March 18, 2019

Senator Rosa Galvez, Chair
Standing Senate Committee on Energy, the Environment and Natural Resources
The Senate of Canada
Ottawa, Ontario
K1A 0A4
Rosa.Galvez@sen.parl.gc.ca

Dear Senator Galvez:

On behalf of Premier Notley and in follow up to the Premiers presentation to the Standing Senate Committee on Energy, the Environment and Natural Resources on February 28, 2019, I am attaching a written submission and an amendments package for the Committee’s consideration. The list of amendments to Bill C-69 will address our concerns as an equal order of government and regulator. Several stakeholders from Alberta’s energy industry have indicated their support for the amendments package.

Protecting our environment, engaging Canada’s Indigenous peoples, providing certainty to investors, and supporting economic growth are all worthy goals; however, Alberta continues to be deeply concerned regarding the serious negative implications of Bill C-69 in its current form. As it stands, the uncertainty created by Bill C-69 has already begun to erode investor confidence and investment in various sectors across the country, which will only continue if the Bill is passed in its current form. Bill C-69 would also affect how the Government of Alberta carries out its environmental and regulatory reviews, and how it works with the federal government to carry out joint reviews.

It is imperative the federal government begin to meaningfully engage with our province on the legislation and the associated policy documents. We need to work together to ensure a timely, predictable, binding process is put in place to prevent project delays as happened due to the Federal Court of Appeal decision on Trans Mountain, as well as project failures due to the changing scope of issues for the hearing panel for Energy East.

The Government of Alberta supports the intent of the energy industry’s amendments. We share industry’s desire for a more transparent system that provides clarity and predictability for all stakeholders, ensures projects in the national interest go forward in a timely manner, and puts in place a system that balances the economy and the
environment. It is critical the Committee hear from all these stakeholders so that they can understand how, if enacted, Bill C-69 will affect their operations going forward.

The federal government must provide greater jurisdictional clarity to reduce overlap and promote certainty. The Government of Alberta, as well as other provincial and territorial governments, should be the primary regulators of natural resource development within their borders.

We have repeatedly advocated that the federal government immediately release the project list and other supporting regulations to allow stakeholders to understand the full impacts of this proposed legislation. Without the release of the project list, stakeholders and investors across Canada, as well as Senate and the committee studying this bill, are left in the dark about the intent of this legislation. This makes it extremely challenging, if not impossible, to understand the potentially far-reaching implications of the Bill.

The opportunity to foster greater public and investor confidence in the major project assessment process will only be accomplished if the federal government and Parliament take the necessary time to fully consider the jurisdictional and economic ramifications of any changes to the system set out in the proposed legislation.

Sincerely,

Shannon Phillips
Minister, Alberta Environment and Parks

Attachments

cc: Honourable Rachel Notley, Premier of Alberta

Michael L. MacDonald, Deputy Chair, Senate of Canada, Standing Committee on Energy, the Environment and Natural Resources

Jane Cordy, Senate of Canada, Member, Standing Committee on Energy, the Environment and Natural Resources

Patti LaBoucane-Benson, Senate of Canada, Member, Standing Committee on Energy, the Environment and Natural Resources

Paula Simons, Senate of Canada, Member, Standing Committee on Energy, the Environment and Natural Resources

Douglas Black, Senate of Canada, Senator
John Aldag, House of Commons, Chair, Standing Committee on Environment and Sustainable Development

Thomas Bigelow, Clerk of the Committee, House of Commons, Standing Committee on Environment and Sustainable Development

Maxime Fortin, Committee Clerk, Senate of Canada, Standing Committee Energy, the Environment and Natural Resources

Honourable Margaret McCuaig-Boyd, Minister, Alberta Energy
Government of Alberta

Written Evidence to
Senate Standing Committee for Energy, the Environment and Natural Resources

Bill C-69: An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts.

Introduction
Over the past two years, the Government of Alberta has been strongly advocating for certainty, clarity and respect for provincial jurisdiction while the Government of Canada attempts to modernize and increase the trust in the impact assessment regulatory system. Bill C-69 will have serious implications for the Canadian economy and threatens investor confidence within a number of industries. Alberta has voiced strong concerns about Bill C-69 since its introduction last year, and the far-reaching negative impacts it will have on both Alberta and Canada's competitiveness, economic diversification, future resource development and employment. Alberta's economic interests depend on regulatory certainty, diverse market access and investor confidence.

While we support the Government of Canada's intentions to better protect the environment, engage Indigenous Peoples and encourage economic development, we remain convinced the proposed legislation in its current form does not achieve these objectives and will only further erode investor confidence in Canadian industry at a time when the natural resources sector and future investment are already in serious jeopardy.

The Government of Alberta is the primary regulator of natural resource development within our provincial boundaries. In order for the Government of Alberta to have confidence in the federal government's proposed legislation, we need the immediate release of the project list, other relevant regulations and the policy framework to support the implementation of the legislation. The proposed legislation alone lacks the detail and clarity needed to understand the impacts on Canadian industry, the investment community within the country and our province. Major amendments to the proposed legislation are required to provide certainty and clarity that will encourage continued responsible growth and spur investment into Canada and Alberta.

The Government of Alberta has consistently communicated our concerns with the lack of government-to-government engagement on this file and has submitted several letters and technical briefs articulating with great specificity the areas in which we have concerns. However, we have yet to see the federal government take meaningful steps to address these concerns.
In addition, the lack of transparency in consulting with and sharing details of the supporting regulations and policy framework with provinces and territories does not support the federal government's stated intent to increase trust or transparency in the new system. There is no clarity in how the proposed legislation will be implemented and how actual projects will be reviewed.

Opportunities exist to foster greater public and investor confidence in federal assessments; however, as drafted, this proposed legislation will not achieve those outcomes. We strongly encourage the Senate to consider all relevant concerns and amendments brought forward by provinces, territories and stakeholders before completing its study of Bill C-69. It is imperative to take all reasonable measures and adequate time to study the proposed legislation in order to make the right decisions.

Through this written submission, the Government of Alberta would like to ensure the members of the Standing Senate Committee on Energy, the Environment and Natural Resources have a succinct list of all our requests, which includes a list of proposed amendments. If all of Alberta’s amendments are adopted, in addition to the release of the project list; this will aid in providing the certainty and clarity required to ensure Canadians, companies and investors are more confident that Bill C-69 will result in good projects being built in a way that protects the environment while creating jobs and growing Alberta and Canada’s economy.

**Project List**

The federal government’s drawn-out review of the project list, and its indications it will expand the scope of the project list, has created great uncertainty for investors, proponents and regulators alike. Expansion to the project list by including smaller-scale projects, and new project types or criteria will create unnecessary regulatory burden, deter development within Canada, and cause increased concern among investors.

The project list is a valued mechanism that provides guidance on the triggers for federal assessment; additions and other changes to the project list will affect clarity. Given the province’s existing environmental and regulatory approval processes, which operate with ongoing Indigenous participation and rigorous consultation on projects, the Government of Alberta asserts an expanded federal project list will create uncertainty, be duplicative, burdensome and intrusive. This would have a significant negative impact on investor confidence.

On multiple occasions, the Government of Alberta has asked the federal government to release the project list, other relevant regulations, and policy that will support the implementation of the proposed legislation. Without these crucial pieces of information, it is impossible to examine the full extent of the implications of the proposed bill on Alberta.

**REQUEST:** Publicly release the project list regulation immediately prior to advancing the proposed legislation through the Senate and legislative processes.
In Situ, Intra-provincial Pipelines, Natural Gas, Renewables and Petro Chemical Development

The Government of Alberta ensures the safe, efficient, orderly, and environmentally responsible development of oil, oil sands, natural gas, and coal resources over their entire life cycle. The provincial regulators have in-depth knowledge, extensive experience and a proven track record when it comes to regulating these resources, and this includes the environmental assessment process.

The Government of Alberta is concerned with the potential inclusion of in situ oil sands facilities, renewable energy projects, petrochemical development, electricity-generating units using natural gas, and intra-provincial pipelines on the project list. These are all project types that currently benefit from a thorough review by provincial regulators.

In situ is well understood and expertly managed within Alberta. A time-tested and comprehensive provincial environmental assessment process is already applied to in situ projects in Alberta.

Renewables are a significant part of Alberta’s Climate Leadership Plan, which aims to replace coal-fired electricity generation with cleaner energy sources. We are working to bring on additional renewables as we transition away from coal, as well as conversion of many of the coal-fired facilities to cleaner fuel types such as natural gas. Projects such as wind and solar or natural gas should not be included in the project list as the project impacts are largely understood and existing regulatory approaches adequately mitigate impacts.

Alberta’s Petrochemical Development Program is key to Alberta’s economic diversification as it provides opportunities to encourage companies to build manufacturing facilities that turn feedstock into more valuable products, such as plastics, fabrics and fertilizers. Alberta’s petrochemical projects are competitive from the regulatory perspective due to the well-established provincial framework and expert regulators. There is significant risk of adverse impacts such as project planning uncertainty, overlap and duplication with robust provincial assessment processes if these projects are subject to an additional layer of assessment by the federal government.

Provincial regulators are best positioned to review in situ oil sands projects, renewable energy projects, petrochemical development, electricity generating units using natural gas, and intra-provincial pipelines because of the existing provincial expertise and because the effects are provincial in nature. Inclusion of such projects on the federal project list would duplicate review efforts, expand review timelines, and increase regulatory burden for industry.

REQUEST: Amend the proposed Impact Assessment Act to exempt in situ oil sands projects, renewable energy, natural gas, intra-provincial pipelines and petrochemical developments.
Factors to be Considered

The Government of Alberta is requesting an amendment to clarify that the federal government will focus on “effects within federal jurisdiction”. This is consistent with the language in previous federal environmental assessment legislation and focuses the assessment on impacts that are under federal authority.

There is also growing concern that, as crafted, this legislation will lead to broader policy debates occurring within individual project assessments, which will slow down project approval or further scope creep into areas of provincial jurisdiction. Therefore, the Government of Alberta is also requesting amendments to clarify policy-laden factors, such as “sustainability” and “the intersection of sex and gender with other identity factors”. The amendment will require the federal government to produce published policy guidance on these otherwise vague concepts.

The Government of Alberta also proposes an amendment to account for provincial climate change enactments and clarify public participation. These amendments are described in further detail below.

REQUEST: Amend the proposed Impact Assessment Act to align the factors with defined terms in the proposed legislation, such as “effects within federal jurisdiction”, to clarify policy-laden factors, to account for Alberta’s climate change enactments and to clarify public participation.

Timelines

Proposed timelines within the legislation are too lengthy and uncertain because there are no hard timelines on the stop-the-clock measures embedded throughout the Act. Lengthy and uncertain timelines will deter development of major projects in Canada. The Government of Alberta is supportive of the use of legislated timelines that provide proponents with certainty. The proposed timelines under the proposed impact Assessment Act, which now include pre-planning and stop-the-clock provisions, are significantly longer than they are under the National Energy Board Act. In the time it would take for a major designated project, such as an interprovincial pipeline, to undergo impact assessment, market conditions may change, and therefore lengthy timelines are a monetary commitment investors may choose not to undertake, especially when considering the processes and timelines in other competing jurisdictions. The Government of Alberta is supportive of having clearer rules on timelines, and we are requesting a 730-day time limit on Agency assessments and review panel assessments, and a 300-day time limit for interprovincial pipeline and other life cycle regulator assessments (Canadian Energy Regulator and Canadian Nuclear Safety Commission). Utilizing lifecycle regulators and their expertise should enable assessments to occur in a shorter amount of time. A proponent should still be able to request a stop-the-clock measure without being penalized.

REQUEST: Amend the proposed Impact Assessment Act to provide a hard limit on timelines for completing assessments.
Recognition of Alberta’s Climate Leadership Plan

The Government of Alberta insists that our Climate Leadership Plan be formally recognized. As anticipated, the province’s most efficient facilities are more competitive under the Climate Leadership Plan than they were under the previous regulations, or in the absence of carbon pricing. Alberta’s Carbon Competitiveness Incentive Regulation implements a carbon pricing system that exceeds the federal benchmark and drives best-in-class performance by rewarding top performers, leading to emissions reductions that help Canada meet its slated commitments.

A cornerstone of the Climate Leadership Plan is a cap on oil sands emissions, which marks one of the first legislated emissions limits on an oil jurisdiction in the world. The legislation provides certainty for investors and drives innovation among producers to find solutions for energy extraction, helping to protect jobs and create new ones. At the same time, tackling emissions ensures the health of future generations of Albertans and Canadians.

Alberta’s Climate Leadership Plan brings together government, industry, businesses, Indigenous communities and the public to diversify the economy, create jobs, and reduce greenhouse gases that cause climate change. It is a robust framework to manage emissions associated with oil and gas projects and upstream pipeline projects originating in Alberta. It is having the desired effects, Alberta is seeing reduced emissions intensity, increased investments in innovation, energy efficiency and renewables, and thousands of jobs that are putting Albertans back to work.

REQUEST: Amend the proposed Impact Assessment Act to account for provincial enactments related to climate change.

Exclude Downstream Greenhouse Gas Emissions

The Government of Alberta reiterates our assertion that downstream greenhouse gas emissions must remain out of scope for all project reviews. We are pleased to see the Developing Strategic Assessment of Climate Change Discussion Paper states that it is not the Government of Canada’s intent to assess downstream greenhouse gas emissions. However, this alone does not alleviate our significant concerns, and further clarity is required to be included within the proposed legislation.

REQUEST: Amend the proposed Impact Assessment Act to exclude downstream greenhouse gas emissions as part of “direct or incidental effects” of designated projects.

Standing Test

The Government of Alberta is concerned the proposed removal of any standing test will open the process for potential abuse, interventions designed to frustrate the national interest, and dilute the voices of those most affected.

The Government of Alberta believes a clear legislated mechanism must be put in place to ensure project panel review hearings are limited to parties that can demonstrate they are either adversely affected or
contribute specific expertise that will be necessary and helpful to the review. The proposed legislation is unclear on how testimonies and submissions from various groups will be weighted and considered by commissioners and review panels. It is imperative that this direction be clearly outlined within the legislation, rather than left to the discretion of the Agency or hearing panels. This could lead to inconsistency from one project review to the next and will only further erode certainty in the system and impact investor confidence.

REQUEST: Amend the proposed Impact Assessment Act to reflect a standing test for review panel hearings

Public Interest Determination
The Government of Alberta is seeking a balanced approach that will consider both the positive and negative impacts of a project undergoing an impact assessment. This is why we are requesting the positive economic benefits of a project also be considered in the public interest determination. This would include positive economic and socio-economic benefits across the country, including but not limited to employment opportunities.

As noted above, the Government of Alberta is also requesting that the proposed Impact Assessment Act account for provincial climate change enactments.

The Government of Alberta also believes it is important that the threshold for determining whether a project is in the public interest should be based on significant adverse effects rather than just adverse effects. Without a qualifier on adverse effects, there is, a concern that projects may not be approved even when projects have an overall positive impact, which would not be in the public interest.

REQUEST: Amend the proposed Impact Assessment Act to include consideration of economic benefits in the public interest determination, significant adverse effects, and account for provincial climate change enactments.

Clarify Strategic and Regional Assessments
The Government of Alberta reiterates our concern over the lack of clarity in the proposed Impact Assessment Act pertaining to strategic and regional assessments and how they may allow for new activities to become subject to federal assessments. The Government of Alberta asserts that provincial assessment processes provide sufficient assurance, and that any addition of new federal processes overlapping existing provincial approaches, is likely to prove confusing, duplicative and intrusive. The ability for a strategic or regional assessment to be undertaken at any time may result in the addition of new project types to the project list create ongoing uncertainty for investors and proponents. The proposed role of strategic and regional assessments is to help ensure policy clarity is provided outside of project assessment. However, the significant lack of clarity on what may trigger these tools, under what circumstances, and to what effect, reduces our confidence that these tools provide timely, necessary, and up-front policy clarity.
The Government of Alberta requests representatives from provincial and territorial governments be legislated members of the advisory council envisioned under section 117 of the proposed Impact Assessment Act. Provincial and territorial governments have experience advising and making decisions that balance economic, environmental and social outcomes. They should be engaged outside of public consultations on strategic or regional assessments.

**REQUEST:** Amend the proposed Impact Assessment Act to ensure provincial and territorial participation in any advisory council created for strategic and regional assessments.

**Panel Composition**

The Government of Alberta is concerned about the composition of review panels. Lifecycle regulators offer invaluable expertise that is required to ensure a technical understanding of the projects and their impacts. Reviewing complex, large-scale projects without adequate knowledge and experience being taken into account will only further affect investor confidence and has the potential to delay timelines even further.

**REQUEST:** Amend the proposed Impact Assessment Act section 47 to require a majority of panel members be from the Canadian Energy Regulator (CER) for CER reviews.

**Provincial Jurisdiction over Natural Resources**

The Government of Alberta is concerned that the broader scope of the project reviews will include projects that are regulated by the province, as the impacts of the projects are provincial in nature. Alberta has an excellent track record for assessing impacts of projects and has a world-class regulatory system with significant expertise and experience in reviewing projects within Alberta’s borders. In addition, the Government of Alberta considers it a significant jurisdictional overreach by the federal government to address provincial resource revenues in any way under federal legislation.

Changes must be made to the legislation to ensure the federal government is evaluating those effects that fall under federal jurisdiction. The Government of Alberta expects explicit assurances that the federal government recognizes the province as the primary regulator of natural resources within our provincial boundaries.

**REQUEST:** Amend the proposed Impact Assessment Act to specifically exclude projects that are regulated by the province from the federal assessment process.

**Ministerial Discretion**

Significant concerns exist with the discretion afforded to the Minister regarding whether to designate a project for an impact assessment. This discretion, if left open-ended, may lead to considerable uncertainty for provincial regulators, industry, and stakeholders alike.
REQUEST: Place a limit on the Minister’s discretion to designate projects not already on the project list.

Clearly Define New Terms and Principles
The proposed legislation lacks clarity in a number of key areas, not least of which is the addition of new terminology that is not clearly defined. Without this clarity, the expectations under the Act are impossible to discern and create areas where project delays can be expected. For instance, clarity within the proposed legislation is required to adequately explain what is meant by ‘meaningful’ public engagement or ‘positive and negative effects on sustainability’. While the Government of Alberta generally supports this principle-based approach, the inclusion of untested language within the legislation without the necessary clarity on the bounds of the intended effect increases uncertainty and elevates the risk of legal challenges.

Similarly, the addition of new decision points within the proposed Impact Assessment Act (such as the early planning phase and extensions or suspension of timelines) increases the risk of stalling the process and creating additional avenues for legal challenges. It is the interest of all Canadians that the federal government has an effective and efficient assessment process in place. This must include ensuring sufficient clarity to prevent unnecessary delays and legal challenges that could easily be avoided through developing legislative clarity in the first place.

Appeal provision
Bill C-69 is new legislation that is untested and will be subject to interpretation by the courts. It will set aside decades of jurisprudence under the National Energy Board Act and the Canadian Environmental Assessment Act (2012, 1992) and could lead to more areas of judicial review.

The Bill has numerous decision points, which could lead to judicial review to the federal court. Rather than judicial review, the Government of Alberta proposes an amendment that would require decisions to be appealed but only on questions of law or jurisdiction to the Federal Court of Appeal. This is similar to the provisions that currently exist under the National Energy Board Act.

Conclusion
The Standing Senate Committee on Energy, the Environment and Natural Resources’ adoption of the amendments we have put forward today will increase our confidence, and the confidence of Albertans. However, we encourage the federal government to re-consider the pace and approach being used to design a new federal impact assessment system. Failure to do so will undermine the federal government’s intentions to modernize the assessment process. This proposed legislation also affects Alberta’s own environmental and regulatory reviews, but it is not possible to assess the implications, as the federal government has not shared the regulations and policy frameworks. The Government of Alberta requests postponing the passage of the proposed legislation until adequate input from the provinces and territories on the fulsome suite of regulation and policy frameworks is undertaken.
The Government of Alberta’s Proposed Amendments to Bill C-69

(March 12, 2019)

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<tr>
<th>Item</th>
<th>Proposed Amendment</th>
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<tr>
<td><strong>Issue #1 Exclusion of Specific Project Types</strong></td>
<td>Amend the <em>Impact Assessment Act</em> (IAA) to exclude in situ, intra-provincial pipelines, all generating units using natural gas, renewables, and petrochemicals.</td>
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<tr>
<td>1.</td>
<td>Amend section 4 of the IAA to add a new subsection (2) with specific exclusions for in situ, intra-provincial pipelines, all generating units using natural gas, renewables and petro chemical facilities.</td>
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<td>(2) This Act does not apply in respect of the following physical activities:</td>
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<td>(a) the construction, operation, decommissioning or abandonment of a new facility, plant, structure or thing for recovering oil sands by drilling or other in situ recovery operations but does not include mining operations;</td>
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<td></td>
<td>(b) the expansion of an existing facility, plant, structure or thing for recovering oil sands by drilling or other in situ recovery operations but does not include mining operations;</td>
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<td>(c) the construction, operation, decommissioning or abandonment of a new pipeline, other than an offshore pipeline or a pipeline that is regulated under the <em>Canadian Energy Regulator Act</em> with a length of 40km or more;</td>
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<td>(d) the expansion of an existing pipeline, other than an offshore pipeline or a pipeline that is under the <em>Canadian Energy Regulator Act</em> with a length of 40km or more;</td>
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<td>(e) the construction, operation, decommissioning or abandonment of a new facility, plant, structure or thing for the generating of wind electric power or solar electric power;</td>
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<td>(f) the expansion of an existing facility, plant, structure or thing for the generating of wind electric power or solar electric power;</td>
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<td>(g) the construction, operation, decommissioning or abandonment of a facility, plant, structure or thing for the refining, manufacturing, or processing of natural gas, natural gas liquids, or petroleum to produce refined products or other light hydrocarbon components or products; and</td>
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<td>(h)</td>
<td>the construction, operation, decommissioning or abandonment of all generating units using natural gas as their primary fuel, including cogeneration, combined cycle generation turbines (CCGT), converted coal-to-gas generation and simple cycle turbines; and</td>
</tr>
<tr>
<td>(i)</td>
<td>the expansion of all generating units using natural gas as their primary fuel, including cogeneration, combined cycle generation turbines (CCGT), converted coal-to-gas generation and simple cycle turbines.</td>
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**Issue #2 Factors to be Considered**

Amend the IAA to clarify factors

2. **Amend section 22 of the IAA to clarify the factors in line with defined terms in the IAA (such as “effects within federal jurisdiction”), that accounts for provincial climate change enactments and to clarify policy-laden factors:**

**Factors – impact assessment**

22 (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

(a) the **effects within federal jurisdiction** changes to the environment or to health, social or economic conditions and the positive and negative consequences of these effects changes that are likely to be caused by the carrying out of the designated project, including

(i) the effects of malfunctions or accidents that may occur in connection with the designated project,

(ii) any cumulative effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out, and

(iii) the result of any interaction between those effects;

(b) mitigation measures that are technically and economically feasible and that would mitigate any adverse effects of the designated project;

(c) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982;

(d) the purpose of and need for the designated project;
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<td>(e)</td>
<td>alternative means of carrying out the designated project that are technically and economically feasible, including through the use of best available technologies, and the effects of those means;</td>
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<td>(f)</td>
<td>any alternatives to the designated project that are technically and economically feasible and are directly related to the designated project;</td>
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<td>(g)</td>
<td>Indigenous knowledge provided with respect to the designated project;</td>
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<td>(h)</td>
<td>the extent to which the designated project contributes to sustainability; relevant published policy on the sustainability framework that is developed by the Agency under paragraph 155(h) and that is identified in the tailored guidelines provided to a proponent of a designated project under paragraph 18(1)(b);</td>
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<td>(i)</td>
<td>the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change and that accounts for applicable provincial enactments respecting climate change;</td>
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<td>(j)</td>
<td>any change to the designated project that may be caused by the environment;</td>
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<td>(k)</td>
<td>the requirements of the follow-up program in respect of the designated project;</td>
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<td>(l)</td>
<td>considerations related to Indigenous cultures raised with respect to the designated project;</td>
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<td>(m)</td>
<td>community knowledge provided with respect to the designated project;</td>
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<td>(n)</td>
<td>comments received from the public or, with respect to a designated project that is referred to a review panel, any interested party;</td>
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<td>(o)</td>
<td>comments from a jurisdiction that are received in the course of consultations conducted under section 21;</td>
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<td>(p)</td>
<td>any relevant assessment referred to in section 92, 93 or 95 where the assessment has been completed prior to the notice of commencement of the impact assessment of the designated project;</td>
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<td>(q)</td>
<td>any assessment of the effects of the designated project that is conducted by or on behalf of an Indigenous governing body and that is provided with respect to the designated project;</td>
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<td>(r)</td>
<td>any study or plan that is conducted or prepared by a jurisdiction — or an Indigenous governing body not referred to in paragraph (f) or (g) of the definition jurisdiction in section 2 — that is in respect of a region related to the designated project and that has been provided with respect to the project;</td>
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<td>(s)</td>
<td>relevant published policy on the intersection of sex and gender with other identity factors that is developed by the Agency under paragraph 155(h) and that is identified in the tailored guidelines provided to a proponent of a designated project under paragraph 18(1)(b); and</td>
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<td>(t)</td>
<td>any other matter relevant to the impact assessment that the Agency or — if the impact assessment is referred to a review panel — the Minister requires to betaken into account.</td>
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**Issue #3 Timelines**

Amend the IAA to place a 730-day time limit on Agency assessments and review panel assessments and a 300-day time limit for pipeline and other life cycle regulator assessments (CER and CNSC). Amend the IAA to allow the proponent to request an extension of the maximum legislated timeline.

3. **Add the following after section 62 to provide a hard limit on timelines for completing assessments:**

   62.1(1) Subject to subsection (3) and notwithstanding subsections 28(5), 28(6), 28(7), 28(9), 36(3), 37(3), 37(4), 37(6), 65(5) and 65(6), a decision pursuant to paragraph 60(1)(a) or section 62 for a designated project must be made within 730 days of the notice being posted by the Agency to the Internet site under subsection 19(4) for the designated project.

   62.1(2) Subject to subsection (3) and notwithstanding subsections 37.1(2) and 37.1(4) a decision pursuant to paragraph section 62 for a designated project must be made within 300 days of the notice being posted by the Agency to the Internet site under subsection 19(4) for the designated project.

**Add the following after section 62 to provide the proponent an opportunity to request an extension of the maximum legislated timeline.**

62.1(3) On the proponent’s request, the Minister may extend the time limit in subsection 62.1(1) and 62.1(2) by any period requested by the proponent.

**Issues #4 Climate Leadership Plan & Emissions**
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<tr>
<td>Amend the IAA to account for provincial and territorial enactments related to climate change for regulating development and limiting emissions growth. Amend the IAA to exclude downstream emissions as part of the assessment of a designated project.</td>
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<td>4.</td>
<td>As noted in row 1, amend s. 22(1)(i) to explicitly include consideration of provincial climate change enactments Factors — impact assessment (i) the extent to which the effects of the designated project hinder or contribute to the Government of Canada’s ability to meet its environmental obligations and its commitments in respect of climate change and that accounts for applicable provincial enactments respecting climate change; Similar changes would be made to sections 183(2)(j), 262(2)(f) and 298(3)(f) of the Canadian Energy Regulator Act when the Commission considers climate change in its determination.</td>
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<td>5.</td>
<td>Amend the definition of “direct or incidental effects” to exclude downstream emissions direct or incidental effects means effects that are directly linked or necessarily incidental to a federal authority’s exercise of a power or performance of a duty or function that would permit the carrying out, in whole or in part, of a physical activity or designated project, or to a federal authority’s provision of financial assistance to a person for the purpose of enabling that activity or project to be carried out, in whole or in part, but such effects shall not include greenhouse gas emissions generated from another physical activity or designated project located downstream from the designated project;</td>
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<td>Issue #5 Standing</td>
<td>Amend the IAA to reflect the “interested party” standing test focusing on adversely affected or expertise. Amend the IAA to ensure the Agency or review panel has discretion to determine the type of participation.</td>
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<td>6.</td>
<td>Adding to the definitions in s. 2: interested party, with respect to a designated project, means any person who is determined, under section 2.1, to be an interested party. Add a new section 2.1 after s. 2: Interested party</td>
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<td>Item</td>
<td>Proposed Amendment</td>
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<td>2.1</td>
<td>If the impact assessment of the designated project has been referred to a review panel, the review panel shall determine that a person is an interested party with respect to a designated project if, in its opinion, the person is adversely affected by the carrying out of the designated project or if, in its opinion, the person has relevant information or expertise.</td>
</tr>
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</table>

As noted above, the factors in the IAA would also be amended to read:

**Factors To Be Considered**

Factors — impact assessment

22. (1) The impact assessment of a designated project, whether it is conducted by the Agency or a review panel, must take into account the following factors:

(n) comments received from the public or with respect to a designated project that is referred to a review panel, any interested party;

Add a new section after section 27 to ensure the Agency has discretion to determine the type of participation:

Public participation

27.1 The Agency must ensure that the public is provided with an opportunity to participate meaningfully, within the time period specified by the Agency, in the impact assessment of a designated project.

Amend section 51(1)(c) and s. 51(1)(d)(i) to insert interested party instead of the public:

Review panel's duties

51. (1) A review panel must, in accordance with its terms of reference,

(c) hold hearings in a manner that any interested party an opportunity to participate meaningfully, within the time period specified by the review panel, in the impact assessment;

(d) prepare a report with respect to the impact assessment that

(iii) sets out a summary of any comments received from interested parties;
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<td>Add a new subsection after subsection 51(3) to ensure the review panel has discretion to determine the type of participation:</td>
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<td>51 (4) A review panel has discretion to determine the nature and scope of participation by any interested party in a hearing conducted under paragraph 51(1)(c). A decision of a review panel under this subsection is final and conclusive.</td>
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### Issue #6 Factors to be Considered in Public Interest Determination

Amend the IAA to ensure economic and social effects of a designated project are considered in the public interest decision and to add "significant" to "adverse effect" and to account for provincial enactments regarding climate change.

7. Amend section 63(d), (e) and (f) of the IAA to include consideration of positive economic benefits in the public interest determination and that accounts for provincial climate change enactments.

Amend section 63(b) of the IAA (and other similarly worded sections) to focus on significant adverse effects, rather than adverse effects.

Section 63(d), (e) and (f) should be repealed and replaced with:
(d) the impact that the designated project may have on any Indigenous group, including positive economic and socio-economic benefits, including but not limited to employment opportunities, and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982; and
(e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change that accounts for applicable provincial enactments respecting climate change.
(f) the potential economic and social effects of the designated project including positive economic and socio-economic benefits, including but not limited to employment opportunities.

Section 63(b) should be amended to strike "adverse" and replace with "significant":

(b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are significant.

Similar changes would be made to sections 28(3), 33(2), 51(d)(ii), 59(2) and 68(2).

### Issue #7 Participation on Advisory Councils

Amend the IAA to ensure provincial and territorial participation in the advisory council for strategic assessments

8. Amend section 117(3) to add a new subsection (c.1):
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<td>Membership&lt;br&gt; (3) The membership of the council must include at least&lt;br&gt; (c.1) one person from a jurisdiction referred to in paragraphs (c) to (d) of the definition of the jurisdiction in section 2.</td>
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### Issues #8 Composition of Panels
Amend the IAA to ensure there is adequate representation from the lifecycle regulator on panel reviews.

9. **Amend section 47 to require a majority of panel members be from the CER for CER reviews.**

**Amend s. 47(3) of the IAA to read:**

**Appointment from roster<br> (3) The persons appointed under paragraph (1) must be appointed from a roster established under paragraph 50(c), on the recommendation of the Lead commissioner of the Canadian Energy Regulator and in consultation with the member of the Queen’s Privy Council for Canada that is designated by the Governor in Council as the Minister for the purposes of the Canadian Energy Regulator Act, and must constitute a majority of the members for any review panel.**

Delete 47(4).

### Issue #9 Minister’s Power to Designate
Amend the IAA to limit the Minister’s discretion to designate projects not already on the project list.

10. **Amend section 9(1) to focus on significant adverse effects and to add additional criteria to limit ministerial discretion.**

**Minister’s power to designate<br> 9 (1) The Minister may, on request or on his or her own initiative, by order, designate a physical activity that is not prescribed by regulations made under paragraph 109(b) if, in his or her opinion, either the carrying out of that physical activity may cause significant adverse effects within federal jurisdiction or significant adverse direct or incidental effects, or public concerns related to those effects warrant the designation and one of the following applies:**

- (a) project type effects within federal jurisdiction are complex and may require a complex set of mitigation measures; or
- (b) the project type is novel and the severity of effects within federal jurisdiction, or mitigations are unknown.

### Issue #10 Privative Clause
Amend the IAA to include an appeal provision to limit legal challenges to questions of law or jurisdiction and to set a 60 day timeframe in order to appeal.
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<th>Item</th>
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<td>11.</td>
<td><strong>Add the following in the Act:</strong></td>
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<td><strong>Decisions final</strong></td>
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<td>Except as provided for in this Act, every decision or order of the Agency, Minister or Governor in Council is final and conclusive.</td>
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<td><strong>Appeal to Federal Court of Appeal</strong></td>
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<td>An appeal from a decision or order of the Agency, Minister or Governor in Council on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.</td>
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<td><strong>Application for leave to appeal</strong></td>
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<td>Leave to appeal must be applied for within 30 days after the date of the decision or order appealed from or within any additional time that a judge of the Court grants in exceptional circumstances.</td>
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<td><strong>Time limit for appeal</strong></td>
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<td>An appeal must be brought within 60 days after the day on which leave to appeal is granted.</td>
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<td><strong>Report not decision or order</strong></td>
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<td>For greater certainty, a report submitted by the Agency under subsections 28(2) or 59(1) or by a review panel under 51(1)(e) is not a decision or order for the purposes of this section and neither is any part of the report.</td>
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<td><strong>Notice of Appeal</strong></td>
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<td>The filing of a notice of appeal under subsection (3) does not suspend the operation of a decision made under this Act.</td>
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