



## MINUTES OF PROCEEDINGS

OTTAWA, Thursday, June 16, 2022

(20)

[*English*]

Pursuant to the order of the Senate of May 5, 2022, the Standing Senate Committee on Energy, the Environment and Natural Resources met this day, in room W110, 1 Wellington St., and with videoconference, at 9 a.m. ET, the chair, the Honourable Paul J. Massicotte, presiding.

*Members of the committee present by videoconference:* The Honourable Senators Anderson, Carignan, P.C., Miville-Dechêne, Patterson, Sorensen and Verner, P.C. (6).

*Members of the committee present:* The Honourable Senators Dalphond, Galvez, Gold, P.C., Kutcher, Massicotte, McCallum, Plett and Seidman (8).

*Other senators present by videoconference:* The Honourable Senator Arnot (1).

*Other senators present:* The Honourable Senator Saint-Germain (1).

*Participating in the meeting:* Maxime Fortin, Principal Clerk, Martine Willox, Legislative Clerk and Louise Martel, Administrative Assistant, Committees Directorate; Jesse Good and Wu DiYing, analysts, Library of Parliament.

Pursuant to the order of reference adopted by the Senate on Thursday, April 7, 2022, the committee continued its consideration of Bill S-5, Strengthening Environmental Protection for a Healthier Canada Act.

*WITNESSES (by videoconference):*

*Environment and Climate Change Canada:*

Jacqueline Gonçalves, Director General, Science and Risk Assessment, Science and Technology Branch;

Laura Farquharson, Director General, Legislative and Regulatory Affairs, Environmental Protection Branch.

The chair informed the committee that the Honourable Senator Galvez, a member of the committee, participated in three meetings from outside Canada last week on the following dates: Tuesday, June 7 at 9:00 a.m. and 6:30 p.m., and Thursday, June 9 at 9:00 a.m. In order to avoid questions related to the decisions made by the committee during these meetings, the Subcommittee on Agenda and Procedure met this week to come up with a plan to move forward with the completion of the report on Bill S-5 and present it to the Senate. The Subcommittee on Agenda and Procedure therefore recommends that the committee vote again on each of the amendments and clauses adopted during these three meetings last week.

It was moved by the Honourable Senator Massicotte that, in order to avoid any questions that may be raised with respect to the Honourable Senator Galvez's participation from outside Canada last week, and pursuant to rule 10-5, that the committee proceed to reconsider each of the amendments and clauses that were dealt with last week, with each item to be introduced by the chair in a similar order.

The question being put on the motion, it was adopted by a show of hands.

The committee proceeded to reconsider the amendments and clauses moved during the meetings of June 7, 2022 and June 9, 2022.

The Honourable Senator Patterson moved that Bill S-5 be amended in clause 20,

(a) on page 13, by deleting lines 25 to 34;

(b) on page 14, by deleting lines 1 to 8.

After debate, the question being put on the motion in amendment, it was negatived by a show of hands.

The Honourable Senator Kutcher moved that Bill S-5 be amended in clause 20, on page 14,

(a) by adding the following after line 3:

“(3) The Minister shall delete a substance from the List, as well as any information regarding the substance that is specified on the List, if an order is made under subsection 90(1) adding the substance to the list of toxic substances in Schedule 1.”;

(b) by replacing line 4 with the following:

“(4) The Minister shall publish the List and any amend-”;

(c) by replacing line 7 with the following:

“(5) The List is not a *statutory instrument* as defined in”.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator Galvez moved that Bill S-5 be amended in clause 20, on page 14,

(a) by replacing lines 14 to 16 with the following:

“Minister shall inform the person who filed the request whether the request is granted or denied and provide the reasons for that decision.”;

(b) by adding the following after line 18:

“(4) An assessment granted under subsection (2) must be

(a) initiated no later than six months after the day on which the person who requested the assessment was informed of the decision; and

(b) completed no later than two years after the day on which it was initiated.”.

The Honourable Senator Galvez moved that the motion in amendment be amended by deleting the words “(b) by adding the following after line 18:” and by deleting the subsequent proposed text.

After debate, the question being put on the subamendment, it was negatived by a show of hands.

After debate, the question being put on the motion in amendment, it was negatived by a show of hands.

The Honourable Senator Galvez moved that Bill S-5 be amended in clause 20, on page 14, by replacing lines 31 and 32 with the following:

“any vulnerable population or ecosystem in relation to the substance and on the cumulative effects on human health and the environment that may result from expo-”.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

It was agreed to confirm the withdrawal of the amendment of the Honourable Senator Galvez to Bill S-5, in clause 20, on page 15.

The Honourable Senator Kutcher moved that Bill S-5 be amended in clause 21, on page 16,

(a) by replacing line 6 with the following:

“(i) is inherently toxic to human beings or non-human organisms, as determined by laboratory or other studies,

(ii) is persistent and bioaccumulative in accordance”;

(b) by replacing line 8 with the following:

“(iii) is present in the environment primarily as a re-”;

(c) by replacing lines 10 to 16 with the following:

“(iv) is not a naturally occurring radionuclide or a naturally occurring inorganic substance;

(b) the substance may constitute a danger in Canada to human life or health and is, in accordance with the regulations, carcinogenic, mutagenic or toxic for reproduction; or

(c) the substance is, in accordance with the regulations, a sub-”.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator Kutcher moved that Bill S-5 be amended in clause 29, on page 21,

(a) by replacing lines 15 to 17 with the following:

“Schedule 1, the Ministers shall give priority to pollution prevention actions and, in particular, in the case of a substance specified in Part 1 of the list of toxic substances in that Schedule, to the total, par-”;

(b) by replacing lines 20 to 26 with the following:

“the environment.

(1.2) For the purposes of subsection (1.1), the Ministers shall, in respect of a substance specified in Part 1 of the list of toxic substances in Schedule 1, consider whether the activity or release can be un-”.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator Patterson moved that Bill S-5 be amended on page 28 by adding the following after line 14:

**“39.1 (1) Subsection 106(1) of the Act is amended by striking out “and” after paragraph (a) and by adding the following after that paragraph:**

(a.1) where the living organism is an animal having a wild counterpart, the information provided shows a demonstrable need for the living organism and that the living organism is not toxic or capable of becoming toxic; and

**(2) Subsection 106(4) of the Act is amended by striking out “and” after paragraph (a) and by adding the following after that paragraph:**

**(a.1)** where the living organism is an animal having a wild counterpart, the information provided shows a demonstrable need for the significant new activity involving the living organism and that the significant new activity does not render the living organism toxic or capable of becoming toxic; and

**(3) Section 106 of the Act is amended by adding the following after subsection (8):**

**(8.1)** Despite subsection (8), if the living organism is an animal having a wild counterpart, the Ministers must provide

**(a)** a public notice of the request for a waiver; and

**(b)** opportunities for members of the public to participate in the assessment.”.

Laura Farquharson and Jacqueline Gonçalves answered questions from time to time.

After debate, the question being on the motion in amendment, it was negated by a show of hands.

The Honourable Senator Patterson moved that Bill S-5 be amended on page 28 by adding the following before line 15:

**“39.2 Subsection 108(1) of the Act is replaced by the following:**

**108 (1)** Subject to subsection (4), the Ministers shall, within the prescribed assessment period, assess information provided under subsection 106(1), (3) or (4) or paragraph 109(1)(c) or otherwise available to them in respect of a living organism in order to determine whether

**(a)** it is toxic or capable of becoming toxic; and

**(b)** it shows a demonstrable need for the living organism.

**(1.1)** The Ministers shall ensure that the public is provided with an opportunity to participate meaningfully in the Ministers’ assessment.

**(1.2)** The Ministers shall, within the prescribed assessment period, solicit public comments in respect of the testing of all evidence and may request additional evidence from any individual.”.

After debate, the Honourable Senator Galvez moved that the motion in amendment be amended in the English version by replacing the words “an opportunity” with the word “opportunities”.

After debate, the question being put on the subamendment, it was adopted by a show of hands.

After debate, the question being put on the motion in amendment, as amended, it was adopted by a show of hands.

The Honourable Senator Patterson moved that Bill S-5 be amended on page 31 by adding the following after line 18:

**“44.1 Subsection 114(1) of the Act is amended by adding the following after paragraph (g):**

**(g.1)** prescribing processes for meaningful public participation in

**(i)** an assessment under section 108, and

**(ii)** the determination of whether to grant a waiver requested under subsection 106(8);”.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator Miville-Dechéne moved that Bill S-5 be amended in clause 50, on page 35, by deleting lines 10 to 13.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator Patterson moved that Bill S-5 be amended on page 37 by adding the following after line 39:

**“55.1 The Act is amended by adding the following after section 331:**

**331.1 (1)** The Minister may issue an emergency certificate authorizing any activity that does not comply with this Act if the Minister is satisfied that the activity is necessary to deal with an emergency in which there is danger to public safety.

**(2)** An emergency certificate is not a statutory instrument for the purposes of the *Statutory Instruments Act*, and the contents of an emergency certificate may be issued orally, but the emergency certificate shall be issued in writing as soon as possible and the writing is conclusive proof of its content.

**(3)** An emergency certificate may include terms and conditions governing the authorized activity, and if any of the terms or conditions are not complied with in the course of carrying on the activity, the Act and regulations apply to the activity as though the certificate did not exist.

**(4)** An emergency certificate may specify the persons who may carry on the activity.

**(5)** The Minister may revoke an emergency certificate as the Minister considers appropriate.”.

After debate, the question being put on the motion in amendment, it was negated by a show of hands.

The Honourable Senator Patterson moved that Bill S-5 be amended in clause 56, on page 38,

(a) by replacing line 1 with the following:

**“56 (1) Subsections 332(1) and (2) of the Act are re-;**

(b) by adding the following after line 21:

**“(2) Section 332 of the Act is amended by adding the following after subsection (3):**

**(4)** In addition to any other requirement of this Act, a notice under this Act, a notice of any consultation to be held in relation to a matter under this Act and any decision made under this Act for which a notice is not otherwise required under this Act must be made public to the greatest extent possible, including by being published

**(a)** by the Minister on their departmental website;

**(b)** in a newspaper or other periodical that, in the Minister’s opinion, has a large circulation; and

**(c)** in the Environmental Registry and in the *Canada Gazette*.

**(5)** A notice published in accordance with paragraphs 4(a) to (c) must include an indication of any opportunities for public participation that may be available in relation to the content of the notice.

**(6)** In addition to any other requirements of this Act, a notice of a public consultation is to be published in accordance with paragraphs (4)(a) to (c) at least 60 days before the consultation is to occur.”.

After debate, the Honourable Senator Galvez moved that the motion in amendment be amended by deleting the words “to the greatest extent possible”, by deleting in the English version the word “and” after the words “large circulation;” and by replacing paragraph “(c)” with the following:

**“(c)** in the Environmental Registry; and

**(d)** in the *Canada Gazette*.”.

After debate, the question being put on the subamendment, it was adopted by a show of hands.

After debate, the question being put on the motion in amendment, as amended, it was adopted by a show of hands.

The Honourable Senator Sorensen moved that Bill S-5 be amended on page 38 by adding the following after line 34:

**“57.1 The Act is amended by adding the following after section 342:**

**342.1 (1)** The Minister shall, five years after the coming into force of this section and every fifth year after that, prepare a report regarding the operation of this Act in respect of the aboriginal peoples of Canada during the preceding five years.

**(2)** The report referred to in subsection (1) must include details on

**(a)** consultations with aboriginal peoples and aboriginal governments in relation to matters under the Act;

**(b)** measures implemented to ensure that the Act is administered in a way that complies with

**(i)** section 35 of the Constitution Act, 1982,

**(ii)** the principle of the honour of the Crown, and

**(iii)** Canada’s treaty relationships with and its fiduciary obligations to the aboriginal peoples of Canada;

**(c)** any evaluation completed in respect of the effectiveness or implementation of the measures described in paragraph (b); and

**(d)** any findings or recommendations in respect of the administration of this Act in respect of the aboriginal peoples of Canada.

**(3)** The Minister must cause the report to be laid before each House of Parliament no later than six months after the conclusion of the five-year period to which the report relates.”.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator Patterson moved that Bill S-5 be amended on page 46 by adding the following after line 11:

**“Report**

**67.1 (1) The Minister of Industry must, no later than one year after the day on which this Act receives royal assent, cause to be tabled in both Houses of Parliament a report regarding measures to**



**(a) ensure that manufactured goods that come to Canada meet the environmental requirements imposed on Canadian manufacturers; and**

**(b) test imported products for compliance with Canadian standards to ensure that they are safe for Canadian consumers and that Canadian producers are not at a disadvantage.**

**(2) The report must include**

**(a) an evaluation of existing measures and their effectiveness;**

**(b) recommendations for any new measures; and**

**(c) a proposed timetable and cost estimate for the implementation of new measures recommended under paragraph (b).”**

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

With leave, it was agreed that the following amendment, proposed by the Honourable Senator Miville-Dechéne, be withdrawn:

That Bill S-5 be amended in clause 69, on page 46, by replacing line 15 with the following:

**“69 (1) Subsections 10(1.1) and (2.1) and sections 10.1 and 11.1 come into force 12 months after the day on which this Act receives royal assent or on any earlier day that may be fixed by order of the Governor in Council.**

**(2) Section 64 and subsections 67(2), (5) and (6)”**

The Honourable Senator Galvez moved that Bill S-5 be amended on page 47, by replacing the references below the heading "SCHEDULE 1" in the schedule with the following:

**“(Paragraphs 56(1)(a) and (c), section 68, section 68.1, subsection 71(1), paragraphs 77(2)(c) and (d), subsections 77(7) and (9), 90(1) to (2) and 91(1), paragraph 91(2)(a), subsection 93(1), paragraphs 94(1)(a) and (5)(b), subsections 95(1) and (3) and 96(1), paragraph 199(1)(a), subparagraph 199(1)(b)(i) and subsection 317.1(3))”**

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

With leave, it was agreed that the following amendment, proposed by the Honourable Senator Galvez, be withdrawn:

That Bill S-5 be amended on page 47 by adding the following before the heading “PART 1” in schedule 1 of the Schedule:

**“List of Toxic Substances”.**

The Honourable Senator Kutcher moved that Bill S-5, in the schedule, be amended by replacing, in the English version, the second line of the note in Schedule 1 set out in the schedule, on page 47, with the following:

“and “y” refer to the number of atoms.”.

The question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator McCallum moved that Bill S-5 be amended in clause 2, on page 2, by replacing line 3 with the following:

“of Indigenous Peoples, including free, prior and informed consent;”.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

It was agreed to confirm the withdrawal of the amendment of the Honourable Senator McCallum to Bill S-5, in clause 2, on page 2, replacing lines 3, 17 and 20.

The Honourable Senator Kutcher moved that Bill S-5 be amended in clause 5,

(a) on page 3, by replacing line 37 with the following:

“(2) The implementation framework, in a manner consistent with the purposes of this Act, shall, among other”;

(b) on page 4,

(i) by replacing line 5 with the following:

“— the principle of non-regression and the principle of intergenerational equity;”,

(ii) by replacing lines 9 to 11 with the following:

“(c) the reasonable limits to which that right is subject, resulting from the consideration of relevant factors, including social, health, scientific and economic factors.”.

After debate, the Honourable Senator Miville-Dechéne moved that the motion in amendment be amended by replacing paragraph “(c)” with the following:

“(c) the manner in which relevant factors, including social, health, scientific and economic factors, may inform the application of that right.”.

After debate, the question being put on the subamendment, it was negated by a show of hands.

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

The Honourable Senator Patterson moved that new clause 10.1 be amended by replacing the proposed text of the portion of subsection 56(1) before paragraph (a) with the following:

**“56 (1) The minister may”.**

After debate, the question being put on the motion in amendment, it was adopted by a show of hands.

It was agreed that clause 1, which contains the short title, carry.

It was agreed that the title carry.

It was agreed that the bill, as amended, carry.

It was agreed that the observations adopted by the committee on June 9, 2022 be appended to the report.

It was agreed that the Subcommittee on Agenda and Procedure be empowered to approve the final version of the report.

It was agreed that the Law Clerk and Parliamentary Counsel be authorized to make necessary technical, grammatical or other required non-substantive changes as a result of the amendments adopted by the committee, including updating cross-references and renumbering of provisions.

It was agreed that the chair report Bill S-5, with amendments and with observations, to the Senate.

At 10:54 a.m., the committee adjourned to the call of the chair.

*ATTEST:*

Chantal Cardinal

*Clerk of the Committee*