

Standing Committee on
Economic Development
and Environment



Report on Bill 3: *An Act to Amend the Public Highways Act*

19th Northwest Territories Legislative Assembly

Chair: Mr. Jackie Jacobson

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ECONOMIC DEVELOPMENT AND ENVIRONMENT**

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March 1, 2021

SPEAKER OF THE LEGISLATIVE ASSEMBLY

Mr. Speaker:

Your Standing Committee on Economic Development and Environment is pleased to provide its *Report on Bill 3: An Act to Amend the Public Highways Act* and recommends it to the House.



Mr. Jackie Jacobson
Chair, Standing Committee on
Economic Development and Environment

**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

**REPORT ON BILL 3: AN ACT TO AMEND THE
PUBLIC HIGHWAYS ACT**

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**STANDING COMMITTEE ON
ECONOMIC DEVELOPMENT AND ENVIRONMENT**

**REPORT ON BILL 3: AN ACT TO AMEND THE
PUBLIC HIGHWAYS ACT**

INTRODUCTION

Bill 3, an Act to amend the Public Highways Act, clarifies the duty and liability of the Government of the Northwest Territories (GNWT) with respect to primary highways and an incident occurring on highways the GNWT does not construct, maintain or control.

On March 13, 2020 Bill 3 had its second reading in the house and was referred to Standing Committee on Environment and Economic Development. On June 23, 2020 Committee reviewed the proposed Bill. On August 25, 2020 and October 15, 2020 Committee's review of the Bill was extended.

PUBLIC ENGAGEMENT

On August 19, 2020 Committee invited comments on the proposed amendment from communities across the Northwest Territories, indigenous governments and businesses involved in the use and construction of roads.

Committee received one written submission from the City of Yellowknife (see Appendix 1). Committee thanks the City for the submission.

WHAT WE HEARD

Traffic Control Devices

The City of Yellowknife encouraged updates to the Bill to outline maintenance requirements and associated liabilities to ensure appropriate accountability.

Committee was also concerned the GNWT should clarify that it is liable for the presence, absence, and insufficiency of any traffic control device. Committee confirmed the Bill does not absolve the Minister from responsibility to maintain in a reasonable state of repair those traffic control devices the Minister has erected.

Maintenance Standards

The City of Yellowknife expressed concern regarding liability related to loss or damage as a result of government's failure to maintain public highways. The City suggested proposed amendments should require infrastructure installed as part of a primary highway be adequately maintained to protect public safety.

Committee confirmed the Department maintains highways in accordance with the following standards:

- The Highway Maintenance Manual;
- National Guidelines from the Transportation Association of Canada; and
- Guidelines for Safe Ice Condition Booklet

The Highways Maintenance Manual is the GNWT's standard of best practice. This manual is updated regularly. Committee requested and received commitment from the Minister to maintain the Highways Maintenance Manual to the Department of Infrastructure website.

The City also had concern as to whether shoulders and pull outs were considered part of primary highways, and Committee confirmed as such.

COMMITTEE CONCERNS

Scope of the Bill Exceeds Objectives of the Bill

Committee was concerned Bill 3 absolves the GNWT of responsibility for highways it controls but has not designated as primary highways under the Highway Designation and Classification Regulations.

Committee was also concerned the liability under the Act was more expansive than Bill 3.

The limitation of liability for primary highways has been addressed through Committee's motion providing no bar based on alleged failure to maintain.

PUBLIC HEARING

On October 14, 2020 the Department held a public hearing on Bill 3 with Committee, which was broadcast and recorded on the Legislative Assembly channel. Standing Committee and the Department discussed concerns related to: limitations of liability, highways under the control of the Commissioner not designated as primary highways and maintenance standards. Committee thanks the Minister and staff for appearing before Committee.

CLAUSE BY CLAUSE REVIEW

The clause-by-clause review of the bill was held February 10, 2021. Committee thanks the Honourable Minister Archie, and members of staff, for their appearance before Committee.

At this meeting Committee further raised concerns regarding the responsibility of the GNWT to maintain highways not designated as primary highways.

Committee's concern regarding the responsibility of the GNWT to maintain liability for primary highways was addressed in motion #1.

At this meeting Committee proposed four motions as set out in Appendix 2.

The Minister concurred with the motions.

CONCLUSION

Following the clause-by-clause review, a motion was carried to Report Bill 3: An Act to Amend the Public Highways Act, as amended and reprinted, as ready for consideration in Committee of the Whole.

This concludes the Standing Committee's review of Bill 3.

APPENDIX 1: WRITTEN SUBMISSION

City of Yellowknife Comments on Bill 3



CITY OF YELLOWKNIFE
OFFICE OF THE MAYOR

September 24, 2020

The Honourable Jackie Jacobson
Chair, Standing Committee on Economic Development & Environment
Legislative Assembly of the Northwest Territories
P.O. Box 1320
Yellowknife, NT X1A 2L9

Dear Mr. Chair,

RE: Bill 3 – *Public Highways Act*

The City of Yellowknife appreciates the opportunity to provide feedback to the Standing Committee on Economic Development and Environment regarding Bill 3, An Act to amend the *Public Highways Act*. The proposed act addresses Government liability for loss or damage resulting from a failure to maintain primary highways in the Northwest Territories.

As it is currently written, the proposed amendments will apply to primary highways designated by the Minister pursuant to the *Public Highways Act*. Currently, the *Public Highways Act* does not address liability related to loss or damage as a result of the territorial governments' failure to maintain public highways. The City of Yellowknife supports and encourages updates to this piece of legislation that will outline maintenance requirements and associated liabilities to ensure appropriate accountability.

Although the City is encouraged by the amendments proposed in Bill 3, we do have comments regarding the following specific sections.

- (i) Section 21.1(4) – The requirement to maintain primary highways in a state of reasonable repair lacks clarity. In its current format, in the absence of defined standards, the determination of what constitutes 'reasonable repair' is described as a comparative approach and provides no certainty on the expected maintenance levels required of the territorial government.
- (ii) Section 21.1(5) – This section attempts to limit liability of the territorial government to the main surface of public highways. It is unclear to the City if the surface area covered would exclude the shoulders and/or pull-outs that form part of primary highways. It is the City's submission that shoulders and/or pull-out areas that are included in construction of primary highways must be maintained to the same level as the primary highway.

- (iii) Section 21.1(9) – The City recognizes that inclusion of a limitation of liability clause is necessary. However, absence of a traffic control device should not absolve liability that is a result of poor design and construction standard. The City submits that the proposed amendments should include language that requires infrastructure that is installed as part of the primary highway (such as traffic control devices and pedestrian crosswalks) to be adequately maintained to protect public safety.

Thank you for this opportunity to provide feedback to the Standing Committee on Economic Development and Environment.

Sincerely,



Rebecca Alty
Mayor

DM #625805



APPENDIX 2: MOTIONS

MOTION

AN ACT TO AMEND THE
PUBLIC HIGHWAYS ACT

That clause 2 of Bill 3 be amended by adding the following immediately before proposed subclause 21.1(10):

No bar based
on alleged
failure to
maintain

(9.1) For greater certainty, subsection (9) does not bar an action brought against the Government of the Northwest Territories for the recovery of damages caused by an alleged failure to maintain in a reasonable state of repair any wall, fence, guide rail, railing, curb, pavement markings, traffic control device, illumination device or barrier adjacent to or in, along or on the highway.

MOTION

LOI MODIFIANT LA LOI SUR
LES VOIES PUBLIQUES

Il est proposé que l'article 2 du projet de loi 3 soit modifié par insertion, avant le paragraphe 21.1(10), de ce qui suit :

(9.1) Il est entendu que le paragraphe (9) ne fait pas obstacle à l'action en dommages-intérêts intentée contre le gouvernement des Territoires du Nord-Ouest pour les dommages causés par le prétendu défaut de maintenir dans un état raisonnable un mur, une clôture, un garde-fou, une balustrade, une bordure, des marques sur la chaussée, un dispositif de signalisation, tout dispositif d'éclairage ou barrière adjacent à la route, le long de celle-ci ou sur celle-ci.

Aucun
obstacle à
l'action
pour un
prétendu
défaut
de maintenir
dans un état
raisonnable

MOTION

AN ACT TO AMEND THE
PUBLIC HIGHWAYS ACT

That clause 2 of Bill 3 be amended in the English version of proposed paragraph 21.1(9)(a) by striking out "pavement, markings," and substituting "pavement markings,".

MOTION

LOI MODIFIANT LA LOI SUR
LES VOIES PUBLIQUES

Il est proposé que la version anglaise de l'alinéa 21.1(9)a proposé à l'article 2 du projet de loi 3 soit modifiée par suppression de «pavement, markings,» et par substitution de «pavement markings,».

MOTION

AN ACT TO AMEND THE
PUBLIC HIGHWAYS ACT

That clause 2 of Bill 3 be amended in proposed subclause 21.1(8) by striking out "provides" and substituting "proves".

MOTION

LOI MODIFIANT LA LOI SUR
LES VOIES PUBLIQUES

Il est proposé que l'article 2 du projet de loi 3 soit modifié par suppression de «démontre», dans le paragraphe 21.1(8) proposé, et par substitution de «prouve».

MOTION

AN ACT TO AMEND THE
PUBLIC HIGHWAYS ACT

That clause 2 of Bill 3 be amended in the English version of proposed subclause 21.1(10) by striking out "to the to the Minister" and substituting "to the Minister".

MOTION

LOI MODIFIANT LA LOI SUR
LES VOIES PUBLIQUES

Il est proposé que la version anglaise de l'article 2 du projet de loi 3 soit modifiée par suppression de «to the to the Minister», dans le paragraphe 21.1(10) proposé, et par substitution de «to the Minister».