



Third Session - Thirty-Seventh Legislature
of the
Legislative Assembly of Manitoba
Standing Committee
on
Law Amendments

Chairperson
Mr. Doug Martindale
Constituency of Burrows



Vol. LII No. 14 - 11:20 p.m., Thursday, August 8, 2002

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Seventh Legislature

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LEGISLATIVE ASSEMBLY OF MANITOBA
THE STANDING COMMITTEE ON LAW AMENDMENTS

Thursday, August 8, 2002

TIME – 11:20 p.m.

LOCATION – Winnipeg, Manitoba

**CHAIRPERSON – Mr. Doug Martindale
(Burrows)**

**VICE-CHAIRPERSON – Ms. Marianne
Cerilli (Radisson)**

ATTENDANCE - 11 – QUORUM - 6

Members of the Committee present:

Hon. Mr. Lathlin, Hon. Ms. Mihychuk, Hon.
Mr. Sale

Ms. Cerilli, Messrs. Cummings, Jennissen,
Martindale

Substitutions:

Hon. Mr. Selinger for Hon. Mr. Chomiak
Mr. Loewen for Mrs. Driedger
Mr. Jack Penner for Mr. Enns
Mr. Hawranik for Mr. Jim Penner

MATTERS UNDER CONSIDERATION:

Bill 41–The Manitoba Hydro Amendment
Act

Bill 49–The Purchase of Winnipeg Hydro
Act

Mr. Chairperson: The Committee on Law Amendments will please come to order.

This evening, the committee will be considering the following bills: Bill 41, The Manitoba Hydro Amendment Act; Bill 49, The Purchase of Winnipeg Hydro Act.

Mr. Glen Cummings (Ste. Rose): With the leave of the committee, I would like to make the

following membership substitutions effective immediately for the Standing Committee on Law Amendments: Fort Whyte (Mr. Loewen) for Charleswood (Mrs. Driedger); Emerson (Mr. Jack Penner) for Lakeside (Mr. Enns); and Lac du Bonnet (Mr. Hawranik) for Steinbach (Mr. Jim Penner).

Mr. Chairperson: Is there leave of the committee to substitute Mr. Loewen for Mrs. Driedger; Mr. Jack Penner for Mr. Enns; Mr. Hawranik for Mr. Jim Penner? *[Agreed]*

Mr. Gerard Jennissen (Flin Flon): Mr. Chair, with leave of the committee, I would like to make the following membership substitutions effective immediately for the Standing Committee on Law Amendments: St. Boniface (Mr. Selinger) for Kildonan (Mr. Chomiak).

Mr. Chairperson: Is there leave of the committee to substitute St. Boniface for Kildonan? *[Agreed]*

Is it the will of the committee to proceed with clause-by-clause consideration of these two bills, and, if yes, in what order, 41 and 49? *[Agreed]*

Bill 41–The Manitoba Hydro Amendment Act

Mr. Chairperson: Does the minister responsible for Bill 41 have an opening statement?

Hon. Greg Selinger (Minister charged with the administration of The Manitoba Hydro Act): No.

Mr. Chairperson: We thank the minister.

Mr. Selinger: I just would like to catch the eye of the Member for Fort Whyte (Mr. Loewen), and my answer would be I will not if he will not.

Mr. Chairperson: The minister has taken his opportunity, so now I will ask the critic for the Official Opposition. Do you have an opening statement?

Mr. John Loewen (Fort Whyte): Yes, I do.

I just want to indicate on the record, one more time, that we are strongly opposed to this Bill 41. In particular, we draw the minister's attention to the submissions that were made by the Manitoba Society of Seniors, as well as the Consumers' Association of Canada, the Manitoba arm of that association.

I think it was very appropriate when they spoke during committee that they brought up, again, the issue of the testimony at the Public Utilities Board, and the fact that it was confirmed there that Manitoba Hydro not only does not have \$288 million to pay to the Government of Manitoba, but, in fact, they will have to go and borrow, and the total cost will be \$564 million; as well as the recommendations that this and other issues should go to the Public Utilities Board before they are finalized, and that will be it, and we can proceed with the bill.

Mr. Chairperson: We thank the member.

During the consideration of a bill, the preamble, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, the Chair will call clauses in blocks that conform to pages. Is that agreed? *[Agreed]*

Mr. Chairperson: Clause 1—pass, on division; clauses 2(1) to 3—pass, on division; preamble—

Mr. Loewen: I do have an amendment to the preamble. My understanding is that the preamble may be amended to clarify it. I move

THAT the preamble be amended by replacing the second paragraph with the following:

AND WHEREAS the Province of Manitoba faces fiscal challenges;

Mr. Chairperson: The amendment is in order.

It has been moved by Mr. Loewen

THAT the preamble be amended by replacing the second paragraph with the following:

AND WHEREAS the Province of Manitoba faces fiscal challenges;

Motion presented.

Mr. Loewen: As I indicated in my speaking to this bill on second reading in the House, I find it particularly offensive that this bill refers in any way to the acts of terrorism on September 11. I do not feel that is appropriate for this bill. Certainly the Government has fiscal challenges, and as a result of those fiscal challenges, they have decided that they need to draw funds from Manitoba Hydro.

I do think it is misguided to put in legislation that we are going to be in the annals of history of this province that, somehow, this draw from Manitoba Hydro will be justified on the basis of the unfortunate and atrocious actions that we all witnessed on September 11.

Furthermore, it is a disservice to the individuals whose lives were lost and to their families, loved ones and friends who survived that incident to have this type of wording in legislation that will be forever on the books of the province of Manitoba.

I am asking that the committee give some serious consideration to that and agree to pass this amendment. I would also indicate if, for some reason, the minister wants to amend this somewhat on the basis of leaving out any reference to September 11, then we would accept that on his behalf as well.

Mr. Chairperson: The question before the committee is shall the amendment pass.

Some Honourable Members: No.

Some Honourable Members: Yes.

* (23:30)

Voice Vote

Mr. Chairperson: All those in favour of the amendment, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

Mr. Loewen: On division.

Mr. Chairperson: On division.

* * *

Mr. Chairperson: Preamble—pass.

Some Honourable Members: On division.

Mr. Chairperson: On division.

Enacting clause—pass; title—pass. Bill be reported, on division.

Bill 49—The Purchase of Winnipeg Hydro Act

Mr. Chairperson: The next bill is Bill 49. Does the minister responsible for Bill 49 have an opening statement?

Hon. Greg Selinger (Minister charged with the administration of The Manitoba Hydro Act): No.

Mr. Chairperson: Does the critic for the Official Opposition have an opening statement?

Mr. John Loewen (Fort Whyte): Again, I wanted to indicate, as I did in speaking to this bill on second reading, that while we are not opposed in principle to the purchase of Winnipeg Hydro by Manitoba Hydro, we are deeply disturbed at the lack of process that the Government is following on this issue, again, as we heard from a number of presenters at committee today.

Again, the Consumers' Association and the Manitoba Society of Seniors, very concerned that the details will not be taken to the Manitoba

Public Utilities Board, which is required, under The Public Utilities Board Act, and that, as a result of that, nobody will really have an opportunity to look behind the deal, to look at the details of the deal to see if it is in the best interests of the city or in the best interests of the ratepayers of Manitoba Hydro.

So, on that basis, we are certainly opposed to some of the consequential amendments of this bill, and we will be bringing forward an amendment to that, but, again, I would urge the minister to listen carefully to the advice that he got today from those who took the time to come here and present this information to us. Prior to the closing of this transaction, I would encourage him to take this to the Public Utilities Board in the spirit of openness, and allow the Public Utilities Board to do what is required by the act and undertake to have a full and complete review of the purchase and sale agreement, prior to closing, so that everybody can be satisfied that (a) it is a financially responsible deal; and (b) understand completely the ramifications going forward that this purchase will have.

It is in the Government's best interests. It is in the best interests of the citizens of Winnipeg who are served by Winnipeg Hydro. It is in the best interests of the ratepayers. The only people who gain by eliminating the due process, as required by The Public Utilities Board Act now, is really the Government of Manitoba. I appreciate it can be a onerous job for the officials at Manitoba Hydro to go to the Public Utilities Board and explain all of this. But it is I think very critical that the Public Utilities Board gets an opportunity to examine the purchase and sale agreement and the ramifications, thereof, in detail.

So I will be moving an amendment under that section. I would hope the minister would pay serious attention to the presentations that he heard today.

Mr. Chairperson: We thank the member.

During the consideration of a bill, the preamble, the enacting clause and the title are postponed until all other clauses have been considered in their proper order. Also, if there is agreement from the committee, I will call

clauses in blocks that conform to pages. Agreed?
[Agreed]

In case anyone is disappointed that I am reading more slowly than usual, it is necessary because the script has not been proofread.

Clauses 1 to 3(1)—pass, on division; clauses 3(2) to 3(4)—pass, on division; clauses 4 to 5(2)—pass, on division; clauses 5(3) to 6(2)—pass, on division; clauses 7 to 8(2)—pass, on division; clauses 8(3) to 8(5)—pass, on division; clauses 9(1) to 9(5)—pass, on division. Clauses 9(6) to 10(2).

Mr. Selinger: Yes. I have a modest and slight amendment to 9(6). 9(6) adds two subsections. They are being distributed.

Okay. Everybody should have a copy of the amendment now. I move

THAT the proposed subsection 43(2.3) as set out in 9(6) of the Bill be amended by adding "or an office building" at the end.

Mr. Chairperson: The amendment is in order. It has been moved by the honourable Mr. Selinger that the proposed—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Motion presented.

Mr. Selinger: Yes, my motion amends the second subsection. The amendment will clarify that Manitoba Hydro will also continue to be liable for local improvement taxes levied on its land that is used for an office building.

Mr. Chairperson: The question before the committee is: Shall the amendment pass?

Some Honourable Members: Pass.

Mr. Chairperson: The amendment is accordingly passed.

Clause 9(6) as amended—pass. Clause 10(1).

Some Honourable Members: Pass.

Some Honourable Members: No.

Mr. Chairperson: Okay. Let us do 10(1).

Clause 10(1)—pass. Clause 10(2).

Mr. Loewen: Mr. Chairperson, I do have an amendment presently being distributed, and, once again, I would reiterate our position that although we are not opposed to a purchase of Winnipeg Hydro by Manitoba Hydro, we do feel strongly that it is in the best interests of—

Mr. Chairperson: Excuse me, Mr. Loewen. I would like you to read your amendment first, and then you can speak to it. Please proceed.

Mr. Loewen: Thank you. I move

THAT the proposed subsection 82(3)(1), as set out in subsection 10(2) of the Bill, be replaced with the following:

Where clause 1(h) applies

82(3.1) For greater certainty, clause (1)(h) applies to the sale of the city's electrical utility to Manitoba Hydro as approved by *The Purchase of Winnipeg Hydro Act*.

Mr. Chairperson: The amendment is in order.

It has been moved by Mr. Loewen that the proposed subsection—

An Honourable Member: Dispense.

Mr. Chairperson: Dispense.

Mr. Loewen: Mr. Chairperson, again, as I indicated, whereby we are not opposed in principle to the purchase of Winnipeg Hydro by Manitoba Hydro, we do think it very important that due process be followed. The Public Utilities Act under section 82 requires that any sale of a public utility go before the Public Utilities Board, and that would be the case with this purchase and sale agreement had the Government not purposely chosen to enact a consequential amendment which would exclude it from following The Public Utilities Board Act.

Once again, I think the Government is out of line and has shown time and time again that they are unwilling to follow due process in these particular matters, and unwilling to undertake to

go through the proper scrutiny that only the Public Utilities Board is available to give in these instances. This is a government that talks about openness. The Finance Minister and the Minister responsible for Hydro (Mr. Selinger) have spoken a number of times in the House about their desire to provide open government and to provide Manitobans with all the facts.

We all know that without scrutiny by the Public Utilities Board, there is information behind the scenes that we will not get access to. In particular, we know from public statements by the mayor of the city of Winnipeg, who, during his election campaign, was opposed to the sale and indicated quite strongly that there was a significant requirement for capital expenditures on behalf of Winnipeg Hydro to bring the plant and operations up to speed.

The purchase and sale agreement has no indication of what the number is in terms of the capital expenditures that will be required to be made by Manitoba Hydro after the closing of this sale. We have no idea with regard to the hurdle rate that has been set as to whether this is, in fact, a fair price and a price that reflects true economic value, or, whether, as I indicated in my speaking to in second reading, that there could very easily be behind-the-scene deals going on here that the Government is forcing Manitoba Hydro to accept.

* (23:40)

We have no idea why the Government and Manitoba Hydro would accept the imposition of being forced to build an office building. While we agree that it is in everyone's best interests that a proper planning process be undertaken, and that it would be a good idea for Manitoba Hydro to build a new office tower in downtown, they indicated as much as two years ago that they were looking very closely at a site that they own at Kenaston and Wilkes, and so we have no idea—*[interjection]* I can understand why they would not proceed with that plan, given this Government's reluctance to do the proper thing and provide for—

But in any event, it really comes back to an economic issue, and, as we said, Manitoba Hydro indicated that, at that time, from an

economic perspective in terms of operating their company, their best-case scenario was to build a building at Kenaston and Wilkes.

Now, they have been through this purchase and sale agreement, are agreeing to build a building downtown. We are not sure and we will never understand what the economic ramifications are, and if, in fact, the result of Manitoba Hydro changing their decision from building at Kenaston and Wilkes to building downtown has an economic cost. That is a cost that will ultimately have to be passed on to the ratepayers.

Similarly, if there is some other deal that has been cut so that the City of Winnipeg would maybe get a little more than is economically beneficial in order that they trade off and the mayor backs off on his position that the Eatons building will never be torn down to construct an arena, these are issues that we are unable to judge because the information is being held secret by this Government. As we have seen with the recent hearings which were just a five-year review, there is lots of information behind the scenes that needs to be understood in order to ensure that there is not an abuse of power, either by the Government or by the monopoly of Manitoba Hydro.

So we do think it is important that, prior to this agreement, the purchase and sale agreement closing, that the Public Utilities Board be convened and that The Public Utilities Board Act be followed as it has been laid out, and that the Public Utilities Board has a full review of the economic ramifications of the particular details of this purchase and sale agreement.

So, again, we would ask that the minister follow the advice that he was given during the committee presentations this morning. I would emphasize that the groups that came forward that are, in fact, true third-party interest groups who spend time at the PUB, have a long history of attending the Public Utilities Board and presenting their case and quizzing the officials of Manitoba Hydro, to get behind the facts, that the minister pay attention to their request. Prior to allowing this deal to close, they do what they say they are willing to do, that is, to have a full, open and public process and put this matter before the Public Utilities Board.

Mr. Selinger: Just briefly, on the amendment, I recommend that we do not support the amendment. But I want to explain to the members at the table that Manitoba Hydro is exempt from The Public Utilities Board Act, pursuant to section 2(5) of the PUB act and is only required to go to the Public Utilities Board for rate reviews, as provided under section 26 of The Crown Corporations Public Review and Accountability Act.

The City of Winnipeg, as the seller, enjoys no such exemption. This clause in here allows the City not to have to go to the Public Utilities Board as part of their transaction to sell Winnipeg Hydro to Manitoba Hydro.

Mr. Loewen: Once again, the minister is right in his statement, but that does not justify excluding the Public Utilities Board from having a full review of this transaction.

I would just ask the minister to, again, do as he has been advised by both the Consumers' Association of Manitoba and the Manitoba Society of Seniors, to take this issue to the Public Utilities Board, and to do what is presently required by law on behalf of Winnipeg Hydro and the citizens of Winnipeg and the ratepayers of Manitoba Hydro.

Mr. Chairperson: The question before the committee is: Shall the amendment pass?

Some Honourable Members: No.

Some Honourable Members: Yes.

Voice Vote

Mr. Chairperson: All those in favour of passing the amendment, say yea.

Some Honourable Members: Yea.

Mr. Chairperson: All those opposed, say nay.

Some Honourable Members: Nay.

Mr. Chairperson: In my opinion, the Nays have it.

The amendment is accordingly defeated.

* * *

Mr. Chairperson: Clause 10(2)–pass; clauses 10(3) to 11(5)–pass.

Mr. Loewen: Once again, we believe that in understanding that the minister will not agree to the amendment that has been brought forward with regard to section 10(2), we want to, again, stress for the record that this clause 10(3) allows an exception to The Public Utilities Board Act, which we do not feel is appropriate.

Once again, we call on the minister to take the purchase and sale agreement to the Public Utilities Board before allowing it to close.

Mr. Chairperson: Clauses 10(3) to 11(5)–pass, on division; clauses 11(6) to 11(14)–pass, on division; clauses 11(15) to 11(17)–pass, on division; clauses 11(18) to 12(2)–pass, on division; preamble–pass, on division.

Mr. Jack Penner (Emerson): Mr. Chairman, this has implications for not only the City of Winnipeg, this has implications for Manitoba Hydro and their economic viability and long-term development plan. As we have said, we do not oppose the purchase of Winnipeg Hydro by Manitoba Hydro.

However, there is clearly a political agenda at work here, and we believe that the establishment of job opportunities in downtown Winnipeg would far exceed what is currently being contemplated by the Province of Manitoba and downtown Winnipeg. The T. Eaton site would, in our view, be an absolute economic advantage, not only to the City of Winnipeg, but in general to Manitobans in the development of hydro facilities and job creation in downtown Winnipeg.

We think that the Province of Manitoba is making a significant mistake in enacting this bill, and we believe that rural Manitobans as well as urban Manitobans are going to, in the long term, regret the establishment of economic opportunity for downtown Winnipeg in passing this bill, and I think the Government of

Manitoba needs to sincerely rethink its position on this matter.

* (23:50)

Mr. Chairperson: Enacting clause—pass; title—pass.

Bill as amended be reported, on division.

What is the will of the committee?

Some Honourable Members: Committee rise.

Mr. Chairperson: Committee rise.

COMMITTEE ROSE AT: 11:51 p.m.