



LEGISLATIVE ASSEMBLY OF MANITOBA

VOTES AND PROCEEDINGS No. 62

THIRD SESSION, THIRTY-EIGHTH LEGISLATURE

PRAYERS

1:30 O'CLOCK P.M.

The following petitions were presented and read:

Mr. SCHULER – Legislative Assembly of Manitoba to request the Provincial Government to consider providing East St. Paul with local ambulance service which would service both East and West St. Paul and to consider improving the way that ambulance service is supplied to all Manitoba's by utilizing technologies such as GPS in conjunction with a Medical Transportation Co-ordination Center (MTCC) which will ensure that patients receive the nearest ambulance in the least amount of time and to consider ensuring that appropriate funding is provided to maintain superior response times and sustainable services. (K. Scott, J. Scott, E. Benesocky and others)

Mrs. STEFANSON – Legislative Assembly of Manitoba to request the Premier of Manitoba to consider accepting that the funding and delivery of public education is exclusively a provincial responsibility and to consider eliminating the Education Support Levy and Special Levy from all residential property and farmland in Manitoba. (R. Rogers, R. Nowell, R. Leninson)

Mr. MAGUIRE – Legislative Assembly of Manitoba to request the Provincial Government to consider funding the PAA to ensure that we receive a reasonable COLA, and that any loss of purchasing power we will face will be minor. (A. McAulay, B. Cochrane, D. Wilson and others)

Mr. LAMOUREUX – Legislative Assembly of Manitoba to request the Legislative Assembly of Manitoba to consider the need to seek clarification on why the Government did not act on fixing the Crocus fund back in 2001. (J. Olea, M. Santos, R. San Juan and others)

Mrs. MITCHELSON – Legislative Assembly of Manitoba to request that the Minister Responsible for Manitoba Hydro and the Government of Manitoba consider ensuring an informed, appropriate and fair Wuskwatim Project Development Agreement (PDA) Referendum vote, and a vote overseen by an Independent Qualified Third Party such as Elections Manitoba. (S. Spence Sr., L. McIves, S. McDonald and others)

Hon. Mr. ASHTON, the Minister of Water Stewardship made a statement regarding the status of flooding in Southwestern Manitoba,

Mr. PENNER and, by leave, Hon. Mr. GERRARD commented on the statement.

Following Oral Questions, Mr. Speaker made the following ruling:

Following Oral Questions on Tuesday, June 7, 2005, the Honourable Member for River Heights raised a matter of privilege regarding answers to questions given by the Honourable Minister of Family Services and Housing. The Honourable Member for River Heights contended that the Honourable Minister of Family Services and Housing provided answers which were at odds with a newspaper article and with a letter that the Honourable Member had tabled concerning whether or not the former Minister of Family Services had been aware of problems at Hydra House in the spring of 2000. The Honourable Member for River Heights concluded his remarks by moving "THAT this matter be referred to the Committee on Legislative Affairs for consideration of disciplinary actions respecting the Minister of Child and Family Services, the Member for Riel." The Honourable Government House Leader and the Honourable Official Opposition Leader also offered advice to the Chair on the matter. I took the matter under advisement in order to consult the procedural authorities.

I thank all Members for their advice to the Chair on this matter.

There are two conditions that must be satisfied in order for the matter raised to be ruled in order as a prima facie case of privilege. First, was the issue raised at the earliest opportunity, and second, has sufficient evidence been provided to demonstrate that the privileges of the House have been breached, in order to warrant putting the matter to the House.

Concerning the first condition, the Honourable Member for River Heights asserted that he was raising the matter at the earliest opportunity, and I accept the word of the Honourable Member.

Regarding the second condition, whether there is sufficient evidence that the privileges of the House have been breached, it is important to determine whether parliamentary privilege has been breached in the actions complained.

Joseph Maingot, in the second edition of *Parliamentary Privilege in Canada* advises on page 241 that to allege that a Member has misled the House is a matter of order rather than privilege. In addition, it has been ruled by Speakers in Manitoba that the Member raising the matter of privilege must furnish proof of intent. Speaker Phillips ruled so in 1987, while Speaker Rocan made similar rulings 7 times between 1988 and 1995. Speaker Dacquay made 9 such rulings between 1995 and 1999. In a ruling that she gave on April 20, 1999, she advised that short of a Member acknowledging to the House that he or she deliberately and with intent set out to mislead, it is virtually impossible to prove that a Member has deliberately misled the House. Similarly, Deputy Speaker Santos made one ruling finding no proof of intentional misleading in 2001, while as Speaker; I have made six such rulings during the period 1999 to 2005. I have looked very carefully at the responses given by the Honourable Minister of Family Services and Housing, and could find no admission of intent to deliberately mislead the House.

In addition, Beauchesne citation 494 states "It has been formally ruled by Speakers that statements by Members respecting themselves and particularly within their own knowledge must be accepted. It is not unparliamentary temperately to criticize statements made by Members as being contrary to the facts; but no imputation of intentional falsehood is permissible. On rare occasions this may result in the House having to accept two contradictory accounts of the same incident." This citation is supported by two rulings from Speaker Rocan and by four rulings from Speaker Dacquay.

Also, as I ruled in the House on April 29 of last year, in a comparable situation, where a matter of privilege was raised in the Canadian House of Commons concerning whether a response given by the President of the Treasury Board was false in comparison with other available information, Speaker Milliken ruled on February 19, 2004 that it is not the Speaker's role to adjudicate on matters of fact.

Although this issue is one that is of obvious importance and significance to many Members in the House, with the greatest of respect, I must rule on the basis of the procedural authorities and on the basis of rulings from previous Manitoba Speakers, there is no prima facie case of privilege.

Pursuant to Rule 26(1), Mr. AGLUGUB, Mrs. ROWAT, Messrs. SWAN, FAURSCHOU and MARTINDALE made Members' Statements.

Prior to Orders of the Day, Mr. DERKACH rose on a Matter of Urgent Public Importance and moved:

THAT under Rule 36(1) I am hereby filing advance notice with you that today I intend to raise a matter of public importance on the following topic: the hardship being faced by rural communities, farm families, and Agri-Manitoba as a result of the ongoing flooding crisis in the Province of Manitoba.

And Mr. DERKACH, Hon. Mr. MACKINTOSH and, by leave, Hon. Mr. GERRARD having spoken to the urgency of the motion,

WHEREUPON Mr. Speaker ruled as follows:

I thank the Honourable Members for their advice to the Chair on whether the motion proposed by the Honourable Member for Russell should be debated today. The notice required by Rule 36(1) was provided. Under our Rules and Practices, the subject matter requiring urgent consideration must be so pressing that the public interest will suffer if the matter is not given immediate attention. There must also be no other reasonable opportunities to raise the matter.

I do not doubt that this matter is one that is of serious concern to a number of Members in the House, and to some members of the public, notably those in rural and agricultural communities.

I have listened very carefully to the arguments put forward, however I was not persuaded that the ordinary business of the House should be set aside to deal with this issue today. Although Members believe this issue to be a serious one, I do not believe that the public interest will be harmed if the business of the House is not set aside to debate the motion today.

Additionally, I would like to note that there are other avenues for Members to raise this issue, including questions in Question Period, and raising the item during consideration of the concurrence motion in Supply.

Therefore, with the greatest of respect, I must rule that this matter does not meet the criteria set by our Rules and Precedents and I rule the motion out of order as a Matter of Urgent Public Importance, but seeing the willingness of the House to debate this motion today, I will allow it. Seeing there is an agreement by the House to debate this matter today, I respect the wish of the House and I will allow the debate to begin.

Mr. Speaker then put the Question, "Shall the debate proceed?" It was agreed to.

And a debate arising,

And Mr. EICHLER, Hon. Ms. WOWCHUK, Mr. MURRAY, Hon. Mr. SMITH, Mr. CUMMINGS, Hon. Mr. ASHTON, Messrs. PENNER and NEVAKSHONOFF, Mrs. ROWAT, Mr. MAGUIRE, Hon. Mr. GERRARD, Mrs. TAILLIEU, Messrs. SCHULER, GOERTZEN and DYCK having spoken.

The debate was terminated in accordance with Rule 36(6).

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 33) – The Planning Act/Loi sur l'aménagement du territoire, reported from the Standing Committee on Legislative Affairs:

Hon. Mr. GERRARD moved:

THAT Bill 33 be amended in Clause 107(1)

(a) in the part of clause (b) before subclause (i), by striking out "both" and substituting "more"; and

(b) by adding the following after subclause (b)(ii):

(iii) requiring that, if manure from the operation is applied to land, it must be incorporated into the soil by injection;

And a debate arising,

And Hon. Mr. GERRARD having spoken,

And the Question being put on the amendment. It was negatived.

Hon. Mr. GERRARD then moved:

THAT Bill 33 be amended in Clause 116(2)

(a) in the part of clause (c) before subclause (i), by striking out "both" and substituting "more"; and

(b) by adding the following after subclause (c)(ii):

(iii) requiring that, if manure from the operation is applied to land, it must be incorporated

And a debate arising,

And Hon. Mr. GERRARD having spoken,

And the Question being put on the amendment. It was negatived.

By leave, Hon. Mr. GERRARD then moved:

THAT Bill 33 be amended by renumbering Clause 112 as Clause 112(1) and adding the following as Clauses 112(2) and (3):

Application must be available for inspection

112(2) After complying with subsection (1), the board, council or planning commission must

(a) without delay, make the application and all supporting material available for inspection and copying at the office of the applicable planning district or municipality; and

(b) keep the application and supporting material available until a final order respecting the application is made under section 116.

Applicant must give notice of application

112(3) Without delay after filing the application, the applicant must

(a) publish a notice of the application in one issue of a newspaper with a general circulation in the planning district or municipality or, when there is no newspaper with a general circulation in the area, post the notice in the office of the planning district or municipality and at least two other public places in the district or municipality; and

(b) post a copy of the notice on the affected property in accordance with section 170.

And a debate arising,

And Hon. Mr. GERRARD having spoken,

And the Question being put on the amendment. It was negatived.

By leave, Hon. Mr. GERRARD then moved:

THAT Bill 33 be amended by adding the following after Clause 113(4):

Period for public comments

113(4.1) After receiving the minister's referral, the Technical Review Committee must, before preparing the report, allow a period of three weeks for interested persons to comment about the application. During that period, any person may comment about the application by sending the comment in writing to the office at which the application is available for inspection.

Comments must be forwarded to T.R.C.

113(4.2) Promptly after receiving a comment under subsection (4.1), the board, council or planning commission must forward the comment to the Technical Review Committee.

And a debate arising,

And Hon. Mr. GERRARD having spoken,

And the Question being put on the amendment. It was negatived.

Mr. MAGUIRE then moved:

THAT Bill 33 be amended in Clause 47(1) by striking out "As soon as practicable" and substituting "Within 14 days".

And a debate arising,

And Mr. MAGUIRE and Hon. Mr. SMITH having spoken,

And the Question being put on the amendment. It was negatived.

Mr. MAGUIRE then moved:

THAT Bill 33 be amended by replacing Clause 51(3) with the following:

Decision and notice of decision within 60 days

51(3) After receiving copies of the development plan by-law and any objections to it, and if it has been referred to the Municipal Board, the Municipal Board's recommendations, the minister must, within 60 days

- (a) decide whether to approve it, with or without alterations or conditions, or reject it; and
- (b) provide the board or council with written notice of his or her decision.

And a debate arising,

And Mr. MAGUIRE and Hon. Mr. SMITH having spoken,

And the Question being put on the amendment. It was negatived.

Mr. MAGUIRE then moved:

THAT Bill 33 be amended by replacing Clause 89(2) with the following:

Destroyed or damaged non-conforming building

89(2) For certainty, if a building that does not conform with a zoning by-law is damaged or destroyed, it may be reconstructed provided the reconstruction does not increase the non-conformity.

And a debate arising,

And Mr. MAGUIRE and Hon. Mr. SMITH having spoken,

And the Question being put on the amendment. It was negatived.

Mr. MAGUIRE then moved:

THAT Bill 33 be amended by adding the following after Clause 113(1):

Chair from Department of Agriculture, Food and Rural Initiatives

113(1.1) Each Technical Review Committee appointed under subsection (1) must be chaired by an employee of the Department of Agriculture, Food and Rural Initiatives.

And a debate arising,

And Mr. MAGUIRE and Hon. Mr. SMITH having spoken,

And the Question being put on the amendment. It was negatived.

Mr. MAGUIRE then moved:

THAT Bill 33 be amended by replacing Clause 116(2) with the following:

Conditions on livestock operations

116(2) A condition may be imposed on the approval of an application under this Division only if it is relevant and reasonable to

- (a) implement a recommendation made by the relevant Technical Review Committee;
- (b) reduce odours from the livestock operation by requiring covers on manure storage facilities or shelter belts be established, or both; or
- (c) control traffic or the timing of construction of any proposed building, or both.

Development agreement

116(2.1) For the purpose of clause (1)(c), the owner of the affected property may be required to enter into a development agreement dealing with the affected property and any contiguous land owned or leased by the owner.

And a debate arising,

And Mr. MAGUIRE having spoken,

And the Question being put on the amendment. It was negatived.

Mr. MAGUIRE then moved:

THAT Bill 33 be amended by adding the following after Clause 116(4):

Written reasons for rejection

116(5) If an application is rejected under clause (1)(a), the board, council or planning commission must ensure that the reasons for the rejection are summarized and included with the copy of its order sent under section 117.

And a debate arising,

And Mr. MAGUIRE and Hon. Mr. SMITH having spoken,

And the Question being put on the amendment. It was negatived.

Mr. MAGUIRE then moved:

THAT Bill 33 be amended by adding the following after Clause 193(2):

Consultations required

193(3) In order for a regulation under this section to be valid,

(a) at least 60 days before it is made the minister must make a draft of it available to the public; and

(b) the minister must consult on its content with representatives of the agricultural community and the affected boards and councils.

And a debate arising,

And Mr. MAGUIRE and Hon. Mr. SMITH having spoken,

And the Question being put on the amendment. It was negatived.

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 48) – The Teachers' Pensions Amendment Act/Loi modifiant la Loi sur la pension de retraite des enseignants, reported from the Standing Committee on Human Resources:

Mrs. DRIEDGER moved:

THAT Bill 48 be amended by adding the following after Clause 1:

Advisory committee on COLA

*1.1(1) Within two months after this Act comes into force, the minister responsible for the administration of **The Teachers' Pensions Act** must establish an advisory committee that consists of*

(a) two members nominated by The Manitoba Teachers' Society;

(b) two members nominated by the Retired Teachers Association of Manitoba Inc.;

(c) two members appointed by the minister; and

(d) one independent member, with pension and investment expertise, nominated by the other members of the committee.

Role of committee

1.1(2) The role of the committee is to make recommendations to the minister as to the steps that should be taken to ensure the long-term capacity of the Teachers' Retirement Allowances Fund to provide reasonable cost of living adjustments to the pension for retired teachers.

Committee to report by January 30, 2006

1.1(3) The committee must report its recommendations to the minister on or before January 30, 2006.

Report to be tabled in Assembly

1.1(4) The minister must table a copy of the committee's report in the Assembly within 10 days after receiving it if the Assembly is sitting or, if it is not, within 10 days after the next sitting begins.

And a debate arising,

And Mrs. DRIEDGER, Hon. Messrs. BJORNSON and GERRARD having spoken,

And the Question being put. It was negated, on the following division:

YEA

CULLEN	LOEWEN
CUMMINGS	MAGUIRE
DERKACH	MITCHELSON
DRIEDGER	MURRAY
DYCK	PENNER
EICHLER	REIMER
FAURSCHOU	ROCAN
GERRARD	ROWAT
GOERTZEN	SCHULER
HAWRANIK	STEFANSON
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NAY

AGLUGUB	MCGIFFORD
ALLAN	MELNICK
ALTEMEYER	NEVAKSHONOFF
ASHTON	OSWALD
BJORNSON	REID
BRICK	ROBINSON
CHOMIAK	RONDEAU
DEWAR	SALE
IRVIN-ROSS	SANTOS
JENNISSON	SHELLENBERG
JHA	SELINGER
KORZENIOWSKI	SMITH
LEMIEUX	STRUTHERS
MACKINTOSH	SWAN
MALOWAY	WOWCHUK..... 31
MARTINDALE	

By leave, the Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 51) – The Labour-Sponsored Investment Funds Act (Various Acts Amended)/Loi sur les fonds de placement des travailleurs (modification de diverses dispositions législatives), as amended and reported from the Standing Committee on Legislative Affairs:

Hon. Mr. GERRARD moved:

THAT Bill 51 be amended

*(a) in the proposed clause 4(1)(c) of **The Crocus Investment Fund Act**, as set out in Clause 6(1)(c),*

(i) by striking out "½ of the" and substituting "two", and

(i) by striking out "four" and substituting "six"; and

*(b) in the part of the proposed clause 4.1(2) of **The Labour-Sponsored Venture Capital Corporations Act** before clause (a), as set out in Clause 15, by adding ", other than the Crocus Investment Fund," after "venture capital corporation".*

And a debate arising,

And Hon. Mr. GERRARD and Mr. LOEWEN having spoken,

And the Question being put on the amendment. It was negatived.

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 22) – The Water Protection Act/Loi sur la protection des eaux, reported from the Standing Committee on Social and Economic Development, the House resumed the Adjourned Debate on the Proposed Amendment (as amended) of Hon. Mr. ASHTON:

THAT Bill 22 be amended by adding the following after Clause 33 as part of Part 4:

Transitional orders re existing operations

33.1(1) A regulation made under Part 2 other than section 7, or under any of clauses 33(1)(a) to (d), may provide that an owner or operator of a commercial or agricultural operation affected by the regulation may apply to a director for an order

(a) specifying a transitional plan by which the applicant may, over a specified period, come into compliance with the regulation; and

(b) exempting the applicant from the application of all or part of the regulation for that period, or any part of it.

Requirements of regulation

33.1(2) Where a regulation provides the right to apply for an order as described in subsection (1), the regulation must also provide

- (a) that a director may issue an order only if he or she is satisfied that
 - (i) the applicant will suffer serious economic hardship unless an order is issued, and
 - (ii) issuing an order will not result in activities that
 - (A) present or may present an unacceptable risk of significant harm to water or an aquatic ecosystem, or
 - (B) place a drinking water source or public health at risk;
- (b) that an order may be subject to terms and conditions;
- (c) a process for appealing, to the minister,
 - (i) a director's decision whether to issue an order; and
 - (ii) a provision, term or condition of an order; and
- (d) a process for varying an order, on the application of the government or the person subject to the order, if there has been a change in circumstances.

And the debate continuing,

And leave having been denied to have the matter remain in the name of Mr. DERKACH,

And the Question being put on the amendment. It was agreed to.

By unanimous consent, Mr. PENNER withdrew his Proposed Report Stage Amendments to the preamble, clauses 1(1), 11(1) and 11(2) to Bill (No. 22).

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 22) – The Water Protection Act/Loi sur la protection des eaux, reported from the Standing Committee on Social and Economic Development,

By leave, Hon. Mr. ASHTON moved:

THAT Bill 22 be amended in the preamble by adding the following after the fourth paragraph:

AND WHEREAS Manitobans recognize that many human activities, including the use and consumption of water for all purposes, the production of waste and wastewater effluent, and industrial, agricultural and recreational activities, may impair the quality and quantity of our water resources, and that stewardship of these invaluable resources is a responsibility shared by all;

And a debate arising,

And Hon. Mr. ASHTON having spoken,

And the Question being put on the amendment. It was agreed to.

By leave, Hon. Mr. ASHTON then moved:

THAT Bill 22 be amended in Clause 1(1) by replacing the definition "nutrient" with the following:

"nutrient" means any substance that provides nourishment and promotes growth of aquatic organisms when transmitted to water. (« nutriant »)

And a debate arising,

And Hon. Mr. ASHTON having spoken,

And the Question being put on the amendment. It was agreed to.

By leave, Hon. Mr. ASHTON then moved:

THAT Bill 22 be amended in Clause 11(1)(b)(vi), by adding ", including measures to ensure persons in the watershed have access to clean potable water" after "water".

And a debate arising,

And Hon. Mr. ASHTON having spoken,

And the Question being put on the amendment. It was agreed to.

By leave, Hon. Mr. ASHTON then moved:

THAT Bill 22 be amended in Clause 11(1)(d) by adding ", recognizing the need to implement the plan with the assistance of individuals, groups, and organizations" after "evaluated".

And a debate arising,

And Hon. Mr. ASHTON having spoken,

And the Question being put on the amendment. It was agreed to.

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 22) – The Water Protection Act/Loi sur la protection des eaux, reported from the Standing Committee on Social and Economic Development, the House resumed the Adjourned Debate on the Proposed Amendment of Mr. PENNER:

THAT Bill 22 be amended by adding the following after Clause 33(1):

Scientific evidence must be considered

33(1.1) Before making a regulation under subsection (1), the Lieutenant Governor in Council must be satisfied by scientific evidence that the regulation is necessary and appropriate for the purpose for which it is made.

And the debate continuing,

And leave having been denied to have the matter remain in the name of Mr. SWAN,

And the Question being put on the amendment. It was negatived.

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 22) – The Water Protection Act/Loi sur la protection des eaux, reported from the Standing Committee on Social and Economic Development, the House resumed the Adjourned Debate on the Proposed Amendment of Mr. PENNER:

THAT Clause 34(4) of Bill 22 be amended in the part of the proposed subsection 10(3) before clause (a) by adding ", after scientific analysis," after "If".

And the debate continuing,

And leave having been denied to have the matter remain in the name of Mr. SWAN,

And the Question being put on the amendment. It was negatived.

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 22) – The Water Protection Act/Loi sur la protection des eaux, reported from the Standing Committee on Social and Economic Development, the House resumed the Adjourned Debate on the Proposed Amendment of Mr. PENNER:

THAT Clause 35(7) of Bill 22 be amended in the proposed subsection 14.1 by striking out "The minister" and substituting "Using scientific methods, the minister".

And the debate continuing,

And leave having been denied to have the matter remain in the name of Mr. DERKACH,

And the Question being put on the amendment. It was agreed to.

Monday, June 13, 2005

The Order of the Day having been read for consideration of Report Stage Amendment of Bill (No. 22) – The Water Protection Act/Loi sur la protection des eaux, reported from the Standing Committee on Social and Economic Development, the House resumed the Adjourned Debate on the Proposed Amendment of Mr. PENNER:

THAT Clause 35(8) of Bill 22 be amended in the proposed subsection 24(2) by striking out "may enter" and substituting "must enter".

And the debate continuing,

And leave having been denied to have the matter remain in the name of Mr. DEWAR,

And the Question being put on the amendment. It was negatived.

The House then adjourned at 5:40 p.m. until 1:30 p.m. Tuesday, June 14, 2005.

Hon. George HICKES,
Speaker.