Submission to the Senate Standing Committee on Energy, Environment and Natural Resources

Regarding 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

Submitted by: The Atlantic Chamber of Commerce

May 2, 2019
Summary

It is the stated intent of Bill C-69 boost public confidence in the regulatory system by providing business with more certainty of a fair, timely and predictable process that protects our environment and encourages businesses to consider investments in Canada. It is clear from reviewing the outcomes of major pipeline development proposals that current legislation is deficient. Effective and reliable amendments are sorely needed.

As this Act is proposed to materially change the manner in which major energy and resource projects are assessed, the federal government has conducted consultations and solicited input from many stakeholders. This submission is based largely on the proposition that Canadian environmental regulations are among the most stringent in the world, and our country can no longer afford to have regulatory processes delay or block resource development, threaten jobs, and limit access to domestic energy resources.

Review of the proposed legislation uncovers two principal deficiencies that will negate progress toward an effective and predictable review process—a lack of precision in defining the scope of impact assessments, and new opportunities to extend timelines via ministerial discretion and new avenues for litigation.

In order to for stakeholders to confidently support adoption of new assessment processes, they need reliable limits specified for the types of projects that will be subject for review (designated project list), clear guidelines to limit the scope public participation to ensure relevance, and a reconsideration and clarification of the factors that will be assessed to ensure inclusion of local and national economic impacts and clarity of public policy issues. If these factors cannot be included in the Act itself, it is essential that stakeholders be provided with access to draft regulations to evaluate whether the amendments will increase and complicate the regulatory burden imposed on project proponents.

Most importantly, the issue of reliable assessment timelines needs to be codified. Noting that previous project proposals (e.g. Energy East, Trans Mountain) have been derailed by procedural issues and protracted litigation, it is disconcerting the current bill allows for the exercise of discretion by a single federal minister to impose arbitrary conditions or delays to what should be a predictable assessment process. The dramatic increase in the number and ill-defined assessment parameters points toward an environment of less certainty and new opportunities for court challenges. We submit that no procedural improvements will be achieved without a requirement for written justifications of ministerial/cabinet discretion and a hard limit specified for the completion of the impact assessment process.

We urge committee members to recognize feedback herein and our complete support for the detailed recommendations of both the Canadian Association of Petroleum Producers and the Canadian Energy Pipelines Association submissions and incorporate the informed recommendations into your response to parliament.
Introduction

On behalf of its network of 93 chambers and boards of trade and 25 corporate partners, the Atlantic Chamber of Commerce (ACC) wishes to thank the members of the Senate Committee on Energy, Environment and Natural Resources for their diligence and commitment in conducting meaningful consultations on legislative changes to impact assessments and project development proposals. We respectfully submit our observations and recommendations to the committee with the intent of assisting our legislators to fully assess whether Bill C-69 will accomplish its intended purpose.

The ACC is the oldest and largest accredited business organization in Atlantic Canada. We strive to influence the region and local community environments to create economic growth and prosperity for citizens and the more than 16,000 businesses that are members of chambers throughout Atlantic Canada. Our mission, experiences and extended network make the ACC uniquely qualified to provide informed commentary on Bill C-69. Most recently, our direct engagement in the assessment of energy-related projects include the cancellation of Energy East due to the uncertainty connected with the review process and participation in the hearings of the New Brunswick Commission on Hydraulic Fracturing, to name a few.

At issue in the current hearings is whether the changes proposed in Bill C-69 as drafted will remove the barriers and wastefulness of the Environmental Impact Assessment (CEAA, 2012). It is clear to all that the existing statutes require revisions, as recent history of failed pipeline proposals (Energy East, Northern Gateway, Keystone, TMX) confirms that current laws are complicating and delaying assessments and approvals well beyond reasonable timeframes.

Accepting that the intent of Bill C-69 is to provide balance between environmental, social and economic factors, we concur with the principles of the bill but find it lacking in comprehensiveness and procedural reliability. The lack of reliable timelines, expanded scope of assessment, and availability of discretionary delays create significantly more uncertainty for project proponents and open new avenues for court challenges. These potential barriers will increase Canada’s reputation as a country that can’t get to yes, and thus a perception that Canada is closed for business. It is imperative amendments to Bill C-69 work for all Canadians in every province—sustaining environmental protection, positively contributing to the Canadian economy and investment infrastructure, and providing much needed jobs for Canadians.
General Observations

The oil and gas industry (O&G) is a crucial driver of the national economy, with production sales in the order to $110B. Direct employment involves more than 425,000 individuals and indirect employment from this sector involves participation of millions of Canadians. It is essential that new legislation support attraction of investment and development of infrastructure to move energy resources to market. The revisions proposed in this bill are largely in recognition that current legislation is standing in the way of approving our O&G transportation infrastructure in a safe and sustainable manner.

Canada could benefit enormously from domestic trade in energy resources. In Atlantic Canada, Canada's largest refinery is forced to purchase foreign crude due to the demise of the Energy East pipeline. Foreign producers are often held to less stringent environmental and social standards. These purchases represent an embarrassingly large drain on our economy and contribute to expanded carbon emissions on a global basis.

The negative impact of current legislation is clear. Failure to approve numerous national interest projects like Energy East, Keystone XL and Trans-Mountain are examples of a broken system. The knowledge that project proposals in Canada will be subject to an extended and uncertain assessment process has seen spending in the O&G sector drop from $80B to $40B between 2014 and 2018 (NEB), and has translated in a 42% drop in the TSX Oil and Gas Index since January 2017.

Private sector investment is globally mobile, and investors neither have infinite patience nor limitless bank accounts to finance extension after extension of the project approval process. Reliable and timely decisions are critical if Canada is to revitalize this industry sector. It is worth noting that in the World Economic Forum (2018) rankings, Canada ranked 12th of 140 countries in terms of competitiveness but a dismal 53rd in terms of regulatory burden. The challenge of developing Canadian energy resources is further exacerbated by the mischaracterization as excessively environmentally harmful, resulting in stranded resources, lower prices and decreased investment.

It is essential that the Impact Assessment Agency focus its operation on project-specific, reliable science based consultations, in order to maintain required balance and credibility. The assessment framework must be well defined and comprehensive in order to withstand the sometimes vocal opposition that so often attracts media coverage. Impact assessments must establish a balance between the often foreign-funded environmental protection organizations and the more restrained support for economic growth.
Deficiencies of Bill C-69

ACC recognizes the value of a comprehensive and balanced assessment of the impact of major resource projects and the need for a reliable, consistent and efficient process. ACC has reviewed and strongly supports the comprehensive submissions provided by the Canadian Association of Petroleum Producers (CAPP) and the Canadian Energy Pipeline Association (CEPA) and recommend their adoption in their entirety.

In addition to our declaration of support, we wish to highlight the following key shortcomings and the need for more detail and balance to ensure Canada does not further damage its reputation among companies evaluating investment opportunities.

Clear unassailable delineation of Scope and Authority

- The number of issues required to be addressed are not clearly defined and are so numerous that they will add significant complexity and delay to the assessment process.

- Many of the factors to be considered appear to not be directly related to factors associated with development of natural resources. Even more concerning, there is no indication that the value of economic development will be included in the assessment process. We recommend the addition of a Business impact assessment to evaluate the contribution to and of the many community businesses and members of the supply chain that are impacted by projects. – this is critical in the equation to balance economy vs environment

- The proposed changes do not include improvements to the assessment of projects, but rather adds an obligation to include consideration of emissions associated with resource production, transportation and consumption that would occur with or without the project and not required of proposals in all sectors.

Too Much Discretion opens door to Political Influence

- Undocumented discretionary power should be avoided to reduce perception and practice of political influences, and ensure departmental collaboration.

- Discretionary powers should not rest with a single minister, but must expand to include Natural Resources Minister and Economic Minister (Finance/Industry) to provide appropriate balance.
The Bill does not Provide Reliable Timelines

- Adding a planning phase makes sense in principle but the bill must more clearly define obligations and set limits on project proponents and intervenors. In the absence of enforceable milestones and reliable scope certainty, the new process may provide opponents with multiple new opportunities to mount project-killing court challenges.

- The lack of a clear test for *standing* in the public consultation process is of great concern. It should be a primary objective that the hearing process focus on presentations from parties who can speak knowledgeably about pertinent environmental, scientific, technical or local interests directly bearing on the project in question. Organizations and individuals not intending to address specific project merits and local impacts should be directed away from public hearings and requested to submit their concerns in writing.

- There are multiples instances where holds and extensions may be applied without justification. The increase in factors that must be considered does little to assure companies investing millions of dollars that they can rely on the assessment process to provide a fair and timely evaluation.

Lack of a Designated Project List

- The lack of a defined designated project list, or at minimum, a robust exclusion list leaves a gap in understanding the bill’s application, creating additional uncertainty in the investment community.

- There are instances where proposals similar to existing projects should excluded from extensive assessments under this legislation. The reality is there are many proposals that will simply be extensions or repeats of projects that have already received approvals via existing legislation and should excluded from further review.
Recommendations

The Atlantic Chamber of Commerce respectfully requests that the Senate Standing Committee on Energy, the Environment and Natural Resources acknowledge the objectives of amending impact assessment legislation and inform parliament that deficiencies in Bill C-69 that will decrease interest in investing in Canada resulting in job losses and reduced economic growth. The final form of Bill C-69 must ensure our natural resources are developed in a way that respects the environment and the rights of communities and made available to national and global markets.

To counteract the shortcomings of previous environmental assessment legislation, we hold that Bill C-69 must adhere to the principles of:

- Decision reliability (timelines and enforceability)
- Consistency
- Efficiency
- Balance
- Transparency

In responding to this opportunity to share our viewpoint with legislators, we have focused on highlighting issues that will contribute to modernized, balanced legislation, to ensure consideration is given to how our natural resources contribute to economic growth and jobs for all Canadians.

We urge committee members to recognize our complete support for the detailed recommendations of both the Canadian Association of Petroleum Producers and the Canadian Energy Pipelines Association submissions and incorporate the informed recommendations into your response to parliament.