

# BILL C-69 IMPACT ASSESSMENT



As Canada's environmental and regulatory processes are updated, the Canadian Association of Petroleum Producers (CAPP) wants to ensure that federal environmental assessments and regulatory reviews foster public and investor confidence while helping to get Canada's resources to market.



Canada's upstream oil and natural gas industry takes pride in meeting some of the world's highest environmental standards, and employs more than half a million Canadians. Industry is proud of its role in economic reconciliation, with more than \$3.3 billion in procurement from Indigenous-owned businesses in 2017. Canada should be the supplier of choice in a world that needs energy to grow the global middle class. The Canadian oil and natural gas sector presents a significant opportunity that provides broad benefits to Canadians. **Under Bill C-69 these benefits are at risk.**

The Senate of Canada is currently debating Bill C-69. In its current form, the Bill will diminish the global competitiveness of Canada's oil and natural gas industry and be a significant barrier to future investment, putting Canadian jobs at risk. It will make an already complex system more complicated, with added uncertainty for the project review and EA processes. Project reviews that are subject to multiple appeals and litigation have become the norm.

**The Canadian government needs to pause and review Bill C-69 to get it right before passing it into legislation.**

CAPP has prepared a full analysis of the challenges in Bill C-69 and has proposed solutions to improve the regulatory framework that provides absolute clarity, certainty and shorter timelines to address these challenges. All stakeholders must be equipped to understand what is required to make Bill C-69 what it is intended to be – a solution to the uncertainty that exists in Canada's current project review system.

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BY 2040.

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## SUMMARY OF SPECIFIC CONCERNS AND SUGGESTED IMPROVEMENTS

### ISSUANCE OF APPROVALS AND THE PATH TO CONSTRUCTION

Bill C-69 increases complexity and will encourage further multiple litigations on project decisions. As written, it will continue the long, drawn-out, uncertain regulatory and judicial processes that have faced projects like the Trans Mountain Expansion Project ("TMEP"). These complex and expensive processes have made significant drains on proponents, communities and governments, and created deep division amongst Canadians. Bill C-69 creates even greater regulatory uncertainty and litigation risk, both of which will result in decreased investor confidence. In addition, areas of public policy debate have been further entrenched into project review on existing areas such as climate and new ones such as the intersection of sex and gender with other identity factors.

#### RECOMMENDATION 1

Factors relevant to project review and material to decision-making must be defined with certainty early in the process and trust needs to be placed in the expert staff of the agency and regulator to make evidence-based decisions. Political interference must be restricted. Public policy debates need to be firmly removed from project assessments and adjudications and put where they belong in strategic assessments or policy forums.



### PUBLIC PARTICIPATION

Public participation must be meaningful. There is concern that the voices of local communities will be drowned out by distant commentators. Lacking the discretion to make determinations about how different groups will participate in the process, any slight differentiation between parties will make processes vulnerable to legal challenge.

#### RECOMMENDATION 2

The assessment process itself needs to be clearly defined as creating means to ensure meaningful participation. Review panels need to have the discretion to hear from those directly affected by a project and to consider the information, expertise and opinions of other knowledgeable persons as they see fit.



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### TIMELINE CERTAINTY

There are numerous provisions in the Act that create potential for delay and that allow the Governor in Council to extend timelines without providing justification. There is no hard time cap for the overall process.

#### RECOMMENDATION 3

Improve predictability of timelines including an overall maximum. Encourage discipline from all parties by requiring publication of reasons for extensions.

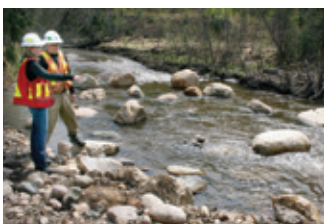


### PROJECT PLANNING CERTAINTY

As currently worded, the proposed Act prohibits a proponent from doing any act or thing in connection with a designated project. Currently, this is so broadly drafted that it would preclude any activity including those that would generate positive benefits to Indigenous or local communities, making the routine planning and preparation work to develop a project proposal subject to penalties.

#### RECOMMENDATION 4

Clearly link the prohibited pre-approval actions of proponents to real changes to the environment more in line with similar prohibitions in other legislation.



### DECISION MAKING / PUBLIC INTEREST

When making public interest decisions on designated projects, there is no express requirement for decision makers to consider the economic benefits of projects. Jobs, economics and infrastructure development are positive legacies that should be included in public interest deliberations. In addition, the Act gives complete discretion to the Minister regarding whether or not to designate a project for assessment, as well as granting them the power to refuse to undertake an assessment at all. This sort of political uncertainty is not acceptable.

#### RECOMMENDATION 5

Restrict the broad discretionary powers granted to the Minister. Make explicit in the Act that decision makers must specifically consider the economic and social effects, including benefits, of projects.

## INVOLVEMENT OF LIFE CYCLE REGULATORS IN REVIEW PANELS

Offshore projects on Canada's East Coast are specifically required to undergo panel review assessments regardless of scope or scale. Where an impact assessment includes activities regulated by a life cycle regulator and is referred to a review panel, the panel chairperson may not be a member of the life cycle regulator nor may members of the life cycle regulator make up a majority of the review panel. In short, life cycle regulators are, by design, denigrated despite their expertise and experience.

### RECOMMENDATION 6

Remove the requirements that marginalize the involvement and use of the expertise of regulators. Allow flexibility for the best placed candidates to comprise and/or chair review panels. Allow flexibility to scale assessment reviews to project complexity and scope.



## NAVIGABLE WATERS

The Navigation Protection Act has been broadened to address all changes to water flows and water levels.

### RECOMMENDATION 7

Focus the consideration and associated approval conditions allowed under this Act to proponent-induced impacts, not the remedy of natural flow conditions or cumulative impacts over which proponents may have no control.



The oil and natural gas industry with its high environmental standards is important to Canada. It contributed:

- **\$109 BILLION** in direct real GDP in 2017 (6.25 per cent of Canada's total);
- **\$12 BILLION** in average annual revenue to governments between 2014 and 2016;
- **\$3.3 BILLION** was invested in 399 Indigenous businesses in 65 communities in 2015 and 2016;
- **533,000** direct and indirect jobs in 2017 (includes the range of 200,000 in the service sector.)