



Second Session — Thirty-Second Legislature
of the
Legislative Assembly of Manitoba

STANDING COMMITTEE

on

LAW AMENDMENTS

31-32 Elizabeth II

Chairman
Mr. P. Eyer
Constituency of River East



MG-8048

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Second Legislature

Members, Constituencies and Political Affiliation

Name	Constituency	Party
ADAM, Hon. A.R. (Pete)	Ste. Rose	NDP
ANSTETT, Andy	Springfield	NDP
ASHTON, Steve	Thompson	NDP
BANMAN, Robert (Bob)	La Verendrye	PC
BLAKE, David R. (Dave)	Minnedosa	PC
BROWN, Arnold	Rhineland	PC
BUCKLASCHUK, Hon. John M.	Gimli	NDP
CARROLL, Q.C., Henry N.	Brandon West	IND
CORRIN, Brian	Ellice	NDP
COWAN, Hon. Jay	Churchill	NDP
DESJARDINS, Hon. Laurent	St. Boniface	NDP
DODICK, Doreen	Riel	NDP
DOERN, Russell	Elmwood	NDP
DOLIN, Hon. Mary Beth	Kildonan	NDP
DOWNEY, James E.	Arthur	PC
DRIEDGER, Albert	Emerson	PC
ENNS, Harry	Lakeside	PC
EVANS, Hon. Leonard S.	Brandon East	NDP
EYLER, Phil	River East	NDP
FILMON, Gary	Tuxedo	PC
FOX, Peter	Concordia	NDP
GOURLAY, D.M. (Doug)	Swan River	PC
GRAHAM, Harry	Virden	PC
HAMMOND, Gerrie	Kirkfield Park	PC
HARAPIAK, Harry M.	The Pas	NDP
HARPER, Elijah	Rupertsland	NDP
HEMPHILL, Hon. Maureen	Logan	NDP
HYDE, Lloyd	Portage la Prairie	PC
JOHNSTON, J. Frank	Sturgeon Creek	PC
KOSTYRA, Hon. Eugene	Seven Oaks	NDP
KOVNATS, Abe	Niakwa	PC
LECUYER, Gérard	Radisson	NDP
LYON, Q.C., Hon. Sterling	Charleswood	PC
MACKLING, Q.C., Hon. Al	St. James	NDP
MALINOWSKI, Donald M.	St. Johns	NDP
MANNES, Clayton	Morris	PC
McKENZIE, J. Wally	Roblin-Russell	PC
MERCIER, Q.C., G.W.J. (Gerry)	St. Norbert	PC
NORDMAN, Rurik (Ric)	Assiniboia	PC
OLESON, Charlotte	Gladstone	PC
ORCHARD, Donald	Pembina	PC
PAWLEY, Q.C., Hon. Howard R.	Selkirk	NDP
PARASIUK, Hon. Wilson	Transcona	NDP
PENNER, Q.C., Hon. Roland	Fort Rouge	NDP
PHILLIPS, Myrna A.	Wolseley	NDP
PLOHMAN, Hon. John	Dauphin	NDP
RANSOM, A. Brian	Turtle Mountain	PC
SANTOS, Conrad	Burrows	NDP
SCHROEDER, Hon. Vic	Rossmere	NDP
SCOTT, Don	Inkster	NDP
SHERMAN, L.R. (Bud)	Fort Garry	PC
SMITH, Hon. Muriel	Osborne	NDP
STEEN, Warren	River Heights	PC
STORIE, Hon. Jerry T.	Flin Flon	NDP
URUSKI, Hon. Bill	Interlake	NDP
USKIW, Hon. Samuel	Lac du Bonnet	NDP
WALDING, Hon. D. James	St. Vital	NDP

LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Tuesday, 28 June, 1983

TIME — 10:00 a.m.

LOCATION — Winnipeg, Manitoba

CHAIRMAN — Mr. Phil Eyer (River East)

ATTENDANCE — QUORUM - 10

Members of the Committee present:

Hon. Messrs. Bucklaschuk, Evans, Kostyra, Mackling, Hon. Mrs. Smith, Hon. Mr. Storie;

Mr. Ashton, Mrs. Dodick, Messrs. Enns, Eyer, Filmon, Mrs. Hammond; Messrs. Harapiak, Hyde, Lecuyer, Malinowski, Nordman; Mrs. Oleson, Mr. Orchard, Ms. Phillips; Messrs. Santos, Scott and Steen.

WITNESSES: A presentation was made on Bill No. 73 - An Act to repeal The School Capital Financing Authority Act; Loi abrogeant la loi connue sous le nom de School Capital Financing Authority Act by Mr. Murray Smith of the Manitoba Teachers' Society.

MATTERS UNDER DISCUSSION:

Bill No. 12 - The Water Rights Act; Loi sur les droits d'utilisation de l'eau. Passed with certain amendments, on division.

Bill No. 15 - An Act to amend The Highway Traffic Act. Passed with certain amendments, on division.

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MR. CHAIRMAN: Committee come to order. We have a list of several bills here to consider today. We were in the middle of considering Bill No. 12 last time we met, however we also have a member of the public who wishes to make a presentation on Bill No. 73. What is the will of the committee?

Is it agreed that we listen to the public presentation first and then consider Bill 12? (Agreed)

Mr. Murray Smith.

MR. M. SMITH: Thank you, Mr. Chairperson. I am Murray Smith the incoming first vice-president of the Manitoba Teachers' Society with a submission from the society regarding Bill 73.

The Manitoba Teachers' Society welcomes this opportunity to appear before this Committee of the Manitoba Legislature to present its opinions regarding Bill 73, An Act to repeal The School Capital Financing Authority Act.

The legislation to be repealed, The School Capital Financing Authority Act was approved in 1966 at the time of a series of major revisions to the financial administration of public education in our province. The

Foundation Program of education and finance amplified Provincial Government financial support for elementary-secondary education and the Public Schools Finance Board was established to manage the disbursement of these funds allocated by the Provincial Government. This era likewise witnessed the creation of the unitary for consolidated school divisions.

The School Capital Financing Authority was established to assist the new unitary school boards to finance their capital expenditures. The Authority was empowered to purchase debentures or bonds issued by school boards to obtain funding for the capital construction and purchasing plans of those school divisions. In order to raise the money necessary to purchase school board securities, the School Capital Financing Authority could issue its own securities guaranteed by the Provincial Government or borrow.

During the 1970s, this system of capital finance for public schools was modified in actual practice possibly due to a more actively supportive role assumed by the Public Schools Finance Board than was foreseen in the mid 1960s. Capital projects proposed by school divisions and school districts were submitted to the Public Schools Finance Board for review. Given the dimensions of the Foundation Program, such submissions became to be regarded as applications for provincial financial support for capital expenditures. On approving capital specifications, the Public Schools Finance Board would release appropriate amounts of funding to the School Capital Financing Authority to support the capital expenditures of the school divisions and districts. In this sense, capital financing for public schools became more an internal function between school divisions and districts, the Public Schools Finance Board and the School Capital Financing Authority rather than having both local and Provincial Government bodies issuing a series of debentures on the open market.

This reformed practice was recognized in the revised Public Schools Act which came into effect in 1980. Section 214 of the Act specified that all debentures and other securities issued by a school division shall be sold or otherwise put on the market through the Public Schools Finance Board. The authority of the Finance Board to supervise the marketing of all debentures issued by a school division was clarified in the 1978 and 1980 amendments to Section 7 of The Public Schools Finance Board Act.

The Manitoba Teachers' Society concurs with the elimination of the School Capital Financing Authority and of the apparently cumbersome process existing in legislation to govern capital financing for public schools. It is the policy of The Manitoba Teachers' Society that all aspects of providing financial support for the public schools of Manitoba, both on the operating account as well as on the capital account, are the responsibility of the Government of Manitoba.

We condone with the reaffirmation implicit in Bill 73 that school boards should not each individually bear

the burden of having to raise funds for capital expenditures either through the issuance of debentures and other forms of securities on the open financial market or through the local taxation of real property.

We agree with this action to more clearly and more precisely vest capital financing for public schools with the Provincial Treasury through the operations of the Public Schools Finance Board in allocating full financial support for approved capital projects.

The Manitoba Teachers' Society believes that only through the exercising of Provincial Government responsibility for financing can all students, regardless of their place of residence in our province, be assured of equal opportunity and access to quality educational services.

This is submitted on behalf of the society and its President, Rex Virtue.

MR. CHAIRMAN: Are there any questions for Mr. Smith? Mr. Santos.

MR. C. SANTOS: Mr. Chairman, through you I would like to ask a question of the basic rationale of removing the burden of raising capital expenditure from school boards and transferring it to the Provincial Government. Would it not be more in line with the responsibility to let them assume the burden so that they will be responsible how to spend the money?

MR. M. SMITH: I'm sure, Mr. Chairperson, the committee realizes the two aspects to school financing. The capital side of it has not been a local responsibility for many years. The bill before the House is merely to amend the way in which the province carries the responsibility for capital expenditure, so the principle of whether school construction, for example, is paid for out of Provincial Consolidated Funds or by local taxation was resolved many years ago.

With respect to operating expenses the arguments are much more current and perhaps more complicated. The Society's view is that the province should accept responsibility for the adequate funding of the programs which the province believes are necessary to provide equal opportunity for the boys and girls of Manitoba and that the province should, therefore, carry 100 percent of the cost of providing such programs. That is, of course, not the present situation but the Society is therefore arguing for the dissociation of local property tax, whether charged at the initiative of a school board or charged at the initiative of the Legislature on the basis of the provincial property levy, we are urging the dissociation of property tax from education financing.

MR. C. SANTOS: Thank you, Mr. Chairman.

MR. CHAIRMAN: Are there any further questions? Seeing none, I'd like to thank you for coming here today, Mr. Smith.

MR. M. SMITH: Thank you, Mr. Chairperson, and for your courtesy in hearing me early.

MR. CHAIRMAN: Before we go any further, I'd like to advise the committee that there were three people who wished to make representation on Bill No. 89, but that

bill was only referred to this committee yesterday and these people have not had time yet to prepare their representations, so I wonder if we could put Bill No. 89 at the bottom of the list. (Agreed)

Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I'd like to make a couple of other comments in respect to the list. I'd appreciate it, on behalf of the House Leader, if we dealt with the bills in this order: Bill No. 12, which we were involved in at our last sitting, when we rose, to continue that now, followed by Bill No. 76, then Bills Nos. 15, 43, 73, 26, 82, 57, 20 and 46.

MR. CHAIRMAN: Is that agreed? (Agreed).

When last we met we were in the middle of considering Bill No. 12, in particular a motion by Mr. Ransom, that all words after the word "interest," where it appears in the third line of Section 11, be deleted, and the words, "shall be transferred to the transferee," be added.

Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, I am not a member of the committee, but I do want to speak to this and again emphasize to the members of the committee the importance of transferring the water rights with a piece of property; and I touched on it briefly the other day, but the implications of not being able to transfer it, as far as the long-term confidence that either the bank or the farmer or irrigator, whether it be a vegetable crop or whether it be any type of farming business that needs the water to facilitate the production of grain in certain circumstances, I think goes without saying, that that kind of transfer should take place. It gives the whole system confidence that operation can carry on as an ongoing unit and an ongoing viable, economic operation. I think it is a sensible approach, and as well the fact, Mr. Chairman, that the government still retain the ability to cancel a licence if there is an abuse of the water licence or not complying to the licence, which has been initially given to the person initially using the water, and I can see very little difficulty in the government members of this committee supporting this, or should have little difficulty in supporting it.

In concluding my comments in support of the amendment as proposed, Mr. Chairman, to the legal counsel, if this were changed at this particular time, it would save them having to redo this bill when we are elected after the next general election, because that would be one of the commitments that we would be wanting to make sure that we gave to the farm community and those irrigators, that we would be able to give them that assurance they would get a transfer of water rights.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, when we rose, we had before us Section 11, and for the recollection of all members of the committee, an amendment was moved by the Honourable Member for Turtle Mountain. What, in effect, he seeks by the amendment is a deletion of all of the words after the word "interest," and then adding the words "shall be transferred to the

transferee." It would, in effect, make the licence run with the land.

We had considered this argument, strongly advocated by the irrigators and others, very very seriously in the preparation of the bill. I won't take the time of the committee to again review the arguments which I addressed on the previous day that this committee sat, why we considered that was inappropriate.

Let me just briefly summarize the rationale. I may not use all the arguments I used before, and I trust that honourable members, even members of the opposition were swayed by my arguments before.

The water that we have beneath the land, and the water that comes to us from natural sources from water and rain, is not such that we believe that someone can have a proprietary interest in that. Most of our ground water is contained in aquifers that are not local to a given piece of property, but they extend many miles underneath the surface of the land. We have some very large aquifers in some parts of the province, and in others we have relatively smaller ones, but nevertheless they generally encompass much more land than that owned by an individual. So the aquifer, the water, really can't be owned by the owner of the land.

Similarly, the water that flows down our streams and through into our lake system is not exclusive to individual property owners. It is true that there is water contained in smaller quantities on some larger agricultural holdings, but the disposition of that water can be vital to neighbouring property owners, so that notwithstanding that the legislation appears to be overly administratively tough, it is necessary to protect our environment. The Minister is accountable; he's accountable to the 56 other legislators in this Legislature, if and when the Minister has acted harshly or unfairly. I, as a Minister, fully expect that I am going to be fully accountable for any failure, neglect, or other criticism that may be levelled at me.

I would expect my successors would likewise accept that responsibility. It's sometimes is a heavy responsibility, but is one that cannot be delegated easily. I find more comfort in it being delegated and is at least left with a Minister who at least is accountable in a formal way, in a political way in this House, than leaving that authority to some institution that is not accountable politically. I have much more faith in the Legislature in respect to that than other institutions.

In addition to that, as I've pointed out, we have an Ombudsman. Our government in 1970, as I recall, instituted that office, and that again is an office that protects against unfair or arbitrary handling of matters or privileges by government. There are situations where there will be, for administrative purposes, a nightmare if the water rights ran with the land. On divisions, on splits, on many instances, there will be real difficulties for government if we do not have the legislation read this way. There's no question about our intent to facilitate the users of water. As I've indicated, I expect to be fully accountable in connection with decisions we make.

Therefore, I indicate to all members that this amendment is not one which we can support. I therefore recommend that the amendment be defeated, so that we get on with the passage of the section as provided for, Mr. Chairman.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I wish to address some comments to the amendment as proposed by my colleague, the MLA for Turtle Mountain. Our amendment was not brought to this committee without some serious thought and consideration being given to it.

We have listened on two occasions now to the Minister's explanation as to why this New Democratic Government cannot comply with the intent of this amendment. Their arguments, Mr. Chairman, quite frankly don't hold water. I say that with no pun intended. They are not based on a realistic assessment of what water licensing and the use of water for irrigation purposes is meant to achieve in this province. They are discussing this from a - I believe the Minister is discussing it from a rather narrow viewpoint, and one that is not based on a factual assessment of what is required to assure the kind of investment in irrigation takes place.

I want to deal with several points on this. Any individual, any farmer, any producer of food products, who desires to increase the productive capability of his land by the use of irrigation water, has to come before government and receive permission to use a water source, whether it be a source by ponding of a stream or a river, or whether it be for drawdown of an underground reservoir. Once that licence is granted, Mr. Chairman, that is only the first minor and very inexpensive step to achieving irrigation of that property.

The other investment, depending on the type of irrigation method used, can be very very substantial and, Mr. Chairman, becomes a fixture of the land. If the individual chooses to use a flood irrigation method, quite often that will require land leveling and I'm sure some of the members opposite must have seen flood irrigation where the costs of land leveling and shaping of the land to be irrigated by flood irrigation requires the investment of several hundred dollars per acre. That becomes a permanent investment to that land, it adds to the value of that land.

If the method to be chosen for irrigation involves a centre pivot irrigation or a sidewalk irrigation system, that also is requiring the individual, the farmer, to make a substantial investment. In the case of centre pivot irrigation, if it's underground water, there is substantial cost in developing wells to provide the water from the underground source. There is substantial cost in trenching in that water supply to the centre pivot feed. There is substantial cost in assuring a power source, either diesel, but in most cases electricity which requires the plowing of underground electric cable. All of these are very very expensive and become a fixed capital asset to the land. Certainly you can peddle off the above-ground portion of a centre pivot irrigation system and recoup some of the investment, but the major investments to the land, the permanent investments to the land, become part and parcel of it, increase its value, and in the event of the sale of that land hopefully can be recouped by the person originally making the investment.

Now, if the water licence is not transferable, that investment is lost to the farmer who made it. I'm sure that members opposite want to see as much irrigation take place in the province as is feasibly practical, given the available supply of water. Now, on one hand they want to see the economic development that

accompanies irrigation take place, but on the other hand they want to stifle the continuation of irrigation should that land change owners. I find that to be an incredible convoluted set of thinking. On the one hand, they want the development; on the other hand, they won't guarantee the future viability of that development. It doesn't make sense. I don't think the Minister makes sense when he gives his arguments.

The major reason he doesn't make sense, Mr. Chairman, is the fact that they have built into this act, and the regulations, the ability to review that licence every five years. If there is a detrimental effect to the water resource, be it underground or be it surface ponding, they can cancel that licence if they can prove a detrimental effect from the use of that water for irrigation. That review is every five years.

What more do they need? They can cancel the licence on a five-year interval to the existing owner and investor in that irrigation. Now they, in addition, want to essentially further stymie that person and put him at more risk by saying that if you sell the land, you cannot transfer the water rights to it. Now that is wrong, that is wrong, Mr. Chairman. You can't desire development and stymie it by putting this kind of a barrier in front of it. I don't think we argue with the five-year review as a method of protecting the water resource, I think we're in agreement with that, but we object strenuously to this artificial restriction and I suggest, Mr. Chairman, that this is a politically motivated one and not a rational and reasoned argument.

They do not want to confer the water right with the land in the event that it's sold because that capitalist, who has made the investment, might actually recoup some of that investment from the land and it's a philosophical argument that goes against the very principles of the New Democratic Party that we are arguing about here - not a protection of the resource - because they have the ability to protect the resource in a previous clause in this bill, which requires a five-year review of the licence. So we are talking here, a philosophical difference between the New Democrats and those other parties in this province who happen to believe that if an individual makes an investment he should have every right to recoup it.

I think our basis for a request for the continuation of the licence with the land in the event that it's sold, is an ultimately fair and legitimate one. I will give as an example, to the committee and to the Minister for his consideration, the Highways Department grants from time to time, through the Highway Traffic Board, the right of access to property from Provincial Highways. That right of access is very often an integral part of the development of the land to which access is granted from a highway. Consider a shopping centre, a manufacturing plant or even a residence which is built adjacent to a highway and has been granted access to the highway by the Highway Traffic Board. There's no question, that without that access, the property and the development thereon has very little value. What good would a commercial development be, a shopping centre, if the access to the highway, to the traffic artery was cut off? What good would a house be? How saleable would a house be if the access to the highway were cut off when it was sold? What good would a manufacturing plant be if the access to the highway was cut off when the property was sold?

That access is granted by government, it can be terminated by government but in no way, shape or form is it automatically terminated when the property is sold. It is an integral part of the development and the investment that is made in the property. It follows logically that it would be ludicrous to cancel the access to a highway just simply because property is sold and the owners have changed, so that the same person does not own the shopping centre or the business as was the person who was originally granted the access to the highway, but yet you, in essence, are saying that in terms of the water rights, which has allowed a farmer to make an investment in irrigation, that when he sells the property that very right of access to the water is cancelled upon the sale of the land. Well, that just plain doesn't make sense. I don't believe that you can logically sit as a member of the New Democratic Party and say that makes sense; it doesn't make sense. I reiterate that you have the built-in protection in this act of an automatic five-year review, regardless of who was the owner, of the use of that water resource. What more do you want?

The only reason that the Minister is refusing this amendment is from a political and philosophical belief that it should not be part of the land because it might actually allow the investor to recoup his substantial investment in developing land for irrigation. That is very very thin and poor reasoning, to refuse this amendment. — (Interjection) —

The Minister says it's thin gruel but he has not offered any logical reason. — (Interjection) — Oh, the Minister says my argument is thin gruel. Well if my argument is thin gruel to the justification of him refusing this amendment, then I suggest that he has no argument at all, other than a philosophical, dog-in-the-manger attitude towards anybody who's willing to invest in the future resource of this province, because that's the only reason he's not allowing this amendment to pass. There's no question that with the majority this government holds on this committee and in this Legislature, that if the Minister says this is what the government shall do, there's probably no question that there would be any individuals in government with enough constitutional fortitude to stand up and say, it's not right, they will vote like sheep on this amendment.

I want to assure the Minister and the members that after the next election, when you are sitting in opposition, you will be having the opportunity to express your opinion on an amendment that we will bring forth in the first term of our government in 1985, an amendment which will transfer the water rights at the time the land is transferred, we will guarantee that it will be in there. Wo what the irrigators can be assured of in this province is that they only have to wait some two-and-a-half years before the correct method of conferring water rights is brought into this province and maintained.

The Minister has offered no logical reason why it should not be there. He's got his five-year review and opportunity to cancel a licence; he needs nothing more, Mr. Chairman; but no, he wants something further. He wants to deprive investment in the sale and recouping of that investment at the time of land sale for some philosophical reason that is foreign to the principles that built this country and this province; that is a

problem that he, as a New Democrat has, and no one else has.

I would urge some of his colleagues, who perchance might come into the farm community and might have people who wish to undertake irrigation projects, to consider the logic of what the Minister is saying and they will find that it is not logical; that they should not support him with his refusal of this amendment; that they should become individuals representing their constituencies and vote for the amendment as proposed. It doesn't confer any particular benefit or right to the person that cannot be cancelled on a five-year review. All it does is follow a dogmatic, outdated line of thought that the Minister has brought forward in his political reason for not allowing this licence to be transferred.

I want to assure the Minister, this committee and the people of Manitoba that this will be one of the first changes we make when we're government two-and-a-half years from now, if this Minister insists on refusing this amendment.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I won't take the time of the committee to answer the very negative, tunnel-vision response of the Member for Pembina. He sees things in black and white and he thinks that all New Democrats wear horns - I feel sorry for him about that - but let me indicate that at the last sitting, a member of the irrigators did speak to me about a potential problem and I agreed that there was merit in the argument that he advanced.

He argued that where there could be, he accepted the fact that government has to be recognized to act in good faith. Governments, regardless of political stripe, do that. However, he was concerned that where someone who had, by virtue of the act, a priority of use as already established in Section 9, then if that priority user could not successfully negotiate compensation, as provided in the act, what they could do, in effect, was await the opportune moment and then make application for a licence based on their priority use; and it is conceivable that under a reference to a court or otherwise, the person that had been relying upon that water use for many many years may not get compensation.

By virtue of the logic in that argument, I've discussed the problem with staff and we've come up with an amendment that I will introduce when we get to Section 14(5). That section will clearly indicate that this Minister and this government does not have the kind of negative attitude toward the users of water that the Honourable Member for Pembina would like to indicate. We are concerned about the users of water. We are concerned that those who make substantial investments in irrigation equipment and irrigation facilities not face the likelihood of some arbitrary termination of their investment.

When we get to this section - as a matter of fact I can indicate to you right now the nature of the wording but it will come later - it's under the compensation section, and it will provide that where the Minister declines to renew or transfer the licence of an existing user by virtue of an application for a higher priority

use, compensation is payable as provided in the section. That will protect against any void that might have occurred - I say might have occurred - under the provisions of the existing act.

That clearly negates the kind of partisan argument that the Member for Pembina addresses. We are concerned to protect the rights of users and those who have made substantial investments in facilities. I am accountable as the Minister and this government is accountable, and we expect to do things in keeping with the spirit of this act, that is, to protect the ongoing use of water for the best use as indicated in the priorities outlined in the act.

MR. CHAIRMAN: Mr. Hyde.

MR. L. HYDE: Mr. Chairman, I'd like to address this issue, through you to the Minister and to the committee. I represent an area of the province where a very large percentage of vegetables and fresh fruits are grown. Irrigation is a must if we are to continue to be able to grow and process the vegetables needed for our province and for a good part of Canada and export. I'm sure from the comments that the Minister has already made, that he is aware and it has been brought to his attention the large investment that is required to establish a system capable of producing the large acreages needed to produce this type of food.

I don't know, Mr. Chairman, all I can do is appeal to the Minister and the members of this committee to give every consideration to the people who have themselves today involved in a very large investment in both land, irrigation equipment and the potential for the production of food is there. I would urge this Minister to give every consideration to give these people the protection that they need to allow them to strengthen their business.

I don't know whether there's many of the members of the government today are aware of the fact that agricultural is still the backbone of Manitoba's economy. Let it not ever be that these people forget that. If they do, not only the farmer himself or the producer has got trouble, but so do the people in this building, the legislators of this province.

I would urge once again, Mr. Chairman, that this Minister and the members of this committee keep that in mind, if they start restricting and making it impossible for the producer of food today, put him in a position where he hasn't got some protection on his investment, that the day is coming when we all will have troubles.

MR. CHAIRMAN: Are you ready for the question?

All those in favour of the resolution moved by Mr. Ransom signify by saying yes; those opposed, say nay.

In my opinion the nays have it.

Mr. Orchard.

MR. D. ORCHARD: What is the process of having a counted vote of the members in the committee, Mr. Chairman.

MR. CHAIRMAN: You can request a vote on division or a counted vote.

MR. D. ORCHARD: If a counted vote was made, it would be with the members that are here I take it?

MR. CHAIRMAN: Yes, those who are members of the committee.

MR. D. ORCHARD: May we have a counted vote then, Mr. Chairman, of the members of the committee that are present?

MR. CHAIRMAN: All those who are in favour of the resolution please raise your hand and all those opposed members of the committee please raise your hand.

A COUNTED VOTE was taken, the result being as follows: Yeas, 7; Nays, 11.

MR. CHAIRMAN: The motion is lost.
Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, if I'd have been a member of the committee, I would have voted in favour of the amendment.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I would like permission of the committee, even though we're at Section 11, that by leave, I would like the committee to go back to Section 3, Subsection 1, where I'd indicated that we were prepared to provide for an amendment to clearly spell out that there would be provision in the regulations dealing with the matters raised at committee. We have an amendment to take care of that.

MR. CHAIRMAN: Is reverting to that clause acceptable to the committee? I take it that it is.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: Mr. Chairman, I move that Section 3, Subsection 1, of Bill 12, be amended by adding thereto immediately after the word "at" in the first line thereof, the words "or the regulations."

MR. J. DOWNEY: Explain. Would the member explain it please, Mr. Chairman?

HON. A. MACKLING: Mr. Chairman, you'll recall that there was concern about the provision in the act, and this is an absolute prohibition against diverting or impounding water. I indicated that certainly the minor drainage and impoundments that are customary to a farming operation, we would want to exempt by regulations. That is, if the effect of the drainage or the impoundment is clearly of a nature that cannot conceivably affect a neighbouring property owner, then we want to make provision for that by regulation that it won't be necessary to have great formality to that. So there was a concern that we spell out in this section that the regulations could so provide and that's why we put that wording in there.

MR. CHAIRMAN: Any discussion of the resolution? Is that agreed? (Agreed) Page 3 as amended—pass.
Back to page 9. Page 9 as not amended—pass.

HON. A. MACKLING: There was a word put in at 8. There was an amendment to Section 8(6).

MR. CHAIRMAN: Page 9 as amended—pass. Page 10.

HON. A. MACKLING: Page 10, there is an amendment, Mr. Chairman. Well, in 14(1) there's a deletion of the word "from" in the second line of that paragraph and a substitution of the word "at" - it's a grammatical change only, Mr. Chairman. I'll ask Mr. Scott to move the amendment.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: Mr. Chairman, I would move that subsection 14(1) of Bill 12 be amended by striking out the word "from" in the second line thereof, and substituting therefore the word "at."

MR. CHAIRMAN: Any discussion? Agreed? (Agreed)
Page 10 as amended—pass. Page 11 - Mr. Mackling.

HON. A. MACKLING: On Page 11, Mr. Chairman, as I indicated out of a concern made to me respecting transferability at a time when it is known that a prior user is likely to try and exercise priority, in order that there be no void and that it be a clear requirement on a priority user being required to compensate an ongoing user, someone who is intending to use the land but for whatever reason, the Minister thought that the priority use should go ahead; that nevertheless there would be compensation paid and therefore this amendment provides for that.

I would ask Mr. Scott to read the motion.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: I move that section 14 of Bill 12 be amended by adding thereto immediately after subsection 4 thereof, the following subsection, this would be subsection 14(5), "Where a licensee applies for renewal or transfer of his licence and the Minister declines to renew or transfer the licence by virtue of an application for a higher priority use, compensation is payable by the new user as provided in this section."

MR. CHAIRMAN: Is there any discussion? Mr. Orchard.

MR. D. ORCHARD: Can you leave us with a minute to look over this amendment, please?

Mr. Chairman, it mentions in here that compensation is payable. My question to the Minister is, who determines (a) whether compensation is needed, and (b) who determines what level of compensation is to be paid?

HON. A. MACKLING: Mr. Chairman, section 14(2) provides for the payment of compensation. It indicates that where a new applicant is entitled to receive or acquires rights, then the existing user is entitled to compensation for any loss or damage suffered by him as consequence of the cancellation or restriction. Then 14(3) provides for an agreement respecting compensation. Where there is a failure to reach an

agreement between the new applicant and the existing user, arbitration is provided for. It is clear that the sections will protect the rights of the ongoing user.

MR. D. ORCHARD: Then are we to assume from the amendment proposed in subsection 14(5) that given a circumstance of a person who has a water licence, is actively irrigating farm land, sells the farm land and the licence is not automatically transferred to the new owner? Are we assuming that it follows from this amendment that there is an automatic review to The Arbitration Act to determine what level of compensation is necessary; or does the Minister have the discretion to say, well, in this case we should pay compensation but in another case we don't have to? Is this an automatic referral, every instance that I have described?

HON. A. MACKLING: Mr. Chairman, I was listening to Legislative Counsel at one point, but the honourable member is concerned about an automatic referral. The entire Section 14 provides for the loss of priority of an existing user. Where that happens the new applicant is obliged to pay compensation to the existing user. He does that by way of coming to an agreement and if they can't reach agreement, then the rights have to be arbitrated pursuant to The Arbitration Act.

There is nothing automatic about it because the parties may come to some agreement and if they do, that's fine. If they don't, then there is the right of the person who is losing the priority to arbitration as provided in this section. It is not a whim of the Minister; it's a right as provided under the act.

What the amendment provides for is that a situation where someone has an ongoing use of water and is relying on that and they continue to maintain their facilities; they're irrigating land; they have buildings; they have equipment designed for their ongoing activity, but it is well-known that there are people who would like to be able to get the water, but they don't want to pay compensation because it would be a substantial amount of money that would have to be paid.

There was a question therefore raised that wouldn't it be conceivable that someone who would have a priority use, say, an industrial use, could await the normal termination of the licence. That is, a 20-year licence period that's come to an end and it would be ordinarily renewed, but if the priority user files his application for that time, could it not be conceivable that a Minister could say, yes, this is a better use? There's much more gain for the people of Manitoba and therefore we are going to allow the priority use and it could be arguable by a court or a board that since the licence had terminated, there was no obligation to pay compensation. This section would address that problem. That's why the amendment is put in here.

MR. D. ORCHARD: So it's fair to assume then, under circumstances where licences are cancelled, not because of a depletion of the resource but rather the event of a new use of the water resource being of a greater economic benefit, that regardless of how the cancellation of the first licence takes place, there is in this amendment the ability for the original licence holder

to apply for compensation regardless of the circumstances.

HON. A. MACKLING: Correct, Mr. Chairman.

MR. D. ORCHARD: Then might I ask the Minister whether there would be circumstances for compensation in the second scenario of licence cancellation where there are indications that the resource may be overused and the licence is cancelled or restricted? Does this section allow the investor and the holder of the original licence to claim compensation, and if so from whom does the original holder of the licence claim compensation since there is no new priority user of the resource?

HON. A. MACKLING: The answer is no, Mr. Chairman. Where, for example, should that happen we have someone who is using a ground water source and the aquifer, for whatever reason - drought conditions - goes down and there is insufficient water and there is a cutback as provided for in the act in allocation to that user, then there's no compensation payable. If there is a cutback or a cancellation for other reasons, the person is entitled to a hearing as provided in Section 19 and then, as I've indicated, there's an appeal by Section 24 by any decision of the Minister.

MR. CHAIRMAN: Any further discussion? Those in favour of the motion please say aye. Those opposed? Motion is carried.

Page 11 as amended—pass. Page 12 - Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, maybe legal counsel could answer this or the Minister. It appears that there is a lot of power being vested in the Minister directly without having to go to the Lieutenant-Governor-in-Council, particularly when it comes to making decisions on the removal of or the changing of some particular works that have been put in place that are deemed in contravention of previous parts of the act.

The question basically is, to vest this kind of power in the Minister, is that a normal process or should this not be more of a decision made by the larger body instead of vesting so much power directly, and as my colleague from Lakeside says, particularly when it's this kind of a Minister we're dealing with? One thing we do have that can console us is that this Minister won't be there very long so that could maybe change it. I think, as legislators, it's important we make sure that fairness is put in place. The question is, should some of these decisions not be made by the Lieutenant-Governor-in-Council rather than just the Minister? That's the first question.

The next one, Mr. Chairman, is on Section 18 on Page 12 where the Minister or a person authorized by him may enter any lands or place for the purpose of inspecting any works constructed or established or being constructed, established or maintained by a licensee under this act and the cost of the inspection or such portion thereof as the Minister determines is payable by the licensee. That I find strange, Mr. Chairman, that the government are now going to be able to, either for cause or for suspected cause, go out and inspect something where the licensee or the

person doing the work has to pay the cost of inspection. Is that principle throughout this government? Is it the responsibility of the average citizen to now pay for the user? It would be user-fee concept of an inspector going out to his property or premises to see if he or she is doing the right or wrong thing.

Two basic questions, Mr. Chairman, and I would hope we could get an answer.

HON. A. MACKLING: Well, Mr. Chairman, taking them in the order in which the honourable member presented his questions, the powers of the Minister are significant, I won't minimize that. But when it says "powers of Minister," it's the department that will be looking at the works and being able to make administrative decisions and administrative actions. You cannot conceive of the government with everything having to go to the Lieutenant-Governor-in-Council for administrative responsibility. As I've indicated, there is a very very full accountability on the part of the Minister not only to the Legislature, but there's an appeal from any decision as the honourable member will find under section 24, full appeal from any power of the Minister as exercised.

Then in respect to inspection. Well, Mr. Chairman, we believe that when we grant a licence to someone to use water and to construct something that that construction has to be safe. It has to be properly done to protect not only the user himself or herself, but also neighbouring property owners. Since we are not making a charge in respect to - at least at this stage - not contemplating any charge in the actual use of the water - although that some government may decide or some Minister may decide in the future - we certainly think that the privilege being granted to someone to use water is one that certainly they should have some responsibility for.

The taxpayers of Manitoba should not have to foot the expense of inspection of facilities that are being constructed to give someone a very significant privilege in the use of a Crown resource. So to the extent that there will be cost, that should not be a burden on the taxpayers as a whole, but a burden on the user himself or herself.

MR. J. DOWNEY: Well, Mr. Chairman, I find it hard to believe that they're now going to be imposing government charges or the inspection charges on people who want to develop a resource or develop a works. If they may be within the limit of the act, they're still subject to a charge by the government. Is that same policy carried out when it comes to the forestry inspectors, to people who are working for the Forestry Branch of his department who go out and inspect a stumpage cutting? Is it now the policy of the government that they're going to charge for the inspection of those kinds of activities by the Department of Natural Resources? That's the principle. We're not talking about paying for the use of water. If the Minister would read the act, we're talking about government inspection of works being done by that individual and government inspecting them to see if it's falling within the limits of the government regulations and law.

I think that's unfair. If it's a policy that he's going to have for all his departments that all inspection within

the government services are now going to be paid for by the user, then let him tell us that. How can he now single out people who are going to put structures in place for irrigation works or activities and say that he is now going to charge them for the inspection? How many other departments in his government charge for their inspection service?

HON. A. MACKLING: Well, Mr. Chairman, the honourable member answered his own question because he makes allusion to the forestry industry. He says, there's a fair one to look at. Well in the forestry industry, the forest is owned by all of us, but we grant licences to individuals to extract timber, to cut trees. For that privilege, we charge a stumpage fee. The Crown gets something back for the forest it's allowing to be used. We have not provided for any charge on the use of water under this act. It may well be considered, but if that is considered, then taken into consideration would be the costs of maintaining the system for the people of Manitoba.

Surely, you and I and all of us, 900,000 people, who may not want to develop an irrigation, or 999,000 who may not wish to develop an irrigation works or a private dam should not be charged with the responsibility of supervising the rights that are being provided to the very few. That's the principle because we're getting nothing, Mr. Chairman, from the use of this water at the present time.

MR. CHAIRMAN: Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, then let me ask this question. The Department of Agriculture have a marketing board or the marketing commission within their jurisdiction and they go out and inspect if there's a violation of The Marketing Act, The Natural Products Marketing Council, send out an inspector to see if farmer A has 10 or 20 more chickens than he or she should have. That is an inspection. The government aren't getting anything back for that. The farmer is in production for his own purposes. He's getting production for his own purposes and there is not a charge for the inspection of that farmer's operation. Why then would this Minister now charge for the inspection of a works that is going on on his farm and investing in the community? He doesn't make sense, Mr. Chairman. It is really an implementation of user fee by this government to charge the people of Manitoba for government services on inspection. He can't deny it, Mr. Chairman. I would like him to change it.

HON. A. MACKLING: Mr. Chairman, the honourable member wants to get involved in a philosophic argument about when inspection fees are appropriately payable by users. If he wants to look at agriculture, well, I guess there may be some areas where there are fees paid and some where there are not.

In respect to agricultural Crown lands, which is a closer analogy than the chickens and hogs or whatever he's talking about, in Crown lands there is compensation paid to the people of Manitoba for the user of the Crown land. There is a fee. Hopefully, that would cover administrative costs. If it doesn't, then perhaps the taxpayers of Manitoba are subsidizing the users of

Crown land. I don't think that's the case. If the honourable member wants to talk about inspection, I know that meat in slaughterhouses is inspected. Someone pays for the cost of that inspection. I think it's the packing houses that have to pay it. In order to get that stamp certified on the side, they have to pay.

MR. D. ORCHARD: Speak on something that you have knowledge on.

MR. J. DOWNEY: Mr. Chairman, how ridiculous is this Minister. The Federal Government were trying to impose a charge for inspection on the producers, and it was rejected by the Canadian public on meat inspection. Can you imagine what would happen if the owners of a packing plant were paying for the inspection? I'm surprised the Minister would ever come out with such a thing.

MR. D. SCOTT: What happens?

MR. H. ENNS: It's a conflict of interest to begin with. He who plays the inspector calls the tune.

MR. J. DOWNEY: Precisely.

MR. D. SCOTT: Glad to hear you say it. Thanks, Harry.

MR. J. DOWNEY: That's the kind of thing that you could possible get into. Mr. Chairman, what I'm saying is that it is a bad precedent to set and it's wrong that the people of Manitoba, who are investing in the province with good intention, if the Minister at his whim says he's going to send out an inspector, have to pay the full cost of that inspection.

He could have an inspector there for a full year to the cost of the person who is investing in a structure. The government, through the Minister, could send a person to sit on his doorstep for one year. We're giving him the right to do it, and he could charge \$500 a day for that inspection, Mr. Chairman; a ridiculous part of the act.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, the Minister hasn't answered the question. When does he and his government deem it appropriate to implement user fees? They've got user fees in this bill under section 18 of the bill. It's user fees. What other circumstances does the Minister feel that user fees are appropriate, or does he just single out members of the rural community for user fees and leave everybody else without user fee? This Minister is once again showing what an unprincipled group we now have in government. They will impose user fees on people that they don't think ever will vote for them, and now they won't touch their own constituency. That's what they're doing in this act.

So, Mr. Chairman, I would move that we delete section 18 of the bill.

MR. H. ENNS: Start from everything after "act." You want to let the guy come on and inspect.

MR. D. ORCHARD: Oh, well okay. I withdraw my original amendment and I move that in section 18 that we delete

all words following "act" in the fourth line of section 18 of the bill.

MR. CHAIRMAN: Is there any discussion on that motion? All those in favour please say aye; those opposed say nay.

MR. H. ENNS: Mr. Chairman, how do you call it?

MR. CHAIRMAN: In my opinion, the nays have it.

MR. D. ORCHARD: Mr. Chairman, I wish it to be shown as that amendment was defeated, on division.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: Mr. Chairman, I want it to be recorded then that the members, particularly the Member for Pembina and the Member for Arthur, were concerned about costs. I quite rightly pointed out that at the present time there was no charge for the use of the water. If costs have to be recovered somewhere, then perhaps we will have to look at that, if that's their position.

MR. CHAIRMAN: Page 12 through 14 were read and passed.

Page 15 - Mr. Mackling.

HON. A. MACKLING: Page 15? Mr. Chairman, there's an amendment on Page 15, Mr. Chairman.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: Is 14 passed? Page 15, I move that Section 24 of Bill 12 be amended, (a) by striking out the words "aggrieved or" in the first line thereof and (b) by adding thereto immediately after the word "board" in the second last line thereof, the words "notwithstanding anything to the contrary in The Municipal Board Act."

MR. CHAIRMAN: Any discussion?

A MEMBER: Explain.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: The word "aggrieved" is superfluous and it's any person who is affected by an order or a decision of the Minister may appeal within 30 days to the Municipal Board, and the decision of the board notwithstanding anything in the act is final.

What it does, in effect, by taking out the word "aggrieved or" is leave the broad meaning of "affected." So it means that any decision of the Minister, and this is the section I was referring members to from time to time, any decision is appealable to the Municipal Board. It does provide for relief from an arbitrary Minister and God forbid that we should have a Conservative Minister as Minister of Natural Resources again and we would have arbitrary decisions, Mr. Chairman. If we do, I have been careful to make provision in this act for a full appeal from such arbitrary decisions and that is why the wording is slightly

changed, to make sure that there is ample, broad opportunity for that kind of appeal, Mr. Chairman.

MR. CHAIRMAN: Any discussion? Motion pass? Pass. Page 15, as amended—pass; Page 16—pass; Page 17—pass; Page 18—pass; Page 19—pass; Preamble—pass; Title—pass; Bill be Reported—pass.

BILL NO. 76 -THE CROWN LANDS ACT

MR. CHAIRMAN: Page by page?
Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, on Page 2 of The Crown Lands Act, and it may be an error or it may not be. On the first part of the bill, Section 4(a.1), "lease Crown lands for a period exceeding 21 years and determine the terms and conditions," and later on in the act, on 9(1)(a), they've got, "not exceeding 21 years," and I would like an explanation as to the differences.

As I would read the first one that the Minister is leasing land for no less than 21 years. Could I have an explanation on that? I wondered if it should be, "not less than 21 years," in both cases.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: Sorry, Mr. Chairman, I'm wondering if the honourable member would give me it again and then I can confirm with counsel because . . . Page 2, you said?

MR. J. DOWNEY: Page 2, 4(a.1). The permission is giving to lease Crown lands for a period exceeding 21 years. For what purpose would this be written in an act where the government would be tying itself to leasing land for more than 21 years?

HON. A. MACKLING: And the next one was?

MR. J. DOWNEY: Well then you go down to 9(1)(a), "lease Crown lands for a term not exceeding 21 years, with or without an option to purchase," but they're using 21 years in reverse ways. One, you cannot lease it for less than 21 years and then the next part of the act, not more than 21 years.

Mr. Chairman, the way I'm reading it, I guess, what lands would the government want to lease for more than 21 years and what lands would they want to have the right not to lease for more than 21 years?

HON. A. MACKLING: Mr. Chairman, I know that there, in the past, have been leases granted for Crown lands in excess of 21 years and the Honourable Member for Lakeside will recall, and other members are aware of the fact, that there is an existing lease with Ducks Unlimited that is for a period of 20 years. They have requested a lease in excess of 20 years. There are other leases, I think, that have been made in the past to agricultural societies, to others where a very long-term lease may be required to facilitate the users; and yet in other instances, there are leases of Crown lands that are much less than that and they can go almost from year to year.

This does provide a complete flexibility in the leasing arrangements of Crown land and this reflects the present status of Crown land leasing. So, Mr. Chairman, we're merely clarifying the existing provisions of The Crown Lands Act.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Okay, but you understand it. You are repealing the Minister's or government's capacity in extending leases on certain lands, under certain circumstances, for more than 21 years. That's what you're repealing.

HON. A. MACKLING: I'm sorry, someone was talking to me, Mr. Chairman; I apologize.

MR. H. ENNS: The Minister now has, under Section 4(a.1), has the ability to lease Crown lands for a period exceeding 21 years.

HON. A. MACKLING: Right.

MR. H. ENNS: And you're taking that right away from the Crown. You can now only lease lands for 21 years or less, as in Section 9(1).

HON. A. MACKLING: No. No, Mr. Chairman. The amendment merely clarifies the leasing rights that the Crown has exercised now and continues to exercise. Where there's provision for determining and there's a revision of the whole section, to clarify and improve the wording, these sections do not change any existing policy of The Crown Lands Act. What it does is revise the wording only. The sections that I've indicated, when I spoke on this, where there's a change in policy, are reflected in Sections 8(4)(b), in particular, and I'll expand on that when we get to it, if you like. I did give copies of my notes to the opposition critic.

MR. CHAIRMAN: Mr. Downey.

MR. J. DOWNEY: Mr. Chairman, just to get back to the first part of that, again I ask for what type of land you would be wanting to put into a lease exceeding 21 years as you're stating in 4(a.1). Is that the type of thing you'd be putting the Saskaram in, with Ducks Unlimited? Is that the kind of Crown land lease you're talking about? Is it the Shilo Military Range?

HON. A. MACKLING: Yes, could be.

MR. J. DOWNEY: So in other words, what the government is doing is they're saying they're now classifying land that would go into a 21-year lease or more, and that nobody could question that unless they were to change to act, to do so.

MR. CHAIRMAN: Mr. Mackling.

HON. A. MACKLING: No, Mr. Chairman. There are existing provisions in the act, and because we are opening the act to make some specific changes, it was considered desirable to clarify the provisions of those

sections and they are repeating existing provisions of the act. There is no change in policy.

MR. J. DOWNEY: If that is the case, Mr. Chairman, then I have no problem with it, but I will further review that and look into it.

MR. CHAIRMAN: Page-by-page? Page 1—pass; Page 2 - Mr. Enns.

MR. H. ENNS: Mr. Chairman, I have no objection to the Crown assisting the municipalities, of course, in the collection of their portion of municipal taxes, but I am somewhat baffled because in the normal course that has always been the case. What are we talking about here? Are we talking about cases here where, particularly with longer term leases, are we talking about the short-term permits or grazing leases that perhaps where the lessee removes himself or just leaves the land, walks away from it without paying rent or tax to anybody, that the Crown obligates itself to in this case pay the municipal portion of the tax?

My experience as a lessor has always been such that I've always paid my one amount of money to the Crown and they have subsequently paid the municipal portion.

HON. A. MACKLING: Mr. Chairman, I am somewhat embarrassed by the fact that I had indicated to the Honourable Member for Lakeside subsequent to his argument in the House, that I would review carefully with staff the arguments that had been made. I apologize to the member that I have not had an opportunity to do that. I know that he's going to address the same questions. I, quite frankly, had not in the pressure of time, taken the opportunity to do that. I would prefer that this bill stand down until I have done that because the honourable member did address some points in argument that I wanted to consider. So I ask that we just stand this bill down until I have done that, because I did give that undertaking and I confess that I haven't had the opportunity to do that.

MR. H. ENNS: Thank you.

MR. CHAIRMAN: Is that agreed? We will proceed to the next bill, hold this one in abeyance. (Agreed)

BILL 15 - THE HIGHWAY TRAFFIC ACT

MR. CHAIRMAN: What is the will of the committee, page-by-page, clause-by-clause? Does the Minister have any introductory comments?

HON. S. USKIW: Mr. Chairman, I think that members opposite may want to pursue a number of points for clarification and perhaps that's what we should proceed with first and then get into the amendments.

I suggested that if there is anyone in the committee that wishes to pursue a line of questioning with respect to items in the bill, perhaps we should do that first and then come in with the amendments after that.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: Sure, that would be fine, Mr. Chairman. In that regard, if I might pose a few questions on Section 1 of the bill.

Mr. Chairman, this addition of three wheels appears to be accomplishing the ability to licence the three-wheel - I don't know what you would call them for lack of a better word, but sort of the recreation vehicles for licencing as a snowmobile, but yet when you pursue section (b) which has the restrictions in engine signs and speed, it doesn't appear to be doing that. Could the Minister indicate what types of vehicles, section 1 of the bill is attempting to licence and legalize?

HON. S. USKIW: Mr. Chairman, it's mopeds that are being constructed with three wheels.

MR. D. ORCHARD: Now, if that's the case, then does that mean that a small three-wheel, motor-driven tricycle without pedals but simply operating by motor would now be able to be licenced?

HON. S. USKIW: Mr. Chairman, the definition of a moped would apply.

MR. D. ORCHARD: So is the Minister saying that anything that is strictly propelled by its motor would not fall into this definition?

HON. S. USKIW: That's correct, Mr. Chairman.

MR. D. ORCHARD: That means that the three-wheelers are still going to have that grey area where they can't be licenced as anything.

HON. S. USKIW: I am advised that the all-terrains - if that's what the member is referring to - are licenced under The Snowmobile Act. We shouldn't get the two mixed up.

MR. D. ORCHARD: But by licencing these types of three-wheeled vehicles, they have the same access to the roads, highways as mopeds now have? This amendment will give them the same access to roads, highways, etc., as mopeds have right now.

HON. S. USKIW: I am wondering whether we can a matter clarified from the Member for Pembina. Is he referring to all-terrains or is he referring to . . .

MR. D. ORCHARD: No, I am asking you that, with this amendment - the Minister indicated it was mopeds that are trikes, have three wheels. Now a moped is a very small displacement engine and can be pedaled or can be driven by the engine. Now you're adding an amendment in here which allows a trike which is either pedaled or motorized, with three wheels, now to be licensed as a moped and, as such, that small three-wheeler with less than a 50 cc engine will now have access to the highways and streets of the cities?

HON. S. USKIW: I am advised, Mr. Chairman, that it is providing that it meets all the other criteria of a moped.

MR. D. ORCHARD: Now, that brings in the interesting - if you're allowing these types of vehicles on the streets and the highways and they cannot obtain a speed greater than 50 kilometres per hour, which is 30 miles

an hour, why would you be adverse to having all three-wheelers, the ATVs on the streets and highways as well?

HON. S. USKIW: Mr. Chairman, it's because the all-terrain vehicles don't conform to highway standard requirements with respect to tires, lighting, etc., all of the things that are required on a vehicle to be driven legally on a highway. They are not manufactured in that way.

MR. D. ORCHARD: Well, let's make an assumption that the turn signals, the brake lights, the front and back reflectors and maybe a headlight were all part and parcel of an ATV. The only criteria they wouldn't meet is the cubic centimetre displacement of the engine and the maximum speed it can attain, those being the only two exemptions, would that allow them to be licensed for use on the highways and streets?

HON. S. USKIW: It could conceivably come under a motorcycle provision if it conformed in that way, but not as a moped.

MR. D. ORCHARD: I'm not sure that that can happen, because I don't think a motorcycle allows anything but a two-wheeled vehicle. I think motorcycles are restricted by definition to not have three wheels. What I'm getting at here is, I'm not objecting to what the Minister is bringing in here but these ATVs are a grey area in terms of licensing. I had a circumstance in the quiet little peaceful hamlet of Miami where there are only 300 people, where an elderly gentleman, retired fellow, had an ATV. He was going down the streets in town as he had been for about a year and a half, and he got nailed with a ticket by the RCMP - and he had to sell the thing. The fellow, just absolutely, is not your run-of-the-mill criminal; he's just an ordinary citizen.

MR. H. ENNS: If they don't get your babysitter, they get your grandpa.

MR. D. ORCHARD: Because of the grey area in licensing, these vehicles are not allowed to even be on sidewalks, I don't believe. If we're making an amendment here and opening up the licensing of three-wheeled vehicles providing they meet certain criteria and giving them full access to the highways and the streets in this province, you've established the principle where a three-wheeled vehicle can be accepted on the roads if it's properly equipped. I simply ask the Minister, would you extend this principle to the ATVs which have bigger engines and are capable of attaining higher speeds and if they were properly equipped as, say, a motorcycle with turn signals, etc., would you then allow them to be licensed as a motorcycle and have access to the streets and highways?

HON. S. USKIW: Mr. Chairman, the member is forgetting that there's a limitation of 50 km per hour, which means that it refers specifically then to city streets or urban streets. Highways are not designated as 50 km per hour highways other than certain sections, so they wouldn't be legally on a highway if the highways speed limit was in excess of 50 km.

MR. D. ORCHARD: Mr. Chairman, I think the Minister may not be quite correct in that because a moped can now go on a highway where the speed limit is 90 km per hour. I don't think the Minister is right there. The moment you bring in these three-wheeled vehicle and classify them as a moped, a moped licence will allow the owner and the operator of that to go on a highway regardless of the speed limit. If his argument is true, then that means any street in the city where the speed limit is 60 km per hour, his argument would say that these three-wheeled vehicles couldn't travel on it. I just don't think the Minister is correct in his interpretation. I don't think there's any restriction that a moped cannot be operated, when it's licensed, on a highway. This amendment calls these three-wheelers mopeds and will allow them to go on the highways. I'll stand corrected if my interpretation of the present law is not valid.

HON. S. USKIW: Mr. Chairman, the registrar is trying to find the correct section of the act to draw attention to the Member for Pembina that, indeed, he is not correct with his analysis. So perhaps we should go to another item and then come back to this one while we look up the . . .

MR. D. ORCHARD: A couple of more questions then on this one. Does this licensing legalize the Happy Wanderer and other handicapped vehicles? Does this amendment now legalize a vehicle such as the Happy Wanderer which has one little wheel out front, two drive wheels at the back with a motor, etc., and those Happy Wanderers have been used primarily by handicapped citizens in the province? Will this amendment now make the use of those vehicles legal on the streets and highways of the province?

HON. S. USKIW: Provided that they do meet the criteria of a moped, yes.

MR. D. ORCHARD: They will be able to travel on the highways.

HON. S. USKIW: No.

MR. D. ORCHARD: We're back to the other question then. I'm not sure that exists in statute because mopeds travel on the highways. Well, if that comes up that will be fine.

Now, the other question, the broader question is on the licensing of operators of these Happy Wanderers, etc., because this amendment opens it up to the problem that I tried to deal with about two and a half years ago or three years ago and there was some concern at the time by the registrar that if these vehicles are - I'll ask the simple question. What sort of an operator's licence will the person be required to have who would operate one of these new three-wheelers on the streets?

HON. S. USKIW: Class 5.

MR. D. ORCHARD: So that if we had an individual who was severely handicapped in some capacity and could not qualify for a classified licence then he would not be able to operate one of these vehicles on the streets.

HON. S. USKIW: That's correct.

MR. D. ORCHARD: Okay then, this amendment, I believe, falls sort of short of accomplishing the legalization of three-wheeled ATVs or the Happy Wanderers for use by handicapped citizens in the province. It sort of is neither fish nor fowl.

HON. S. USKIW: Yes, I wanted to just elaborate a little more on that point. There is provision for exception based on medical evidence. The registrar is able to permit someone that does not have Class 5 under certain circumstances to drive and use one of these vehicles. Sorry, the correction is that it's a restricted Class 5, but which can be issued by the registrar.

MR. D. ORCHARD: Well, I assume that the restrictions have been established by regulation. I wonder if the Minister might at some future date provide me, before we debate this bill on third reading, with the restrictions on the Class 5 licence that would allow handicapped operation of these three-wheeled, Happy Wanderer-type vehicles so that we can better analyze the kind of opening up of licensing and registration that appears to be present in this section.

HON. S. USKIW: Just to clarify on that point. I presume the member is asking for sort of broad parameters within which we would provide for an amended licence, if you like. That's fine.

MR. D. ORCHARD: Then the other question is, I take it then the Minister has no intention of freeing up the ATV three-wheeled vehicles you call them, say, motorcycles if they were to meet the lighting, and braking, and safety standards that are there with the ATVs.

MR. H. ENNS: I think you want to look at that one a second time.

HON. S. USKIW: It goes back to the point I made earlier, Mr. Chairman, if they meet the requirements of a motorcycle, then they would, of course, be approved in that way, based on that criteria.

MR. D. ORCHARD: That's all the questions I have on section 1, Mr. Chairman.

MR. CHAIRMAN: Section 1 - pass? Mr. Penner.

HON. R. PENNER: Mr. Chairman, I would move that section 1 of Bill 15 be amended by striking out the word "is" in the second line thereof and substituting therefor the word "as" - one of my important amendments - and by renumbering subclause 1 in the 10th line thereof as subclause 3.

HON. S. USKIW: It is a typographical error.

MR. CHAIRMAN: Is that agreed?

HON. R. PENNER: We're prepared to explain this in a 10-minute speech.

MR. CHAIRMAN: Pass?

MR. D. ORCHARD: I already had it down there, Rolly.

MR. H. ENNS: That's okay, we'll go with that one, Rolly.

MR. D. ORCHARD: Let's pass Page 1, Mr. Chairman.

MR. CHAIRMAN: Clause 1 or Page 1?

MR. H. ENNS: Page-by-page.

MR. CHAIRMAN: Page-by-page. Page 1 as amended—pass.

Page 2 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, on section 3 of the bill, could the Minister indicate the necessity of having this, I assume, foreign student licencing requirement and changes? Has there been an accident experience that has caused this amendment to come forward?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, the purpose here is to open it up to allow more students of other countries to be eligible. It's been too restrictive we find to date.

MR. D. ORCHARD: As the Minister says in opening this up and making it less restrictive, has the registrar and his staff established a checkpoint system whereby they have assured themselves that the standards for issuance of a driver's licence in whatever country the student may come from are equivalent to ours or even exceeding ours to assure that we've got properly trained and properly experienced drivers being licenced by this amendment?

HON. S. USKIW: No, we don't deal with question of standards at all, Mr. Chairman. We are satisfied with the fact that a person has a legitimate licence from their home country, provided of course that they are only here for a short period of time and not become permanent residents; 90 days is the time frame currently.

MR. D. ORCHARD: Well then the Minister is saying that neither he nor the department is really concerned about whether that driver's licence has been granted knowing that the person has the same driving skills as are required by other Manitobans, No. (1), which I have to say I question, and No. (2), has the registrar an ability to check into the driving record to assure that individual is not under suspension, but yet retains his licence when he comes to Manitoba; has the ability to check his driving record been put in place, and in fact being used?

HON. S. USKIW: I'm advised, Mr. Chairman, that we do not check the driving record of the individual as long as their licence is valid, we recognize that as their entitlement to have a temporary licence while they are here for a short period of time.

MR. D. ORCHARD: Mr. Chairman, I'm not sure that necessarily is a good enough safety check. We put our

own drivers in Manitoba through some fairly stringent requirements to allow them the privilege of driving on our highway system and our street system. I would suggest that where these licences are being granted, and we are actually loosening up the requirements of non-resident Manitobans who are students, that the registrar would certainly have an onus to assure that person is not an unsafe driver from the country he's coming from. That isn't difficult to check out, not with the computer hookups and the communications technology that are available. I think it would be a normal safeguard that the registrar and the government would wish to pursue before granting this licence.

HON. S. USKIW: I think if the member would read section 3.(b), his reference to the fact that the person has to comply with any restrictions or conditions imposed by the registrar, so it's open to the registrar to demand conditions and to require performance if there's some reason to believe that is necessary.

MR. D. ORCHARD: Mr. Chairman, that's exactly the nature of my questions. I asked the Minister if they're checking out the driving record, and they said no they weren't. I asked them if they were checking the standards of the issuance in the country from which this person comes, whether the standards are the same as here, and he said no they weren't. Now the Minister is saying well clause (b) covers it off, but he said they weren't checking either of those areas, which I would think would be the major two things that you'd want to determine before you granted the licence.

If the Minister is now saying that, yes, they are going to check the person's driving licence, his record, in the country he comes from to make sure the licence is held by a safe and conscientious driver, then I'm satisfied. If he's also saying that in clause (b) the registrar will check out to see whether Botswana has the same kind of licencing standards as Manitoba, so that the driver is reasonably versed in the rules of the road, then the Minister and the registrar are satisfied that he can adequately comply with the driving conditions in Manitoba, then I'm also satisfied. If his original answer stands, then I would suggest that as a standard procedure before granting this licence, that the registrar make those enquiries as to licencing standards and the driving record of that individual.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Chairman, through you to the Minister, I support everything that my colleague, Mr. Orchard from Pembina, has just said, except that I would have a tendency of putting the onus on the applicant. Surely, it wouldn't be that difficult rather than on our officials or our registrar. Surely, a student who would be in this position, a foreign student coming to this country should consider, among the first things if he wants to drive here, to have the appropriate documentation. Surely, it would not be that hard to ask the foreign student to supply our officials, our registrar, with some kind of confirmation that (a), that, yes indeed, he is an authorized driver in his own country, his licence is not suspended, and a simple letter from his own authority, from his own state, from his own country given to our officials should suffice.

I wouldn't want to impose on our hard-working officials and our busy people, nor would I want to impose on our taxpayers the expense of telexing or cabling around the world to check on somebody's driving records. The applicant should provide that, or else the licence should not be given.

HON. S. USKIW: Mr. Chairman, I think that's covered under 3(b), if the Member for Lakeside . . .

I want to go back, Mr. Chairman, if I may to - let's pass Page 2 as amended.

MR. CHAIRMAN: Page 2 as amended—pass. Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, we're willing to pass page 2 if now the Minister is indicating that section (b) will follow up on the suggestions that my colleague made and that we have the assurance that driving qualifications are part of the licence-granting process that the registrar will go through.

MR. CHAIRMAN: Page 2—pass; page 3 - Mr. Uskiw.

HON. S. USKIW: Before we get to that, Mr. Chairman, I want to go back to the earlier question with respect to the use of mopeds. Under section 172.1(1), "subject to subsection (2), no person shall operate a moped on a provincial truck highway on which the maximum speed limit is more than 50 miles or 80 kilometers per hour."

MR. D. ORCHARD: No moped can be on there.

A MEMBER: They caught you this time, Don. You have got away with it all this time, Don.

MR. CHAIRMAN: Page 3.

MR. D. ORCHARD: Mr. Chairman, you've got amendments here that . . .

MR. CHAIRMAN: Mr. Penner.

HON. R. PENNER: Yes, my thanks to the Member for Pembina. I move that a proposed new subclause of 33(iii) and (ii) to The Highway Traffic Act, as set out in Section 4 of Bill 15 be struck out and the following subclauses be substituted therefor:

(1) "at least one amber reflector visible to the front and position to indicate as nearly as practicable the extreme left projection of the implement or mobile machine; and,

(2) at least 2 red reflectors visible to the rear and mounted to indicate as nearly as practicable the extreme left and extreme right projection of the implement or mobile machine."

MR. CHAIRMAN: Any discussion of the motion? Mr. Uskiw.

HON. S. USKIW: Mr. Chairman, that flows from the submission that was received by the committee at the last hearing by the Canadian Farm and Industrial Equipment Institute, wherein they wanted our Act to

conform with SAE standards, which we have accepted as being reasonable.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: That amendment does indeed bring Manitoba in line, and I think it's good that we did not insist on the original sections of the bill, which would have made us unique in North America. That's a good amendment.

MR. CHAIRMAN: Page 3 as amended—pass; page 4 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, now in section 6, 33(17) amended, under the present act, how does a person who does not have the required lights as specified in section (a); how does a farmer currently move his equipment down the highway if he hasn't got his lights. There is no restriction on him now?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Not to date, there hasn't been.

MR. D. ORCHARD: Now this amendment is going to cause some problems, some expense to the farmers; can the Minister indicate the kind of accident experience that caused this amendment as is present in (b) to be brought forward to the act. Have there been a number of accidents caused by poorly marked farm implements being towed down the road in the evening or at night that have prompted the department to bring forward this amendment?

HON. S. USKIW: Mr. Chairman, I think if the member studies the proposal before us, he will appreciate the common sense that is built into it. Equipment has become wider and wider and much more cumbersome to handle in terms of size and the right-of-way width and so on. The size of equipment relative to right-of-way width, which we have throughout the province, we have had a number of complaints about that. Common sense dictates that when one is taking up most of the width of the road that one ought to be visible at night and this is what this is intended to do.

The option is up to the individual whether they want to upgrade their equipment to provide for the necessary lighting or, if they wish otherwise, they may choose to provide pilot vehicles in order to protect the public interest. It's an option they can exercise. The other option is to be off the road before dark. I believe that's important given the nature of farm machinery these days, the size of the equipment.

MR. D. ORCHARD: I accept some of the Minister's rationale here, but the thing is with new equipment that is wider and longer, that as the Minister has indicated that equipment is presently equipped with the kinds of lighting that is specified in subsection (4) of this bill. The tractors have the flashing lights that are towing those kinds of implements. This amendment is going to hit old equipment. This is going to hit equipment that was probably manufactured 10, 15 years ago; owned probably by some of your smaller farmers.

I just want to make the Minister aware that, in bringing in this amendment, he is going to require the wife and friend or a neighbour or child to be front and back in pilot vehicles or he's going to require that equipment to be retrofitted with flashing lights, etc. etc.

I would ask the Minister if this clause is unique to Manitoba or do other provincial jurisdictions, particularly in the prairies, have that this clause or a similar requirement?

HON. S. USKIW: No, Mr. Chairman. We will be unique with respect to pilot vehicle requirements?

MR. D. ORCHARD: Well, then I guess I have to register my objection to doing this, because I don't think the Minister indicated any accident experience. He indicated a number of complaints, but if we bring in legislation on the basis of complaints from individuals, we would have a lot of things banned and a lot of legislation, if it is based solely on complaints. If there is no accident experience here, I suggest that the Minister is probably proceeding with amendments, and if they are unique to the prairies, that are going to put Manitobans in the unique position of having more restrictive legislation for the farm community than other provinces.

HON. S. USKIW: Mr. Chairman, I appreciate the point that is being made. It doesn't detract from the fact that it is an important safety feature and as the members are aware, we are trying to emphasize a much safer highways system through various measures that we are undertaking this year. This is only part of that. I, having had personal experience with movement of farm machinery, know fully what risk I am exposed to, have been exposed to and what risk the public is exposed to when wide machinery is on a highway at night without lighting. I think it is wrong and I don't believe the public opinion, including the farm community, will object to these precautions being taken.

MR. D. ORCHARD: What are the penalties involved for violation under section (b)?

HON. S. USKIW: It is whatever is available under The Summary Convictions Act, Mr. Chairman. I don't know what the minimum and maximums are.

MR. D. ORCHARD: Well, under The Summaries Conviction Act, the amendments the Attorney-General made there last year made it much easier for the State to collect their money from any offending individual, and I'd appreciate if the Minister could, at a later date, supply the level of fine that he would anticipate would be part of a summons issued in violation of this section.

We can move onto the next section of height and weight requirements, Mr. Chairman. I'd like to ask the Minister whether this section does not preclude special permitting of transportation of round bales on the highway?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: No, it doesn't, Mr. Chairman.

MR. D. ORCHARD: Mr. Chairman, I had discussions with the Minister earlier on about some of the width

and height problems that transporters of round bales have experienced. Can the Minister indicate whether they've got any new thoughts on that, because I think round bales are a given fact in the economy now, and I can appreciate the desire of the Motor Vehicle Branch to have everything nice and neat and tidy and safe, and that they can develop regulations and guidelines that are impossible to follow, and can essentially eliminate the movement of round bales if they so desire.

I know the Minister's not so inclined, and I would wonder if he had instituted any sort of a review of guidelines where you would have the maximum heights, maximum widths, set out for special permitting for the transportation of round bales.

HON. S. USKIW: Mr. Chairman, I know that is a matter that is being looked at, although I'm not sure just what answers we're going to come up with, with respect to that review. This particular recommendation, of course, comes from the joint ARTAC, CCMTA Committee report on vehicle weights and dimensions; its already been adopted by the Province of Saskatchewan.

MR. D. ORCHARD: I appreciate this amendment doesn't have anything to do with the round bales but I choose this section just to put a few comments on the record. In the review of transportation of round bales, I would hope that the Minister is not unduly swayed by non-farming people in the department who view the stacking of a second row of bales which, in effect, ties in the bottom row of double bales. In reality, that extra height is absolutely essential to achieving stability on the bottom row of round bales; even though it may exceed normal height limits, it's essential to tying in the bottom load, and the argument that it raises the centre of gravity, I think, is somewhat questionable because the round bales are over the middle of the load, their centre of gravity is not as high, it's far from the extreme height of the load. If you develop the regulations which would prevent the transporting of a double-wide row of round bales on the bottom, tied in by a second row down the middle, you're going to raise considerably the cost of transporting those bales and, anytime you raise those costs, any industry affected, and I think, in this case, particularly the dairy industry, if it were affected, there's no question that you would eventually see that regulatory increase in cost being reflected in the price that consumers are going to pay for milk because the price of milk is set by a cost-of-production formula, and if one of the costs of production, such as, transporting round hay bales goes up because of restrictive regulations, it would reflect in the retail price;

I know the Minister understands the problem and I would urge him to come to a set of guidelines as soon as possible, because we are going to get into the bale transportation season very shortly, probably within the next three weeks or so.

HON. S. USKIW: Mr. Chairman, I fully appreciate the point that's being made and our permit section, I think, will have to address that kind of a problem in a way that will make it convenient for the general public. I don't think we can deal with it here, with these amendments.

MR. D. ORCHARD: Page 4 can pass.

MR. CHAIRMAN: Page 4—pass; Page 5 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, under the non-application of weight restrictions under Section 8 of the bill, I notice that this applies to "municipality or other authority having jurisdiction over highways when the vehicle or machine is equipped with a snow clearing device"; would this exemption, or non-application of the restrictions apply to construction equipment owned by private-sector companies moving to a new job location when restriction are on?

HON. S. USKIW: The interpretation of that would be that the municipality would have to be, in fact, the hiring authority of the contractor.

MR. D. ORCHARD: Okay, would the same exemption, or non-application, of the restriction apply to a contractor engaged to reconstruct a road on behalf of the Department of Highways, and having to move rubber-tired equipment down the road, would the same non-application apply to those people as well?

HON. S. USKIW: If you read the section, it says, "or authority having jurisdiction over highways," so it's within our powers to provide that.

MR. D. ORCHARD: Section 9 of the bill, where you have increased the fines for overweights, I've got some serious questions. I know the costs of building roads and reconstructing roads are going up, but you've got a 333 percent increase in the fine levels here for anybody who would be found guilty of transporting overweight loads on our highways. That's a pretty healthy increase; it's far beyond the 6 and 5 that some administrations are advocating is a way to restrain costs and inflation.

I'm not advocating that anyone illegally transport heavier than regulated loads down the highways, but to me it seems as if this amendment is another money grab that this government is bringing to the people of Manitoba and, as the Minister says, they need lots of it but, unfortunately, they are grabbing the money, once again, through this amendment, they're grabbing the money from the users of the highways and then they're starving those monies off and spending them in many willy-nilly ways in this government. If they were ploughing those monies, as I've said, and made this argument time and time again, if they were ploughing those revenues back into the highway system, at least the users could tolerate, maybe, the necessity for fines; but that isn't happening and the Minister knows very well it's not happening. So I simply want to record the objection: No. 1, of such a massive increase in the level of fines, and couple that with a general decrease in the funding to highways, whilst revenues from use of the highways and offenses on the highways are going up.

In the same light, Section 10 of the bill provides, I believe, the traffic inspectors with too slack a system of assuring that their scales are in order. We brought in the amendment some two or three years ago which required highway traffic inspectors to have, in the department, their scales checked every year and

certified every year for accuracy. Now that was designed to protect, not only the department, but to protect truckers and users of the highways from being falsely charged. Here we have the government changing that so that the inspectors only have to have those scales inspected every two years. We can't tolerate that; we believe the onus should be on the government and the department to make sure that their scales are accurate, and it's not a very large request to leave the amendment as is and delete Section 10, and we will be proposing that when we get to that section, Mr. Chairman.

HON. S. USKIW: Mr. Chairman, on the first point, I just wanted to make the point that the present penalty system for overweights, in practical terms, has amounted to a licence to overweight transportation. It is not deterring overweights, it is merely looked upon as an expense of the load, and is becoming more and more an acceptable expense. So it's no longer a question of deterring overweights on the highway system. It's just an added expense to the operator. If we want to in fact succeed in deterring overweight trucking, then we have to have a penalty that indeed is a penalty for doing so. Alberta has already adopted that; Saskatchewan as I understand it is intending to adopt the same revision.

With respect to scales, the Federal Government of course is responsible for weights and measures, and they have amended their regulations to require every two years instead of annual inspection. All we are doing here is conforming to meet the new federal regulations.

MR. CHAIRMAN: Mr. Orchard.

MR. D. ORCHARD: That's a maximum that applies here, that two wrongs don't make a right. I don't agree with the federal regulation if that's what's stemming from this. I don't think we have to comply with it just because the Federal Government do it, we don't have to comply with it. I think you assure more justice and more equity in the system if you leave the one year in. It's not a major expense to the department and it does provide a fail-safe in making sure that in the last six months those scales aren't out of whack, and you've got people being charged incorrectly, maybe not charged enough even, if the Minister is after his money grab in the fines. Maybe the scales are weighing light and you're not getting enough revenue.

I think it would be in the Minister's best interests to say the Federal Government and the regulations are wrong and to leave our act the same.

HON. S. USKIW: I think I should draw to the attention of the Member for Pembina that it is federal inspectors that enforce the law. We have no authority with respect to weights and measures, and therefore we cannot compel them to inspect more than once every two years in accordance with their own law.

MR. D. ORCHARD: Mr. Chairman, this section also applies to the scales that the provincially employed highway traffic inspectors will use and you are not only just allowing the federal people to do it, your own people are going to do it. They're not going to have their scales inspected except for every two years now.

HON. S. USKIW: The point I was making is that inspection is required by law to be done by the Government of Canada and by jurisdiction. It's not within our authority to decide that question. It is their rules and their inspectors that enforce that provision.

MR. CHAIRMAN: Page 5—pass; Page 6 - Mr. Orchard.

MR. D. ORCHARD: Once again I just want to comment that fines are increasing incredibly, 400 percent in Section 13, in Section (a); a 400 percent in (a); a 400 percent increase in (b); and a 500 percent increase in Section (c) of this bill. Once again maybe the Minister will use the same justification as he did with the previous increase in fine, but it is substantial. It appears to be another method of raising revenues without any intention to spend them on the source that they derived them from.

That part of the bill can pass with the exception of an explanation by the Minister as to why Section 14 has been amended.

HON. S. USKIW: I just want to respond by making the point that there have been no adjustments in this area since 1967, so we're talking about a very long time.

MR. CHAIRMAN: Page 6 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, could the Minister offer an explanation for the increase under Section 14 of the bill?

HON. S. USKIW: That's housekeeping, Mr. Chairman. It reflects the changes in MPIC. Their amendments were effected on March 31, 1983. This is to conform.

MR. CHAIRMAN: Page 6—pass - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, I note in Section 16 of the bill, that we've got amendments to the amendments.

MR. CHAIRMAN: Page 6—pass; Page 7 - Mr. Orchard.

MR. D. ORCHARD: What's the reason here that we are going from 45,000 to 90,000, and now to 180,000, and then from 5,000 to 10,000 to 20,000?

HON. S. USKIW: The same answer applies. It's all to conform with the changes that were made by MPIC.

MR. CHAIRMAN: Mr. Scott.

MR. D. SCOTT: I'd like to make a couple of motions here toward accepting the amendments to the amendments.

First off that Clause 16(b) of Bill No. 15 be amended by striking out the sign and figures "\$90,000" on the fourth line thereof, and substituting therefore the sign and figures "\$180,000.00." Could I do all motions together and we can discuss them together, please?

Second motion being that Clause 16(c) of Bill 15 be amended by striking out the sign and figures "\$10,000"

on the fourth line thereof, and substituting therefore the sign and figures, "\$20,000.00."

Third one, that proposed new Clause 167, Subsection 2.1, Sub, Subsection (a) to The Highway Traffic Act as set out in Section 17 of Bill 15 be amended by striking out the word "of" in the first line thereof, and substituting therefore the word "by."

MR. CHAIRMAN: Is there any discussion? Pass. Page 7 - Mr. Orchard.

MR. D. ORCHARD: Mr. Chairman, on Section 17 of the bill, could the Minister indicate whether these amendments are designed to accommodate movement of the custom application flotation equipment that's used in the fertilizer business right now?

MR. CHAIRMAN: Mr. Uskiw.

HON. S. USKIW: Yes, that's correct, Mr. Chairman.

MR. D. ORCHARD: Were these amendments proposed in consultation with the association representing the custom fertilizer applicator?

HON. S. USKIW: Yes, Mr. Chairman.

MR. D. ORCHARD: They don't have any objection to the maximum speed of 42 miles per hour?

HON. S. USKIW: Mr. Chairman, it's based on manufacturers' recommendation and we must stick by that. People that are putting out the product know what it's capable of doing, talking about the tires, and to violate those specifications would obviously be putting us in a position of liability in my opinion, and warranty provisions of course.

MR. D. ORCHARD: Then I take it that there was no objection from the Custom Applicators Association?

HON. S. USKIW: We're not aware of any objections, Mr. Chairman.

MR. D. ORCHARD: Mr. Chairman, on Section 18 of the bill, last year this amendment was a bad amendment, and now it's a bad amendment amended to be worse. There's no end to the kind of — (Interjection) — ridiculous thing that will emanate from this amendment. The Minister fell into the trap . . .

MR. CHAIRMAN: Order please.

MR. D. ORCHARD: . . . last year of getting caught and bringing in a bad amendment last year. He realizes how bad it was, he's had to amend it again this year. I would suggest, Mr. Chairman, that I move, seconded by my colleague, the MLA for Lakeside, that we delete Section 18 of the bill.

MR. CHAIRMAN: Any discussion? Question?

HON. S. USKIW: Maybe he should explain what he's doing repealing the provisions in the act.

MR. D. ORCHARD: Mr. Chairman, I believe that last year's amendment was bad enough. This further confuses. It's a bad amendment followed by a bad amendment, and I would move that we delete Section 18 from the bill.

HON. S. USKIW: Mr. Chairman, by accepting that motion, what we would be doing is accepting what is now there. The amendment is intended to deal with a problem of enforcement; namely, that under the old section the law officer has to prove that a person was indeed listening to the radio, if you like. In this section, he merely has to notice the wearing of headphones to determine whether an offence has been committed. So it's not easy or it's not possible, I suppose, to prove that one is listening to a radio, even in one is wearing headphones. So in essence, the old section is not enforceable.

MR. CHAIRMAN: Mr. Enns.

MR. H. ENNS: Mr. Chairman, I think it's far more important to determine what that person is listening to. Well, I say that in all seriousness. If he is listening to a political speech by my friends opposite then, of course, that amendment should be strengthened in any way possible or otherwise.

I would like to ask, with the registrar present, how many convictions were actually occasioned under this section of the act?

MR. CHAIRMAN: Could you move to the microphone, your answer is not being recorded. Mr. Uskiw.

HON. S. USKIW: Well, Mr. Chairman, the question as to whether we had any convictions under that section. We're aware of charges, I'm not sure what the number of convictions are. That information can be . . .

MR. H. ENNS: Mr. Chairman, I still believe that the motion made by my colleague accomplishes what he wanted to do. By deleting the whole section, the section no longer is there, what your amendment is trying to correct for enforcement purposes.

I simply want to support the motion by the Member for Pembina.

MR. CHAIRMAN: Are you ready for the question? All those in favour of deleting section 18, please say aye; those opposed say nay. In my opinion, the nays have it.

MR. D. ORCHARD: Well, let's have a show of hands, Mr. Chairman, and have a counted vote.

MR. CHAIRMAN: All those in favour of deleting section 18, please raise your hands.

MR. H. ENNS: It's a freedom vote. Conrad, you can vote for this.

MR. CHAIRMAN: All those opposed, please raise your hand.

A COUNTED VOTE was taken and the motion was defeated.

HON. A. MACKLING: Justice triumphs again.

A MEMBER: Oppression triumphs again.

MR. CHAIRMAN: Page 7 as amended—pass; Page 8 - Mr. Scott.

MR. D. SCOTT: Mr. Chairman, I've got a couple of amendments here, amendments to the amendments on section 19.

I move that section 19 of Bill 15 be struck out and the following subsections be substituted therefor:

"Subsection 238 (1.2) added.

19 Section 238 of the act is amended by adding thereto immediately after subsection 1.1 thereof the following subsection:

Title - Further suspension of licence.

Section 238 (1.2).

In addition to the penalty provided under Section 201.5 where a person is convicted of an offence under subsection 201(1) for driving a motor vehicle on a highway while his driver's licence is suspended under subsection 1, the licence and the right to have a licence of that person is automatically further suspended in accordance with subsection 1(a) or (b) as the case may require."

MR. CHAIRMAN: Any discussion?

MR. D. ORCHARD: Just leave a little time to assimilate all of this wisdom given to us by the Member for Inkster.

HON. S. USKIW: Mr. Chairman, perhaps I might advise why we are moving the motion, the Supreme Court ruled on February 4, 1981 that Section 238 of the Criminal Code as being ultra vires. Therefore, we now charge people under Section 201 of The Highway Traffic Act, but which is very cumbersome and administratively so, this will allow us to move more quickly and expeditiously with respect to those that are driving after being suspended without reference to federal jurisdiction.

MR. D. ORCHARD: Okay, then Mr. Chairman, in layman's language outside of the legalese, what this is doing then is allowing a greater control over suspended drivers and being able to keep them off the roads when they're driving while under suspension.

HON. S. USKIW: That is right.

MR. CHAIRMAN: On the motion—pass. Page 8 as amended - Mr. Scott.

MR. D. SCOTT: Mr. Chairman, I have another amendment here as well. It should go through quickly.

That Section 21 of Bill 15 be struck out and that the following section be substituted therefor:

"Subclause 243(5)(a)(iv)am.

Section 21(24)(3)(5)(a)(iv) of the act is amended,

- (a) by striking out the sign and figures "90,000" in the second line thereof and substituting therefor the words and figures "180,000 dollars;"
- (b) by striking out the sign and figures "10,000 dollars" in the fourth line thereof and substituting therefor the sign and figures "20,000 dollars;" and
- (c) by striking out the sign and figures "\$100,000" in the sixth line thereof and substituting therefor the sign and figures "\$200,000."

MR. CHAIRMAN: Any discussion. Mr. Uskiw.

HON. S. USKIW: Just to inform the committee that this is again to conform with changes of MPIC.

MR. CHAIRMAN: Pass? Any discussion? Page 8 as amended—pass.

MR. D. ORCHARD: Pass on that. Mr. Chairman, on Page 9. The Minister offered no explanation in his introductory remark as to the commencement of the act, where you're going to have a retroactive application of Sections 14, 15, and 16(a) and in Clause 25(2) you're going to have a retroactive application to June 30, 1982. Can the Minister provide the reasoning for this retroactive application?

HON. S. USKIW: Mr. Chairman, this all relates to conformity with the provisions under MPIC so that the effective dates for both their act and ours is the same.

MR. D. ORCHARD: Okay, I can accept that, except in having this retroactive, is anybody's position before the courts or in dispute with Autopac being adversely affected by having this retroactive legislation?

HON. S. USKIW: I am advised that no, because MPIC had their provisions in place as of that date that that problem would not arise. We're merely updating our act to conform and not to be in conflict with MPIC.

MR. D. ORCHARD: Okay, then if I understand the Minister there's nothing being made retroactive here that wasn't already being enforced on another act which had precedence over this act.

HON. S. USKIW: That's my understanding, Mr. Chairman.

MR. CHAIRMAN: Page 9—pass; Preamble—pass; Title—pass; Bill be reported—pass.

The hour is 12:30, time for committee to rise.