point that Mr. Tabuns has made on this issue.

0950

The Chair: Any further debate? I'll now put the question.

Mr. Tabuns: A recorded vote.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Levac, Oraziotti, Van Bommel.

The Chair: The motion does not carry.

We move on to number 15. It's a PC motion.

Ms. Scott: I move that clause 34.6(1)(a) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

“(a) any of the water, including any sewage produced from the water, would be transferred; and.”

This is a similar amendment to what has just been discussed by the NDP, Peter Tabuns. He made the points of the groups that came before us that encouraged this to be studied, and I heard the government side talking about the memorandum of understanding with the municipalities. Maybe we need to re-look at those.

Also, this group, the Georgian Bay Association, did their own study and found that 2.5 billion gallons per day, a previously unknown diversion, had been taken out of the St. Clair River, leading to the current low water levels in Lakes Michigan and Huron and in Georgian Bay. I think that it needs an update of the science and discussions, but it's the same rationale that was brought forward.

The Chair: Any further debate?

Mr. Leal: I would think this would be out of order because we voted down the previous NDP motion, which is identical, I believe.

The Chair: There is a difference, in that one dealt with sewage and one dealt with wastewater. I rule it in order.

Interjections.

The Chair: It is in order. Any further debate?

Ms. Scott: A recorded vote, please.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Levac, Oraziotti, Van Bommel.

The Chair: The motion does not carry.

We move on, then, to page 16, an NDP motion.

Mr. Tabuns: I move that subparagraph 1i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out the portion before sub-subparagraph A and substituting:

“i. The new or increased transfer amount.”

I was very concerned and our researchers were very concerned when we went through this because we felt that consumptive amount could understate the amount that was actually transferred. I haven't tried to change the definition of “consumptive amount” earlier on in the act, but I would say that you can have transfers that may elude that term “consumptive amount” and that you need a stricter wording when it comes to the whole issue of transfers, for reasons that I went into on the previous amendment.

I would move that this amendment be adopted as a way of ensuring that transfers between basins are eliminated or, at best, minimized.

The Chair: Any further debate?

Mr. Leal: I take the point that Mr. Tabuns has made. I would respond, though, that Bill 198 implements the commitments of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, including the prohibition of water transfers from one Great Lake watershed to another, with strictly regulated exemptions. The government is currently actively engaging its stakeholder advisory panel in developing the proposed legislation and has responded to requests by some members for stronger restrictions on transfers between

the five Great Lakes watersheds in a number of ways: Number one, the draft legislation was modified to authorize stronger intra-basin transfer controls by regulation.

For example, the bill provides regulation-making authority to lower the threshold requiring the return of water to the source of the Great Lakes watershed and to introduce additional environmental criteria to respond to cumulative impacts and climate change effects. A commitment has been made to engage Ontario's annex advisory panel to dialogue on potential interim measures, should the legislation be enacted. The government has also committed to consult with stakeholders and the public in developing supportive regulations. I think that explains our position in terms of what we see as already contained in the proposed draft of the bill.

The Chair: Any further debate? None.

Mr. Tabuns: Recorded vote.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel.

The Chair: The motion does not carry.

We'll move on now to number 17. It's a PC motion.

Ms. Scott: I move that subparagraph 1i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out "that is lost through consumptive use" in the portion before sub-subparagraph A and substituting "that is lost."

Again, this amendment goes back to our first motion calling for the clarification of water lost.

The Chair: Further debate?

Mr. Leal: Clearly, there's a philosophical divide between the government and the official opposition in terms of this notion of consumptive use. We believe, as I said previously, that consumptive use is a fundamental principle of Bill 198. It needs to be retained to make it consistent with our other partners who want to move forward with the effective management of water within the Great Lakes basin and the St. Lawrence River basin. We will not be supporting it.

Mr. Tabuns: I think there's a philosophical divide, but frankly, what's here doesn't eliminate the term "consumptive use." It simply tries to eliminate transfers and, as I understand what's before us, tries to move us to a stricter standard than the term "consumptive use," which may not encompass all losses of water. So I would say that it doesn't violate the agreement, but it doesn't eliminate the concept of consumptive use. It deals with transfer and makes the whole process of transfer more difficult. On that basis, as we've gone through the debate, I think that it is worthy of support.

The Chair: Any further debate?

Ms. Scott: A recorded vote, please.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel.

The Chair: The motion does not carry.

We'll move on now to number 18. It's an NDP motion.

Mr. Tabuns: I move that subparagraph 1ii of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out.

As I said in the debate on second reading, there's real concern that the development of municipalities or new tracts of housing north of Toronto, the development of the big pipe, will lead to substantial diversions of water from Georgian Bay and Lake Huron, and an exemption from transfer to municipalities feeds that. I would say that anyone transferring water should be caught in the same regulations. Frankly, leaving a large loophole for municipalities could mean that rural areas and areas around the upper Great Lakes will be substantially disadvantaged. I've already made my argument about the need to maintain good faith with the American states with whom we are striking an agreement, and I think that this is the direction the government should be going in.

The Chair: Further debate?

Mr. Leal: The issue that Mr. Tabuns has raised is contained in previous NDP motions 16, 18, 19, 21, 22, 27 and 29. We've provided our rationale as to why we feel we can't support it. So, suffice to say, for reasons of brevity, I don't have to provide an additional explanation.

The Chair: Is this another philosophical divide?

Mr. Leal: Perhaps it is. "Philosophical divide" is a good word to use.

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The Chair: Any further debate? None.

Mr. Tabuns: Recorded.

Ayes

Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel.

The Chair: The motion does not carry.

We'll move on now to motion 19. It's an NDP motion.

Mr. Tabuns: I move that paragraph 1 of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by adding the following subparagraph:

"iv. Notice of the application for the permit or amendment has been given to the province of Quebec, the states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of

Pennsylvania in accordance with the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005.”

Again, this is an initiative to tighten the conditions for transfer between lakes in the Great Lakes basin as a way of protecting those Great Lakes.

The Chair: Any further debate? None.

Mr. Tabuns: Recorded.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: The motion does not carry.

We'll move on now to page 20, a PC motion.

Ms. Scott: I move that subparagraph 2 i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out “that is lost through consumptive use” in the portion before sub-subparagraph A and substituting “that is lost.”

The amendment is going back to the result of the first motion that we brought forward.

The Chair: Any further debate?

Mr. Leal: We won't be supporting this motion. I think we've clearly outlined our position on the use of replacing consumptive use.

The Chair: Any further debate? None, so I'll now put the question.

All those in favour? Opposed? That does not carry.

We'll move on now to number 21. This is an NDP motion.

Mr. Tabuns: I move that paragraph 2 of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out.

This amendment is meant to prohibit intra-basin transfers, and it requires return of waters to their source basin. I think we've had the argument.

The Chair: Any further debate? None.

Mr. Tabuns: Recorded.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: The motion does not carry.

We'll move on now to number 22, an NDP motion.

Mr. Tabuns: I move that subparagraph 3 i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out the portion before sub-subparagraph A and substituting:

“i. The new or increased transfer amount.”

Again, this is requiring return of water to its basin to avoid the difficulties, environmental and political, that arise from transfers.

The Chair: Any further debate?

Mr. Tabuns: Recorded.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: The motion does not carry.

We'll move on to number 23. It's a PC motion.

Ms. Scott: I move that subparagraph 3 i of subsection 34.6(2) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out “that is lost through consumptive use” in the portion before sub-subparagraph A and substituting “that is lost.”

This again speaks to the clarification of water loss, as we've mentioned many times before in the committee.

The Chair: Any further debate? None, so I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on now to number 24. It's a PC motion.

Ms. Scott: I move that paragraph 1 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out “that may be lost through consumptive use” and substituting “that may be lost.”

Again, this is following the first motion that we brought forward.

The Chair: Any further debate? All those in favour of the motion? Opposed? That does not carry.

We will move on to number 25. It's an NDP motion.

Mr. Tabuns: I move that paragraph 1 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

“1. The new or increased transfer amount is returned, either naturally or after use, to the same Great Lakes watershed from which it was taken.

“1.1 The quality of the water that is returned is equal to or better than the quality of the water that was taken.”

The concern here, again, is to avoid transfers.

I want to speak briefly to this whole question of returning water in the same shape or in better shape than it was taken. Pressure on our water resources is only going to increase over the next few years. The quality of the water returned is of great concern.

I note two things:

One, in China, they are finding that their industrial growth is increasingly constrained by the fact that the water in their rivers is too low a quality even for industrial use. We never want to be in that situation, and setting a high standard now makes sense;

Secondly, we are going to find that quantity of water will increasingly be an issue. Friends of mine who live in the Kingston area are having their wells run dry. In the Picton area, wells are also running dry. Ongoing lack of precipitation over the years is starting to change the water table. We have to make sure that in a situation of constrained quantity, quality is protected; thus the amendment.

The Chair: Any further debate?

Ms. Scott: I would support that motion, because we heard from many of the people before the committee and during debate in the Legislature about the quality of the water and that this was not recognized in the bill and is something that really needs to be addressed.

Mr. Leal: We won't be supporting this motion. The bill already requires that proposals for large—greater than 19 million litres per day for consumptive use—new or increased takings of water between the Great Lakes watersheds are returned after use to the watershed from which it was taken.

The government will be introducing a motion, number 44, which I believe clarifies the regulation-making authority to make it clear that where water is transferred between Great Lakes watersheds, a regulation may be made requiring the return of that water to the watershed from which it was taken.

There are already provisions in other legislative statutes in the province of Ontario, through the COA process, that I believe address many of the concerns that have been raised through the motion that has been put forward here by Mr. Tabuns.

The Chair: Any further debate?

Mr. Tabuns: Recorded vote.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: The motion does not carry.

We'll move on now to number 26. It's a PC motion.

Ms. Scott: I move that paragraph 5 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out "losses of water through consumptive use" at the end and substituting "losses of water."

The amendment is going with our theme about the clarification of the water lost.

The Chair: Further debate?

Mr. Leal: The philosophical divide remains.

The Chair: Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on to page 27. It's an NDP motion.

Mr. Tabuns: I move that paragraph 5 of subsection 34.6(3) of the Ontario Water Resources Act, as set out in

subsection 1(10) of the bill, be amended by striking out "and losses of water through consumptive use" at the end.

Again, this is an attempt to prevent transfers. I'd like a recorded vote if there's no debate.

1010

The Chair: Further debate? None, so I'll now put the question.

Ayes

Scott, Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: That does not carry.

We will then move to motion number 28. It's a government motion.

Mr. Leal: I move that section 34.6 of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by adding the following subsections:

"Assessment of cumulative impacts

"(4) If an assessment of cumulative impacts is prepared under article 209 of the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement of 2005, the minister shall publish the assessment in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993 and invite members of the public to submit written comments to the ministry on what actions should be taken by the government of Ontario in response to the assessment, including comments on whether regulations should be made for the purpose of paragraph 7 of subsection (3) or under clause 75(1.2)(b) and, if so, on the content of those regulations.

"Climate change, etc.

"(5) When the minister publishes an assessment under subsection (4), the minister shall highlight the parts of the assessment that, in his or her opinion, give consideration to climate change and other significant threats to the waters of the Great Lakes-St. Lawrence River basin.

"Government response

"(6) After considering comments submitted under subsection (4), the minister shall publish a statement in the environmental registry established under section 5 of the Environmental Bill of Rights, 1993 that summarizes the actions that the government of Ontario intends to take in response to the assessment."

The agreement requires the regional body to assess cumulative impacts on climate change. This amendment provides an opportunity for the public to respond to the cumulative assessment report and provides comments to the minister on how the government shall respond to the report.

This amendment is in response to comments that were made by the Canadian Environmental Law Association.

The Chair: Any further debate?

Mr. Tabuns: A question of clarification: This assessment of cumulative impacts is done by the government of Ontario or by another body?

Mr. Leal: Does the MOE have a response? Mr. Flagal, please.

The Chair: So we're going to hear from a representative of the Ministry of the Environment?

Mr. Flagal: My name is James Flagal. Under article 209, there's a commitment by the parties—so it's by the parties—that they will undertake this particular assessment. One of the things the assessment will look at is impacts of climate change and other significant risks to the basin. It is a report that's produced by the parties. Once that report is produced, the minister is then under an obligation to post that report under the Environmental Bill of Rights and invite comments.

Mr. Tabuns: So there's not a requirement in the agreement that a regular assessment of cumulative impacts be done; is that correct?

Mr. Flagal: There is a requirement; there's a requirement that that sort of assessment be done every five years, and that's in article 209.

Mr. Tabuns: Just so I'm clear, then, I would have thought that if it's required and is going forward, then one would say “when an assessment,” and what we have here is “if an assessment of cumulative impacts.” I'm not trying to be unnecessarily picky, but I think you have to have a regular assessment.

Mr. Flagal: In my experience in legal drafting with respect to “if” versus “when,” they often mean the same things. So when it's “if,” it's all—I hate to say that, but it really is; I remember that in drafting “if” and “when” are often the same things. “When” versus “if” the parties carry out this assessment because they've committed to do so in article 209: once that happens, that minister's obligation is there. Do you see what I mean? Now, I want to be clear. Of course, the legislation couldn't commit the parties to do something because this legislation can only bind the province.

Mr. Tabuns: I see.

Mr. Flagal: Do you see what I mean? That's why you can't say in the legislation, “We're requiring the parties.” That would obviously—

Mr. Tabuns: That makes sense to me. Is there a requirement—and I just may have missed it as we went through—in this legislation for Ontario to look at cumulative impacts if the group as a whole does not take action, if, for some reason, they do not get around to doing it, as occasionally happens?

Mr. Flagal: I think the answer to that is no. This is the motion that's dealing with that. There's no obligation by the legislation itself saying that the government of Ontario is required to look at cumulative impacts. At the same time, I know, for instance, with respect to the permits-to-take-water-program, when the ministry was preparing things like the permits to take water regulation and, as you also probably know, things that are looked at under the Clean Water Act, there's a requirement there for source protection areas that a water budget be pre-

pared. I find, in speaking to staff, that water budgeting is one of the key tools that's often used to try to determine what cumulative effects are happening to water resources. I guess the answer is, there are other processes that can be pointed to where the government of Ontario does look at cumulative effects on water resources.

Mr. Tabuns: Okay. Thank you for your help.

The Chair: Thank you, Mr. Flagal. Any further questions or debate? None, so I'll now put the question. Shall the motion carry? All those in favour? Opposed? That carries.

We'll move on to number 29. It's a PC motion.

Ms. Scott: I move that section 34.6 of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by adding the following subsection:

“Return of transferred water

“(4) Despite any other provision of this act, a person who transfers water between Great Lakes watersheds shall ensure that the water is returned to the Great Lakes watershed from which it was taken.”

This amendment arises out of the argument brought forward by the Georgian Bay Association and other environmental and resource protection groups that have worked closely with Garfield Dunlop and Norm Miller. We've said this before. We've brought forward the fact that we're seeing dramatic reductions in water levels in some of our most significant lakes. This amendment would enshrine in the legislation the simple notion that water taken from the Great Lakes watershed must be returned.

The Chair: Any further debate?

Mr. Leal: We won't be supporting this motion at this time. If you look at motion number 44, which we'll be dealing with down the road, I think it addresses many of the concerns that Ms. Scott has articulated.

The Chair: Any further debate? None? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

We'll move on to number 30. It's a PC motion.

Ms. Scott: I move that subclause 34.7(2)(f)(i) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be amended by striking out “reduce the consumptive use of the water” and substituting “reduce the loss of the water.”

This is going on the theme from amendment number 1.

The Chair: Any further debate? None? I'll now put the question. All those in favour of the motion? Opposed? That does not carry.

Number 31 is a government motion.

Mr. Leal: I move that clause 34.7(2)(f) of the Ontario Water Resources Act, as set out in subsection 1(10) of the bill, be struck out and the following substituted:

“(f) governing the use and conservation of transferred water, including requiring the holder,

“(i) to implement specified measures to promote the efficient use of the water or reduce the loss of water through consumptive use,

“(ii) to ensure that an audit is conducted by a specified person or body in order to evaluate whether the water is being used efficiently, and to provide the results of the audit to the director, to other persons or both, or

“(iii) to prepare a water conservation plan and submit it to the director, to amend the plan if required by the director, and to implement the plan; and.”

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Where a permit to take water is being issued that governs a new and increased transfer of water between the Great Lakes watersheds, this motion would expressly authorize the director to require the permit holder to prepare and implement a water conservation plan. This is a position that has been strongly advocated by the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes and St. Lawrence Cities Initiative, and the Georgian Bay Association.

The Chair: Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on to number 32. It's an NDP motion.

Mr. Tabuns: I move that section 1 of the bill be amended by adding the following subsection:

“(12.1) The Act is amended by adding the following section:

“Conservation plans

“74.1 The government of Ontario shall, with the involvement of interested persons, develop and implement plans for the conservation of water.”

This would further strengthen the act with regard to a requirement for water conservation initiatives.

The Chair: Any further debate?

Mr. Leal: It is my contention that by just approving government motion 31, we can look after the concerns that have been raised in this NDP motion, as presented by Mr. Tabuns.

The Chair: Any further debate? I'll now put the question. All those in favour of the motion? Opposed? The motion does not carry.

Number 33 is an NDP motion.

Mr. Tabuns: I move that section 1 of the bill be amended by adding the following subsection:

“(12.2) Section 75 of the act is amended by adding the following subsection:

“Regulations, conservation

“(0.1) The Lieutenant Governor in Council may make regulations requiring persons to take measures specified in the regulations to conserve water.”

That would provide the right to make regulations about conservation in the Ontario Water Resources Act, and I would say that it's probably consistent with where the government wants to go on this.

The Chair: Any further debate?

Mr. Leal: It's my position that government motions 11 and 31 cover the intent that has been expressed here by Mr. Tabuns. Certainly, 11 and 31 were the result of addressing stakeholder concerns, particularly those of the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes and St. Lawrence Cities

Initiative, and our friends in the Georgian Bay Association.

The Chair: Any further debate?

Mr. Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: The motion does not carry.

We'll move on now to motion number 34. It's a government motion.

Mr. Leal: I move that section 1 of the bill be amended by adding the following subsection:

“(13.1) Section 75 of the act is amended by adding the following subsection:

“Regulations, s. 34(3.1)

“(1.2) The Lieutenant Governor in Council may make regulations prescribing takings of water or classes of takings of water for the purposes of subsection 34(3.1).”

This motion is consistent with section 34 of the Ontario Water Resources Act, to require, by regulation, the grandfathering of water takers to obtain a permit. This will allow the government to have this authority in place when the bill receives royal assent.

The Chair: Any further debate? I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on, then, to motion number 35. It's a government motion.

Mr. Leal: I move that subsection 1(14) of the bill be amended by striking out the portion before subsection 75(1.2) of the Ontario Water Resources Act and substituting the following:

“(14) Subsection 75(1.2) of the act, as enacted by subsection (13.1), is repealed and the following substituted.”

My explanation is the same as the previous amendment.

The Chair: Any further debate? None? I'll now put the question.

All those in favour of the motion? Opposed? That carries.

Motion number 36 is a government motion.

Mr. Leal: I move that subsection 1(15) of the bill be amended by striking out the portion before subsection 75(1.2) of the Ontario Water Resources Act and substituting the following:

“(15) Subsection 75(1.2) of the act, as re-enacted by subsection (14), is repealed and the following substituted.”

My explanation is the same as the previous two amendments.

The Chair: Any further debate? None. I'll now put the question. All those in favour of the motion? Opposed? That carries.

We'll move on to motion number 37, an NDP motion.

Mr. Tabuns: I move that subsection 75(1.2) of the Ontario Water Resources Act, as set out in subsection 1(15) of the bill, be amended by adding the following clause:

“(h.1) prescribing a maximum limit on the number of permits that may be issued pursuant to subsection 34.6(2).”

The initiative here is to put a cap on transfers with the intention of protecting the lakes and protecting our political position with regard to our American neighbours.

Mr. Leal: We won't be supporting this motion. Some reasoning: The number of permits is not a relevant measure of the potential impact of multiple takings from the watershed. The impact is determined more by the size of the water takings, the source and the cumulative impact of those takings, and I believe that we've moved to address this. We approved amendment 28 previously, which I think addresses the problems and concerns raised in Mr. Tabuns's motion.

The Chair: Any further debate?

Mr. Tabuns: A recorded vote.

Ayes

Tabuns.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: The motion does not carry.

We'll move on to motion number 38.

Ms. Scott: I move that subsection 1(15) of the bill be amended by adding the following subsection to section 75 of the Ontario Water Resources Act:

“Groundwater in Great Lakes watersheds

“(1.5) A regulation under clause (1.2)(g) is not valid unless the description of Great Lakes watersheds recognizes that,

“(a) surface water flows do not necessarily indicate the watershed boundaries for groundwater; and

“(b) the location on the surface from which groundwater is taken is not necessarily within the watershed boundaries for the groundwater.”

This amendment was brought forward by the Canadian Bottled Water Association. They contend that Bill 198 does not contain any recognition of the fundamental fact that watersheds are essentially a concept related to surface water; underground sources of water often flow in different directions than does water on the surface. If the goal is to ensure that the water belonging to one watershed remains in that watershed, it is essential to incorporate this.

Mr. Leal: We won't be supporting this motion. This amendment would be inconsistent with the treatment of groundwater in the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement, specifically article 207, which states: “The basin surface water divide shall be used for the purpose of managing and regulating new or increased diversions, consumptive uses or withdrawals of surface water and groundwater.”

The Chair: Any further debate? None? I'll now put the question. All those in favour of the motion? Opposed? It does not carry.

We'll move on to motion 39. It's a PC motion.

Ms. Scott: I move that subsection 75(1.5) of the Ontario Water Resources Act, as set out in subsection 1(16) of the bill, be amended by striking out the portion before clause (a) and substituting the following:

“Regulations, charges

“(1.5) The Lieutenant Governor in Council may make regulations establishing and governing charges to recover increased costs that the government of Ontario incurs under this act as a result of the taking or use of water for commercial or industrial purposes, including the costs of the administration of this act in connection with those takings and uses, including.”

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Again, it was brought forward by the Canadian Bottled Water Association. They have raised serious concerns about the ultimate constitutional nature of this bill, an item which we continue to ask the government to look at and take seriously, which is why I mentioned in committee that the bill should almost have been split into two, the MNR and the MOE sections, because of the industry not being consulted enough on this.

A regulatory charge must be confined to recovering the costs of the governmental authority incurred as a result of the regulated activity. The regulated activity, in this case, is the use of water taken pursuant to the Ontario Water Resources Act for commercial and industrial purposes. As drafted in Bill 198, the authority to impose charges by regulation would be open-ended and is not confined or related in any way to the regulated activity. For example, the act would authorize regulations to charge commercial and industrial users of water taken under the Ontario Water Resources Act for the costs of government advertising campaigns to limit residential waste of water, the cost of programs to subsidize water-saving appliances and the costs of any government program for water conservation under any provincial act whatsoever, such as source water protection programs. Since the act limits the sphere of the regulated activity to commercial/industrial users, only costs directly related to that activity can be reflected in this charge. That was their concern in committee, that there might be a constitutional challenge.

The Chair: Further debate?

Mr. Leal: The wording of this amendment is not clear in relation to what is meant by “increased costs,” and would be too limiting from a regulatory charge perspective.

I'd also like to add that the amendment is also inconsistent with the intent of the proposed charge, which is meant to support the management of water resources in the province of Ontario for both human and ecological uses. Commercial/industrial users would be charged because they contribute to the need for water management programs and derive commercial benefit from a healthy and sustainable water supply. One of the primary goals of the charge is to ensure that industrial/commercial users pay their fair share for the cost the government incurs for water management programs.

Ms. Scott: I don't know if it's appropriate if we could get some clarification maybe from legal counsel about when I mentioned the cost of the government advertising campaign to limit the residential waste of water.

Mr. Beecroft: Your motion would allow these charges to recover increased costs incurred by the government as a result of the taking or use of water for commercial or industrial purposes, including the costs of administration of this act related to those water takings. I'm not sure I can say one way or the other on the specific example of government advertising. Arguably, government advertising in certain circumstances could be part of the administration of this act. It may depend on the type of advertising.

Ms. Scott: I think it brings that grey area into—that was kind of an example that we used—what we've been saying from motion 1 about the consumptive uses and the related charges: Is it considered a tax charge? It's an uncertainty out there, especially for our industrial sector, of what they're being charged for. Are they being charged fairly? Do they have a level playing field? I think it all goes back to that use of "consumptive." Okay. Thank you.

The Chair: Any further debate on the motion? I'll put the question. Shall the motion carry? It's a Peter Kormos trick. All those in favour? Opposed? It does not carry.

The next motion is number 40, a PC motion.

Ms. Scott: I move that subsection 75(1.6) of the Ontario Water Resources Act, as set out in subsection 1(15) of the bill, be amended by,

(a) striking out "for commercial or industrial purposes" in clause (a) and substituting "for commercial or industrial purposes that result in a loss of water"; and

(b) striking out "for commercial or industrial purposes" at the end of clause (b) and substituting "for commercial or industrial purposes that result in a loss of water."

It was brought to our attention that the regulations under this section would have to be reviewed to ensure that they meet the test for a valid regulatory charge. This charge removes the authority to impose patently unrelated charges.

The Chair: Any further debate?

Mr. Leal: This amendment, as proposed, would allow a charge for a consumptive portion of the water-taking. However, the total commercial-industrial water-taking is what gives rise—apart from the need for water management programs that the government of Ontario carries

out. Commercial and industrial takings may lead to interference with other uses or with ecological functions and, therefore, the entire taking should be subject to the charge, not just the consumptive portion of that charge.

The Chair: Any further debate?

Ms. Scott: I guess we're going back to our philosophical divide that we have here on the loss of water, if water is returned and the quality—anyway, just to put that on record again.

Mr. Leal: And I respect your views on but one side of the philosophical debate we have here this morning.

The Chair: Any further debate? None? I'll now put the question. Shall the motion carry? All those in favour? Opposed? That does not carry.

Motion number 41 is a government motion.

Mr. Leal: I move that clause 75(1.6)(b) of the Ontario Water Resources Act, as set out in subsection 1(16) of the bill, be amended by striking out "the person takes" at the beginning and substituting "the person takes or distributes."

The Chair: Any further debate on this? None? I'll put the question. All those in favour? Opposed? That carries.

The next motion, number 42, is a PC motion.

Ms. Scott: I move that clause 76(b.1) of the Ontario Water Resources Act, as set out in subsection 1(20) of the bill, be amended by striking out "reduce the consumptive use of water" at the end and substituting "reduce the loss of water."

This is going back to our philosophical debate again about the clarification of water lost; again brought forward by some of our industries who use water for cooling purposes but return the water in good quality and in the same amounts. They'll be unfairly penalized. Again, going back, we're unclear of the interpretation of "consumptive use" by the other parties to the agreement on the Great Lakes-St. Lawrence basin.

The Chair: Further debate? None?

Ms. Scott: A recorded vote for that one, just for a change.

Ayes

Miller, Scott.

Nays

Balkissoon, Leal, Oraziotti, Van Bommel, Zimmer.

The Chair: The motion does not carry.

The next motion is number 43. It's a government motion.

Mr. Leal: I move that clause 76(b.1) of the Ontario Water Resources Act, as set out in subsection 1(20) of the bill, be struck out and the following substituted:

"(b.1) requiring the taking of measures to promote the conservation of water, including,

"(i) the preparation of water conservation plans, the submission of those plans to the director, the amendment

of those plans if required by the director, and the implementation of those plans, and

“(ii) other measures to promote the efficient use of water or reduce the loss of water through consumptive use.”

The Chair: Any debate?

Mr. Leal: This was a position put forward by the Sierra Club of Canada, the Canadian Environmental Law Association, the Great Lakes and St. Lawrence Cities Initiative and the Georgian Bay Association.

The Chair: Is there any further debate on the motion? None? I’ll now put the question. All those in favour? Opposed? That carries.

We’ll move on to motion number 44. It’s a government motion.

Mr. Leal: I move that section 1 of the bill be amended by adding the following subsection:

“(21.1) Section 76 of the act is amended by adding the following subsection:

“Return of transferred water

“(2) Without limiting the generality of subclause (1)(b)(vi), a regulation under that subclause may require water transferred between Great Lakes watersheds listed in subsection 34.5(2) to be returned to the Great Lakes watershed from which it was taken.”

The Chair: Is there any debate on the motion?

1040

Mr. Norm Miller (Parry Sound–Muskoka): Sure. We had a motion you voted against a little earlier on that I think was trying to accomplish more or less the same thing. It was number 29. So maybe you could clarify how this is going to protect intra-basin watershed transfers. From the case in my own riding, water levels in Lake Huron and Georgian Bay are a real consideration and a very important issue. I’d like to see water that is taken from a watershed be returned to the same watershed. Is that going to be accomplished with this amendment?

Mr. Leal: Mr. Chair, Mr. Miller has raised a very important point. I’ll get our folks from MOE or MNR to address that.

The Chair: Do we have staff present who could come forward and perhaps—good morning again, Mr. Flagal.

Mr. Flagal: Thank you. The motion that the committee had considered earlier was a provision that actually required, in every case, that where water was transferred, it be returned to the source watershed. What this is here is a regulation-making authority. It clarifies an existing regulation-making authority. I want to be really clear about this. Many committee members pointed out, and they recognized, that the agreement does allow, if you can meet the strict criteria, the ability to not return all of the water that you have taken minus the consumptive use. You are required, as you know, to return the water if it is a large transfer. The way the agreement defines large transfer is, “Is this 19 million consumptive per day?” I want to be clear about this. One of the first things that the legislation, the bill that exists now, does is that when it’s that large type of transfer, what the bill says is: number 1, the decision on the permit is made by

the minister, not the director; number 2, there’s a requirement for regional review, and all the water needs to be returned. That 19 million can be reduced by regulation, so if the government in the future says, “We think more proposals for transfers should go for regional review; we think more proposals should be treated like those large transfers that are now recognized in the agreement,” they can reduce that floor.

What does this motion do? This motion clarifies an existing regulation-making authority. It says that the government can put in place regulations saying, for instance, if your transfer is from the Lake Huron watershed, you are required to return that water. So this gives a flexibility to the government to be able to address that type of concern that we heard at committee. I do know that there was a commitment by the Ministry of Natural Resources that they were going to engage the panel once again, and they were going to discuss the implementing regulations for this particular bill. Therefore, this is one of the things that the panel, plus other affected stakeholders, obviously, can discuss. To give you another quick example, as you’ve identified, there are situations the bill recognizes where you don’t have to return the water. The regulations can obviously step in and take away that particular allowance and say, “No, you do have to return the water.”

Mr. Miller: So it gives flexibility, but it’s not set in stone and may require water transfers.

Mr. Flagal: The regulation can require it. It’s “may” because it’s obviously a permissive thing, but the regulation can say that if you’re taking from a particular watershed or a particular point in the watershed or, as an example, if you’re transferring more than 10 million, let’s say, or five million or something like that, you are required to return this particular amount minus consumptive use or whatever it is. It’s flexibility. So when you identify “may”—the regulation can be mandatory, absolutely, I think is what I’m trying to address.

Mr. Miller: Okay. Very good. Thank you.

Mr. Leal: Mr. Miller, would you like to hear from the people from MNR who are involved in the Great Lakes basin?

Mr. Miller: Certainly.

Ms. Hunter: Leith Hunter, legal services branch, MNR. I’m not sure that I can add much—

The Chair: I’m sorry, could you just state your name again? I’m sorry.

Ms. Hunter: Leith Hunter, legal services branch, MNR. I’m not sure that I can add much to what Mr. Flagal just said to you, but the effect of this will provide flexibility to require return flow where it is not required under the terms of the agreement and it’s not required here. It gives the government a bit of ability to require people who are otherwise not required to return flow under the agreement or under this legislation to return flow.

Mr. Miller: What about all the smaller users? There’s the threshold of 19 million litres per day, I think it is.

Ms. Hunter: As drafted, the legislation creates two different categories in terms of size: those transfers which are less than 19 million litres per day consumptive use, and those which are greater. For the ones which are less than 19 million litres per day consumptive use, there are again two categories: some are required to return to the watershed from which they took the water; some are not, although they're required to prove, in a sense, why they cannot.

Mr. Miller: Can there be, in the future, new, smaller, less-than-19-million-litre transfers that don't have to be returned to the watershed from which they were drawn?

Ms. Hunter: As drafted, there is the flexibility for some smaller users not to return to the watershed. This regulation-making authority would permit that to be changed if it was decided it should be done by regulation.

Mr. Miller: So the minister could decide to make regulations to not allow water to be taken out of one watershed and put into another for the smaller users as well.

Ms. Hunter: This is a Lieutenant Governor in Council regulation-making authority. The ability to not return could be removed for certain transfers.

The Chair: Thank you, Ms. Hunter. Any other debate on this motion? None? I will now put the question. Shall the motion carry? All those in favour? Opposed? Carried.

Members of committee, those are—

Mr. Leal: On a point of order, Mr. Chair—

The Chair: I know, but we have to first vote on the section, because all those amendments that we debated and discussed so far had to do with section 1 of the bill. I'm now going to put the question. Shall section 1, as amended, carry? All those in favour? Opposed? That carries.

There were no amendments put forward regarding sections 2 and 3. Is there any debate on sections 2 and 3? None? I'll ask the questions together. Shall sections 2 and 3 of the bill carry? All those in favour? Opposed? Carried.

Now we go to section 4. Mr. Leal, you have a government motion regarding section 4 of the bill.

Mr. Leal: Yes. I move that subsection 4(2) of the bill be amended by striking out "Subsections 1(6)" at the beginning and substituting "Subsections 1(5.1), (6)."

That is to be consistent with a motion we passed earlier on at the start of our clause-by-clause deliberations this morning.

The Chair: Thank you. Any further debate? None? I'll put the question. All those in favour of the motion? Opposed? That carries.

That was the only amendment regarding section 4, so I will now put the question. Shall section 4, as amended, carry? All those in favour? Opposed? Carried.

There were no motions put forward regarding section 5, so shall section 5 carry? All those in favour? Opposed? That carries.

Shall the preamble carry? All those in favour? Opposed? Carried.

Shall the title of the bill carry? All those in favour? Opposed? Carried.

Shall Bill 198, as amended, carry? All those in favour? Opposed? Carried.

Shall I report the bill, as amended, to the House? All those in favour? Opposed? Carried.

Shall we adjourn?

Mr. Leal: I just want to thank and acknowledge the work of Mr. Miller, Ms. Scott and Mr. Tabuns—their thoughtful speeches, observations and input—on Bill 198.

The Chair: I want to thank staff and—

Mr. Leal: And the staff of MOE and MNR, who had done a marvellous job this morning providing detailed responses to questions posed to them.

The Chair: I want to thank staff from the clerk's office, legislative counsel and research, and Hansard as well.

We are now adjourned.

The committee adjourned at 1050.

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