

# CALGARY HERALD

## Alberta energy bill criticized as ‘train wreck’

### Province defends plan to simplify approvals

By Darcy Henton, Calgary Herald November 5, 2012



**Alberta's Wildrose party Leader Danielle Smith makes a campaign stop in Calgary, Alta., Friday, April 20, 2012.**

#### **Photograph by: Jeff McIntosh , THE CANADIAN PRESS**

EDMONTON — A new piece of provincial legislation designed to streamline the approvals process for resource development is being dubbed a “Franken-bill” and “a train wreck” by critics.

While the government defends it as “a common-sense approach,” opposition MLAs say Bill 2, the Responsible Energy Development Act, merges six conservation statutes to create a one-window regulator at the expense of landowners and the environment.

“It feels a bit like a Franken-bill,” Wildrose Leader Danielle Smith told the legislature when the bill was given second reading last week. “It’s bringing in all of the different elements of a variety of different pieces of legislation, squashing them together, and hoping that by naming it under a single regulatory agency, somehow it’s going to solve the many problems.”

Critics say the bill is plagued with flaws, but the most critical problem is the removal of the right of a landowner to go before the Environmental Appeal Board.

They say the bill also narrows the scope of who can trigger a public hearing into a project, gives too much power to the ministers to override decisions, lacks timelines and attempts to bypass the constitutional right of aboriginal people to be consulted on projects on their traditional lands.

Keith Wilson, a St. Albert lawyer who held meetings across the province last year to rally rural opposition against four previous controversial provincial land use bills, called Bill 2 “a train wreck.”

“Bill 2 is sloppy legal drafting and bad policy insofar as it strips the most affected by energy projects of their legal right,” he said.

The bill gives the new regulator “unfettered discretion” in deciding whether landowners get any notice of any developments near their property or whether they have any right to a hearing or other participation in the process, Wilson said.

But Energy Minister Ken Hughes rejected the contention Bill 2 could trigger a storm of outrage across the province like previous land-use bills. He said the bill is “a common-sense approach that creates a more effective and efficient system.”

“There’s no reason people should feel that this is anything like those other bills,” he said.

Hughes said the bill provides more rights to landowners than some of the previous legislation.

“Under this new legislation we actually are requiring the new regulator to notify everybody who is directly and adversely affected,” he said. “The notice is intended to ensure that at the front end of the regulatory process there is a complete, thoughtful and common sense approach to hearing all of the issues of all of the parties that are affected.”

Hughes added the appeal process is “just as robust as it is today in the existing Energy Resources Conservation Board (ERCB) regulation” although the appeals will be go to the regulator’s commissioners rather than the Environmental Appeal Board.

But Cindy Chiasson, executive director of the non-profit Environmental Law Centre in Edmonton, said that’s akin to “self reviews by the regulator of its own decisions.”

She said the new hearing commissioners may be more independent of the ERCB, but “there is still a perception of bias.”

“As much as they say this is not the ERCB, this new regulator will end up carrying some of the ERCB’s baggage in terms of the perception people have of it and what the past history has been in the province in terms of how energy decision-making has taken place.”

She said the bill also changes the test for standing in several current pieces of legislation from “directly affected” to “directly and adversely affected,” which can narrow the scope of who can demand a hearing.

“Changing it to being the regulator’s call on if and when hearings are called, I would say that’s a step backwards for landowners who may be affected,” she said.

University of Alberta Faculty of Law Prof. Russ Brown said the bill doesn’t add to the government’s powers to regulate land use, but simply consolidates those powers.

However, in the process the government has removed some procedural protections, he said.

“Under Bill 2, the consolidated regulator will be making decisions respecting the landowners land, but if the landowner has some objection or if there’s been something overlooked, they can’t appeal.”

NDP critic Rachel Notley said the concept of bringing everything under one regulator is problematic because it creates a conflict of interest.

“I think what will happen is the mandate to ensure environmental safety and sustainability of any particular development will be subordinate to the mandate to develop the oil and gas industry,” she said.

She said Bill 2 “is very much geared toward streamlining the process for the energy industry and eliminating and minimizing the role of those pesky public interest advocates.”

Liberal Kent Hehr said he supports a one-stop shop for development approvals for industry but the bill allows cabinet to make the decisions behind closed doors.

“It doesn’t appear to be an independent body, given that the ministers of Energy and Environment and Sustainable Resource Development can tell the new regulator what its priorities should be.”

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