

licence issued under the Canada Oil and Gas Act which was passed by the Senate on December 18, 1981. The crown share incentive amounts to 25 per cent of any eligible exploration expenditures incurred on Canada lands. Entitlement to this incentive does not depend on the Canadian ownership rate or the control status of the applicant. The crown share incentive is intended to encourage and assist the exploration effort in Canada lands while contributing towards a share of such expenditures commensurate with the government's retained interest in the Canada lands.

The "higher level" incentives consist of three additional levels of incentives, again representing a percentage of the eligible exploration or development expenditures or eligible asset costs incurred by an applicant. Entitlement to this incentive is dependent on the applicant being Canadian controlled and having a minimum Canadian ownership rate of 50 per cent. The incentive levels, as a percentage of eligible expenditures, increase as the Canadian ownership rate of the applicant increases. In the case of the highest level, the incentives can be as high as 35 per cent of eligible exploration expenses on provincial lands and as high as 80 per cent of eligible exploration expenses on Canada lands.

● (2210)

Part II of the bill provides the framework for the rules for determining Canadian ownership rates and incorporates, by reference, the provisions of the Foreign Investment Review Act regarding identification of non-eligible persons as a basis for determining a person's control status. The Foreign Investment Review Act rules involve considerations of control in fact when assessing the non-eligible person status of corporations. The FIRA rules are extended to partnerships and trusts under Part II. The Canadian ownership rate determination rules are primarily set out in proposed regulations. In the case of an entity, such as a corporation, trust or partnership, the Canadian ownership rate is based on the Canadian ownership rate of the shareholders, beneficiaries, or partners. Since these may themselves be entities, a further similar calculation may be necessary as well. It may be necessary to look behind nominees or owners of interest in entities to establish where real beneficial ownership resides.

Bill C-104 has been considered by the House of Commons Standing Committee on Energy Legislation. A number of witnesses appeared before the committee to make submissions on the bill, including the Canadian Petroleum Association, The Canadian Bar Association, The Consumers' Association of Canada, and the Canadian Institute of Chartered Accountants. Many individual companies, large and small, also appeared. One issue raised by witnesses and the members of the committee was that there was no mechanism established within the bill by which an appeal could be made regarding an incentive or ownership decision. During the report stage of Bill C-104 in the other place, the Minister of Energy, Mines and Resources introduced an amendment whereby the determination of Canadian ownership rate under various sections was made specifically subject to judicial review under section 28 of

[Senator Steuart.]

the Federal Court Act. This amendment was adopted unanimously by the other place.

Several other amendments were adopted at the committee stage. While most of these amendments were technical, one amendment to Part II of the bill is worth noting. This amendment is intended to allow persons who determined their Canadian ownership rate and control status on the basis of the draft forms and regulations published on March 10, 1982 to rely on the provisions in those drafts for their applications under the act. This prevents any unfairness where applicants for a Canadian ownership rate and control status determination have gone to considerable trouble and expense to determine their Canadian ownership rate under the published draft rules, only to be faced with the possibility of extensive revision and recalculation under the rules set out in the act as proclaimed in force and the regulations as promulgated.

Another issue raised in committee was that the provisions of the bill are too complex. There are, however, good reasons for this complexity. In the case of the Petroleum Incentives Program Act a key consideration has been the recognition that the benefits conferred by the program on Canadians could in a variety of ways be transferred to non-Canadians. This has led to the adoption of rules to reduce such transfers to a minimum.

● (2220)

As for the Canadian Ownership and Control Determination Act, it is intended to measure real beneficial ownership. Sometimes this measurement can be a relatively simple process, while in other cases it is more difficult because of the nature of the entity being measured. The system of rules for the measurement of Canadian ownership is designed to apply to individuals, to private and public corporations and to partnerships and many other investment vehicles such as trusts and insurance companies. The equity structure of each of these types of entities is extremely varied and the Canadian ownership rate rules must parallel that variety to be effective.

The minister announced in the other place that the Department of Energy, Mines and Resources will keep in close touch with the industry to review the provisions of this bill for any changes that may be required. Any such changes will be considered within the context of the integrity of the program.

Honourable senators, I am pleased to recommend this bill to the Senate as it will be instrumental in enabling Canada to resolve many of its present and future energy problems. If this bill passes second reading, it is my intention to move that it be referred to the Standing Senate Committee on Banking, Trade and Commerce.

On motion of Senator Macdonald, for Senator Charbonneau, debate adjourned.

THE SENATE

MOTION RE ALLOCATION OF SEAT NO. 15 TO SENATOR MANNING WITHDRAWN

On the Order: