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LEGISLATIVE SUMMARY

BILL C-12:
AN ACT TO AMEND THE FINANCIAL ADMINISTRATION ACT (SPECIAL WARRANT)

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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Legislative Summary of Bill C-12
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-12: AN ACT TO AMEND THE FINANCIAL ADMINISTRATION ACT (SPECIAL WARRANT)

1 BACKGROUND

Bill C-12, An Act to amend the Financial Administration Act (special warrant), was introduced in the House of Commons on 13 March 2020 by the Minister of Finance. It was passed by the House of Commons and the Senate and received Royal Assent on the same day.[1]

Bill C-12 enables the federal government to request that the Governor General sign special warrants to approve spending while Parliament is not sitting. It also contains several reporting provisions for the warrants issued. The bill's provisions expire on 24 June 2020.

1.1 SPECIAL WARRANTS DURING AN ELECTION

Parliament must approve all government spending, either through standing legislation, such as the *Employment Insurance Act*, or through appropriation bills for spending requests outlined in the main and supplementary estimates. Once an appropriation bill receives Royal Assent, the Governor General signs a warrant authorizing the withdrawal of funds from the Consolidated Revenue Fund. However, when Parliament is not sitting, the government is unable to receive parliamentary approval for additional spending.

Section 30 of the *Financial Administration Act*[2] provides an exception to this requirement. This section allows the Governor in Council (i.e., Cabinet) to direct the preparation of a special warrant signed by the Governor General that authorizes payments from the Consolidated Revenue Fund for government expenditures.

The Act stipulates several conditions that must be satisfied before a special warrant can be issued:

- Parliament must be dissolved for an election.
- The President of the Treasury Board must report that there are no other appropriations available for the payments (i.e., the funds previously approved by Parliament are insufficient).
- The appropriate ministers must report that payments are urgently required for the public good.

The Act specifies that special warrants cannot be used during a prorogation of Parliament.[3]

Additionally, they must be published in the *Canada Gazette* within 30 days of being issued, and a statement of special warrants issued must be presented to the House of Commons within 15 days of the return of Parliament. The amounts appropriated in special warrants are deemed to be included in the next appropriation Act passed by Parliament.

Special warrants may be issued from the date of dissolution until 60 days following the date fixed for the return of the writs after a general election. The last special warrants were issued in 2011, when Parliament was dissolved for a general election.

According to the Treasury Board of Canada Secretariat, the phrase "urgently required for the public good" [4] can include emergencies and unforeseen events, as well as the core operations of government that are essential and must be maintained. The Secretariat also states that, "the satisfaction of the urgency condition is subjective and has been accepted over time as a judgment of the Minister responsible."[5]

Special warrants cannot confer an authority that requires the approval of Parliament, such as changing the wording of spending authorities (estimates votes). They also cannot be used to amend the terms and conditions for payments authorized by standing legislation, such as the *Employment Insurance Act*.

It is worth noting that prior to 1997, the government could use special warrants whenever Parliament was not in session or was adjourned for an extended period. However, some members were concerned that special warrants could be used by the government to avoid convening Parliament – for example, in 1989, the government used special warrants on three occasions during the period of adjournment and subsequent prorogation. Peter Milliken, MP, sponsored a private member's bill that was adopted in 1997 to restrict the use of special warrants to election periods.[6]

1.2 THE CURRENT SITUATION

As the House of Commons and Senate were suspended on 13 March 2020 due to concerns over coronavirus disease 2019 (COVID-19), the government is unable to request parliamentary approval for additional spending that may be urgently required to help combat the novel coronavirus and sustain the Canadian economy. The government could not use the provisions for special warrants outlined above because Parliament has not been dissolved for an election. Thus, the House of Commons and the Senate approved Bill C-12, which temporarily removes the restriction that special warrants can only be issued during an election period and allows them to be issued while Parliament is suspended.

2 DESCRIPTION AND ANALYSIS

Clause 1(1) of the bill amends section 30 of the *Financial Administration Act* to enable the Governor General to sign special warrants that authorize payments from the Consolidated Revenue Fund when Parliament is in session but is not sitting. The Governor in Council may direct the preparation of the special warrants on report of the President of the Treasury Board that there are no other appropriations available for the payments and reports of the appropriate ministers that the payments are urgently required for the public good.

Clause 1(3) of the bill establishes reporting provisions for the special warrants issued under clause 1. The warrants are to be sent to a representative of every recognized party in the House of Commons as soon as they are issued, sent to the Clerk of the House of Commons within seven days, and published in the *Canada Gazette* within seven days.

Clause 2 provides that clauses 1(2) and 1(4) of the bill, which reinstate the previous provisions of the *Financial Administration Act* (as outlined in section 1.1 of this Legislative Summary), come into force as of 24 June 2020, thereby limiting the bill's duration.

NOTES

1. Bill C-12, An Act to Amend the Financial Administration Act (special warrant), 1st Session, 43rd Parliament (S.C. 2020, c. 4).
2. *Financial Administration Act*, R.S.C. 1985, c. F-11.
3. A prorogation of Parliament terminates the current parliamentary session, whereas dissolution results in a general election.
4. Government of Canada, *Statement on the Use of Governor General Special Warrants for the Fiscal year ending March 31, 2012*, Ottawa, 2011, p. 9.
5. Ibid.
6. *An Act to amend the Financial Administration Act (session of Parliament)*, 2nd Session, 35th Legislature, (S.C. 1997, c. 5). See also Marc Bosc and André Gagnon, eds., "Chapter 18: Financial Procedures – Governor General's Special Warrants," *House of Commons Procedure and Practice*, 3rd ed., 2017.