

立法會
Legislative Council

LC Paper No. CB(1)2535/01-02
(These minutes have been seen
by the Administration)

Ref: CB1/BC/10/01

**Bills Committee on
Land (Miscellaneous Provisions) (Amendment) Bill 2002**

**Meeting on
Friday, 5 July 2002, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Ping-cheung (Chairman)
Ir Dr Hon Raymond HO Chung-tai, JP
Hon Hon Eric LI Ka-cheung, JP
Hon Fred LI Wah-ming, JP
Hon Miriam LAU Kin-yee, JP
Hon Emily LAU Wai-hing, JP
Dr Hon TANG Siu-tong, JP
Hon Albert CHAN Wai-yip
Hon IP Kwok-him, JP
- Members absent** : Hon Margaret NG
Hon Abraham SHEK Lai-him, JP
Hon Audrey EU Yuet-mee, SC, JP
- Public officers attending** : Environment, Transport and Works Bureau

Mr C S WAI
Principal Assistant Secretary for the Environment,
Transport and Works (Works)
- Highways Department

Mr H C WONG
Assistant Director of Highways
- Mr H H LIU
Chief Highways Engineer

Lands Department

Mr R G HARDING
Assistant Director of Lands

Department of Justice

Ms Marie SIU
Senior Government Counsel

Clerk in attendance : Mr Andy LAU
Chief Assistant Secretary (1)2

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Ms Alice AU
Senior Assistant Secretary (1)5

Action

I Election of Chairman

Ir Dr Raymond HO, the member who had the highest precedence among members of the Bills Committee, presided over the election of Chairman. Mr LAU Ping-cheung was nominated by Mr IP Kwok-him and the nomination was seconded by Mr Fred LI. Mr LAU accepted the nomination. There being no other nominations, Mr LAU Ping-cheung was elected Chairman of the Bills Committee. He then took over the chair.

II Meeting with the Administration

(LC Paper No. CB(3)541/01-02

Ref: WB(W)249/38/02 [TC13/2001]

LC Paper No. LS84/01-02

Appendix III to LC Paper No. CB(1)2164/01-02

LC Paper No. CB(1)2181/01-02

LC Paper No. CB(1)1874/01-02

- The Bill;
- LegCo Brief;
- Legal Service Division Report;
- Mark-up copy of the Bill;
- Background brief on the Bill; and
- Information note on handling contravention of environment-related legislation by public officers)

2. The Bills Committee deliberated (Index of proceedings attached at **Annex A**).

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Admin 3. The Bills Committee requested the Administration to provide further information on the following to facilitate their consideration:

- (a) to provide information on overseas legislation relating to the control of street excavations (including but not limited to Singapore, Taiwan and Japan) and whether criminal liabilities would be imposed on those who contravene the relevant provisions, including the Government and a person doing anything in the course of carrying out his duties as a public officer in the service of the Government;
- (b) to provide information on overseas legislation relating to the exemption of criminal liabilities on the Government or a person doing anything in the course of carrying out his duties as a public officer in the service of the Government;
- (c) to provide information on the factors of consideration for laying a criminal charge in respect of an offence involving excavation in unleased land, the conviction of which leading to a criminal record;
- (d) to consider repealing the imprisonment term for offences relating to excavations in unleased land;
- (e) to consider contracting out the control of excavations in unleased land;
- (f) to provide information on the operation of the reporting mechanism, including the follow-up actions to be taken by the Administration upon receiving a report from the Authority by the Secretary;
- (g) to provide information on the number of reports received by the Secretary and the course of disciplinary actions taken by the Administration against the concerned public officers in the last three years; and
- (h) to provide information on how the economic costs relating to street excavations were derived at.

4. The Bills Committee agreed to invite public views on the Bill. Apart from posting a notice of invitation for public views on the LegCo website, an advertisement would also be placed in one Chinese and one English newspapers. Individual organizations which had expressed views on the Bill at previous Panel meetings would also be invited to give views on the Bill again.

5. The Bills Committee agreed that the House Committee should be invited to consider setting up a Subcommittee to follow up on issues relating to the exemption of criminal liabilities on the Government or a person doing anything in the course of

Action

carrying out his duties as a public officer in the service of the Government. Background information should be prepared to facilitate members' consideration.

6. The Bill Committee agreed to hold the next meeting on Thursday, 19 September 2002, at 10:45 am to receive public views and continue discussion with the Administration.

III Any other business

7. There being no other business, the meeting ended at 12:50 pm.

Legislative Council Secretariat
17 September 2002

**Proceedings of the meeting of the Bills Committee on
Land (Miscellaneous Provisions) (Amendment) Bill 2002
Friday, 5 July 2002, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
<i>Agenda Item I - Election of Chairman</i>			
000000 - 000143	Ir Dr Raymond HO	Election of Chairman; Mr LAU Ping-cheung was elected Chairman of the Bills Committee	
<i>Agenda Item II - Meeting with the Administration</i>			
000143 - 000254	Chairman	Welcoming remarks	
000254 - 000859	Admin	Introduction on the Bill	
000859 - 001841	Chairman Ms Miriam LAU Admin	<ul style="list-style-type: none"> - Need to introduce an independent assessment mechanism to ensure that a reasonable initial permit period was being applied for - Differential treatment for non-compliant government departments which were merely subject to a reporting mechanism and not liable for any criminal sanction in respect of excavating without an excavation permit (EP) or breach of permit conditions - Operation of the reporting mechanism and follow-up actions to be taken against the responsible public officers/ government departments 	<ul style="list-style-type: none"> - Admin to formulate a set of assessment criteria in consultation with the utility undertakers before the Bill came into operation - Admin proposed that this Bill should be dealt with by LegCo in the same manner as the Noise Control (Amendment) Bill 2001, that was, the Bill should be passed first, then the question of imposing criminal sanctions against government departments might be raised separately as a general issue in another forum
001841 - 002829	Chairman Ir Dr Raymond HO Admin	<ul style="list-style-type: none"> - Possible role conflict of the Highways Department (HyD) as it would assume the role of issuing authority, the enforcement authority and a permittee at the same time - Fairness in imposing imprisonment term against a permittee for making or maintaining an excavation without an EP if the breach was caused by the contractor's fault - Differential treatment for non- 	

Time	Speaker	Subject(s)	Action required
		<p>compliant government departments</p> <ul style="list-style-type: none"> - Identity of public officers to be named as the permittee for excavations carried out by government departments 	
002829 - 004057	Mr IP Kwok-him Chairman Admin	<ul style="list-style-type: none"> - Differential treatment for non-compliant government departments - Whether it was possible to specify in the Bill that no government departments would actually be carrying out the excavations themselves because in most cases, public work projects were invariably carried out by the contractors - Procedural question on whether a government department could be prosecuted by another fellow department 	
004057 - 005214	Ms Emily LAU Admin Chairman ALA	<ul style="list-style-type: none"> - The Public Accounts Committee's concern and call for measures to improve the regulation of excavations, as well as the latest situation in the control of excavations - Transparency of the proposed reporting mechanism and rationale for designating the Secretary for Works, instead of the Chief Secretary for Administration as in the Environmental Impact Assessment Ordinance (Cap. 499), to receive reports of contravention by government departments - Way forward for addressing the policy issue involved in the differential treatment for non-compliant government departments in the context of the Bill - Reference to overseas legislation relating to the exemption of criminal liabilities on the Government or a person doing anything in the course of carrying out his duties as a public officer in the service of the Government 	- Admin to provide information
005214 - 005920	Dr TANG Siu-tong	- Differential treatment for non-	

Time	Speaker	Subject(s)	Action required
	Admin Chairman	compliant government departments - Need for objective criteria to determine an optimum permit period - Working of the proposed multi-tier statutory review mechanism	
005920 - 010108	Chairman Admin	- Incentive for early completion of excavation works	
010108 - 010625	Mr Fred LI Admin Chairman	- Strengthening enforcement against non-compliance with the relevant lighting, signing and guarding requirements specified in the EP - HyD's role in and frequency of utility site inspections	
010625 - 011630	Ms Miriam LAU Admin Chairman	- Reference to overseas legislation relating to the control of street excavations (including but not limited to Singapore, Taiwan and Japan) and whether criminal liabilities would be imposed on those who contravene the relevant provisions, including the Government and a person doing anything in the course of carrying out his duties as a public officer in the service of the Government - Need for Admin to exercise more stringent control over the unduly long duration of excavation works and the problem of unattended sites, such as with the application of new technology - Addressing the contractors' failure to cover up the site to allow access during temporary suspension of work in the context of the Bill - Clarification on the nature of "fine" imposed on government departments	- Admin to provide information
011630 - 012457	Ir Dr Raymond HO Admin	- Consultation among public officers at works departments about their willingness to be named as the permittee for government excavation works - Whether Admin would consider repealing the imprisonment term for offences relating to excavations in unleased land - Whether Admin would consider	- Admin to consider Dr HO's suggestion - Admin to consider Dr

Time	Speaker	Subject(s)	Action required
		contracting out the processing and monitoring of EPs - Need to clearly differentiate between the liabilities of the permittee and his contractor for any breach of permit conditions	HO's suggestion
012457 - 013246	Mr IP Kwok-him Admin Ms Miriam LAU	- Clarification on imposition of criminal liability/imprisonment term for breach of EP conditions - Request for information on the factors of consideration for laying a criminal charge in respect of an offence involving excavation in unleased land - Differential treatment for non-compliant government departments - Implementation of a one-stop-shop mechanism for receiving and processing EP applications - Long processing time for EP applications	- Admin to provide information
013246 - 013348	Dr TANG Siu-tong	- Operation of the reporting mechanism and follow-up actions to be taken against the responsible public officers/government departments	- Admin to provide information on the number of reports received by the Secretary for Works and the course of disciplinary actions taken by Admin against the concerned public officers in the last three years
013348 - 014037	Ms Emily LAU Admin Chairman	- Reference to overseas legislation as to whether criminal liabilities would be imposed on those who contravened the relevant provisions relating to the control of street excavations - Concern about over-estimation of proposed fees for excavation and under-estimation of economic costs due to traffic delay	- Admin to provide information - Admin to provide detailed breakdown of the proposed fees as well as information on how the economic costs relating to street excavations were derived at
014037 - 014648	Ir Dr Raymond HO Admin Chairman Mr IP Kwok-him	- Consultation among public officers at works departments about their willingness to be named as the permittee for government excavation works	

Time	Speaker	Subject(s)	Action required
		- Need to clearly differentiate between the liabilities of the permittee and his contractor for any breach of permit conditions	
014648 - 014855	Chairman Mr IP Kwok-him Ir Dr Raymond HO Ms Emily LAU	- Public consultation on the Bill	- Members agreed to invite public views on the Bill
014855 - 014948	Mr Eric LI Admin	- Request for information on the operation of the reporting mechanism, including the follow-up actions to be taken by the Administration upon receiving a report from the Authority by the Secretary	- Admin to provide information
014948 - 015125	Chairman Clerk	- Date of next meeting	
015125 - 015945	Chairman Clerk Ms Miriam LAU Mr IP Kwok-him Ms Emily LAU Dr TANG Siu-tong	- Handling contravention of environment-related legislation by public officers [LC Paper No. CB(1)1874/01-02]	- Members agreed that the matter should be examined by a subcommittee formed under the House Committee (HC). As the last HC meeting in the current legislative session would be held in the same afternoon, members also agreed that the Chairman should report the Bills Committee's decision to HC for consideration - Admin and the Legislative Council Secretariat to prepare background information for members' reference
<i>Agenda Item III - Any other business</i>			
015945 - 020049	Admin Chairman	- Attendance of officials from Lands Department at future meetings	