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Legislative Summary

BILL C-39:
AN ACT RESPECTING CERTAIN MEASURES TO STRENGTHEN THE ECONOMY

45-1-C39-E

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Legislative Summary of Bill C-39
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-39: AN ACT RESPECTING CERTAIN MEASURES TO STRENGTHEN THE ECONOMY*

1 BACKGROUND

Bill C-39, An Act respecting certain measures to strengthen the economy (short title: Building Canada Strong Act),[1] was introduced in the House of Commons on 21 September 2026 by the Honourable Steven MacKinnon, Minister of Transport and Leader of the Government in the House of Commons.

The bill has three parts:

- Part 1 of Bill C-39 amends various Acts respecting impact assessments, permitting and other environmental issues in the project review process. These include amendments to the *Impact Assessment Act*,[2] the *Building Canada Act*,[3] the *Canadian Energy Regulator Act*,[4] the *Canadian Navigable Waters Act*,[5] the *Canadian Environmental Protection Act, 1999*,[6] the *Species at Risk Act*[7] and the *Fisheries Act*.[8] These amendments follow the Government of Canada's release on 8 May 2026 of a discussion paper on proposals to expedite the federal project review process[9] and its 9 September 2026 report on the result of those consultations.[10]
- Part 2 of Bill C-39 amends various Acts respecting transportation related to marine ports, trade corridors, approval processes and security clearances. These include amendments to the *Department of Transport Act*,[11] the *Canada Transportation Act*,[12] the *Canada Marine Act*,[13] the *Marine Liability Act*,[14] the *Coasting Trade Act*[15] and the *International Bridges and Tunnels Act*.[16] It also repeals the *Shipping Conferences Exemption Act, 1987*[17] and enacts the Enabling Digital Trade Act. These changes follow Transport Canada's release on 8 May 2026 of a discussion paper on proposals to change transportation governance and approval processes,[18] as well as its 9 September 2026 reports following consultations.[19]
- Part 3 of Bill C-39 amends the *Canada Labour Code*[20] and the *Wage Earner Protection Program Act*[21] respecting the collective bargaining process and workplace relations, employee benefit rules and wage recovery in federally regulated private sector industries. These amendments follow the Government of Canada's two rounds of consultations, in April 2026[22] and July 2026,[23] on issues affecting labour relations and worker protections under the *Canada Labour Code*, as well as the release of the September 2026 report summarizing the feedback received from employers and employees.[24] Part 3 was also introduced in the context of the Standing Senate Committee on Transport and Communications' June 2026 report on labour disputes in the rail and maritime sectors,[25] as well as the May 2025 report of the Industrial Inquiry Commission on West Coast Ports.[26]

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2 DESCRIPTION AND ANALYSIS

2.1 PART 1: IMPLEMENTATION OF CERTAIN MEASURES IN RELATION TO PROJECT EVALUATIONS

2.1.1 Division 1: Amendments to the *Impact Assessment Act*

Division 1 of Part 1 of Bill C-39 amends the *Impact Assessment Act* (IAA) to speed up and streamline the federal reviews of designated projects[27] (those requiring an impact assessment), by enabling the Minister of the Environment to issue certain federal authorizations at the same time as the impact assessment decision, by shortening the time limits for some steps in the impact assessment process, and by making the Canadian Nuclear Safety Commission the responsible authority for impact assessment of projects that will be regulated under the *Nuclear Safety and Control Act*.[28]

2.1.1.1 Parallel Impact Assessment and Federal Authorization Phases

Under the current IAA, a designated project undergoes an impact assessment as a separate phase of the federal review process. If, at the conclusion of the impact assessment, the Minister of the Environment decides that a project's effects or outcomes are in the public interest, the project proceeds to the federal authorization phase. At this point, regulatory reviews are undertaken for the federal authorizations required for the project to proceed. This may involve authorization by multiple ministers,[29] depending on the federal legislation involved. Indigenous consultation takes place during each of the impact assessment and federal authorization phases.

Bill C-39 allows for the impact assessment and federal authorization phases to occur at the same time.

Clause 2 of Bill C-39 amends the preamble of the IAA to add a recognition of the importance of coordinating the impact assessment and federal authorizations of designated projects, along with the importance of coordinating Indigenous consultation for the impact assessment and federal authorizations of designated projects. Clause 4(1) of the bill adds new section 6(1.1) of the IAA to reflect this in the IAA's purpose clause. Clause 88 of Bill C-39 replaces section 155(b) of the IAA to broaden the existing objectives of the Impact Assessment Agency of Canada (IAAC) to reflect this new coordination role.

The IAAC already has responsibility for coordinating consultations with Indigenous groups in relation to the impact assessment of designated projects.

2.1.1.2 Canadian Nuclear Safety Commission Leading Certain Impact Assessments

Under the current IAA, the IAAC is the sole entity responsible for conducting impact assessments, unless the Minister of the Environment uses their discretion to appoint a review panel or an integrated review panel to conduct an impact assessment.[30]

If a proposed project will be regulated under the *Nuclear Safety and Control Act* however, the minister must refer the impact assessment to an integrated review panel, set up by the IAAC and the Canadian Nuclear Safety Commission (CNSC).[31]

Bill C-39 gives the CNSC responsibility for conducting some impact assessments.

Clause 4(1) of Bill C-39 adds the CNSC to the list of the entities in the mandate of the IAA listed in section 6(2) of the IAA. Clause 7 of Bill C-39 adds new section 8.3, which names the CNSC as a "responsible authority" in the case of a designated project that is designated by the minister or defined in regulations "that includes activities that are regulated under the *Nuclear Safety and Control Act* and that are linked to the Canadian Nuclear Safety Commission." Clause 7 of Bill C-39 also adds new section 8.4 which requires the two responsible authorities (CNSC and the IAAC) to cooperate with each other when responsible for closely related designated projects.

Bill C-39 changes the IAA to add reference to the respective responsibilities of the CNSC for CNSC-led impact assessments and of the Minister of the Environment for IAAC-led impact assessments. Bill C-39 creates responsibilities for the CNSC similar to those that the IAAC and the minister already have for impact assessments (e.g., authority to coordinate the impact assessment and consultation with Indigenous groups, cost recovery from the proponent, public access to records, enforcement and annual reporting).

Clause 16 of Bill C-39 amends section 19 of the IAA to allow the IAAC or CNSC, as the case may be, to delay posting a notice that all information has been received from the proponent by the deadline. The general deadline is shortened from 3 years to 365 days, however the CNSC may postpone the posting of the notice in order to cooperate with another jurisdiction (listed in section 21 of the IAA) that has powers, duties or functions related to assessing the environmental effects of the designated project.

2.1.1.2.1 Physical Activities Regulated by the Canadian Energy Regulator or the Canadian Nuclear Safety Commission

Clause 8(2) of Bill C-39 amends section 9(7) of the IAA such that, if a physical activity is regulated under the *Canadian Energy Regulator Act*,[32] the Minister of the Environment may not designate that physical activity (thus requiring an impact assessment by the IAAC).

Clause 28 of Bill C-39 amends section 32(b) of the IAA to add the *Nuclear Safety and Control Act* to the list of laws that, if a proposed project includes activities that will be regulated by it, the minister must not approve a substitution for an impact assessment conducted by another jurisdiction.

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Clause 31 of Bill C-39 adds new section 36.1 to the IAA that creates an exception whereby the minister cannot refer to a review panel the impact assessment of a designed project where the CNSC is the responsible authority.

Clauses 34 to 40 and 42 of Bill C-39 repeal sections of the IAA related to impact assessments involving the Minister of the Environment and the CNSC or the Canadian Energy Regulator (CER), or projects regulated by the CNSC or the CER, because these are no longer relevant. Projects that will be regulated by the CNSC or the CER will undergo assessments by those bodies and not by the IAAC or the Minister of the Environment.

2.1.1.3 Shortened Time Frames

Clause 2 of Bill C-39 amends the preamble of the IAA to add a federal government commitment to issue the decision statement for designated projects (for which the IAAC is the responsible authority) within one year of receiving the required information from the proponent.

Clause 16 of Bill C-39 modifies section 19(1) of the IAA to reduce the amount of time that the proponent has to provide the responsible authority with information or studies set out in the notice of commencement of the impact assessment of the designated project, from the current three years to 365 days. However, the proponent may still request a time extension, as currently set out in the IAA.

Clause 32 of Bill C-39 modifies section 37(2) of the IAA to shorten the time limit for completing an impact assessment by review panel from 600 to 300 days. Under modified sections 37(2) to 37(4), the IAAC, minister or Governor in Council may still extend time limits for a review panel to cooperate with a jurisdiction referred to in section 21 of the IAA. However, they may no longer extend time limits "to take into account circumstances that are specific to the designated project."

Clause 33 of Bill C-39 repeals section 37.1 of the IAA regarding time limits.

2.1.1.4 Federal Authorizations Issued at the Same Time as the Impact Assessment Decision Statement

Clause 3(3) of Bill C-39 amends section 2 of the IAA to define a federal authorization as "an approval or other decision, or a permit, licence, regulation or other document or instrument, that is required to permit a designated project to be carried out in whole or in part."

Clause 91 of Bill C-39 sets out a new Schedule 5 to the IAA, specifying the federal authorizations, shown in Table 1, for which the Minister of the Environment has new powers (described below). Notably, clause 49 of Bill C-39 adds new section 64.2 to

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the IAA, by which the minister may grant the federal authorizations listed in Schedule 5 at the same time as the decision statement, if the decision is such that the designated project may proceed.

Table 1 – Schedule 5 to the *Impact Assessment Act*, as Set Out in Clause 91 and Schedule 1 of Bill C-39

Act (Column 1 of Schedule 5)	Provision of the Act (Column 2 of Schedule 5)
Fisheries Act	▪ Section 34.4(2)(b) – Authorization to carry on a work, undertaking or activity, other than fishing, that results in the death of fish, provided that the work, undertaking or activity is carried on in accordance with the conditions established by the Minister of Fisheries and Oceans. ▪ Section 35(2)(b) – Authorization to carry on a work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat, provided that the work, undertaking or activity is carried on in accordance with conditions established by the Minister of Fisheries and Oceans.
Canadian Navigable Waters Act	▪ Section 7(6) – Approval to construct, place, alter, rebuild, remove or decommission a work that may interfere with navigation, including by changing the water level or water flow of a navigable water, that the Minister of Transport considers appropriate in the circumstances. ▪ Section 24(1) – Exemption by the Governor in Council from the prohibition against interference with navigation by deposit or dewatering.
Canadian Environmental Protection Act, 1999	▪ Section 127(1) – Issuance of a permit by the Minister of the Environment authorizing the loading for disposal and the disposal of waste or other matter at sea, subject to the regulations.
Species at Risk Act	▪ Section 73(1) (in respect of a purpose referred to in section 73(2)(c)) – Authorization by the competent minister (Environment or Fisheries and Oceans) to engage in an activity affecting a listed wildlife species, any part of its critical habitat or the residence of its individuals. ▪ Section 74 – Agreement, permit, licence, order or other similar document authorizing a person or organization to engage in an activity affecting a listed wildlife species, any part of its critical habitat or the residences of its individuals that is entered into, issued or made by the competent minister under another Act of Parliament has the same effect as an agreement or permit under section 73(1).

Notes: Other parts of Bill C-39 modify the sections of the laws listed in Schedule 5 to require that, before establishing, adding or amending terms and conditions in the various authorizations, agreements or permits, the minister "must take into account the technical, economic and practical feasibility of the terms and conditions if the agreement or permit authorizes a person to engage in an activity" related to a designated project, as defined in section 2 of the *Impact Assessment Act*.

Clauses 159 and 160 of Bill C-39 modify the *Canadian Navigable Waters Act*. Clause 167 of Bill C-39 modifies the *Canadian Environmental Protection Act, 1999*. Clause 176 of Bill C-39 modifies the *Species at Risk Act*. Clause 183 of Bill C-39 modifies the *Fisheries Act*.

Sources: Table prepared by the Library of Parliament using information obtained from Bill C-39, An Act respecting certain measures to strengthen the economy, 45th Parliament, 1st Session; *Fisheries Act*, R.S.C. 1985, c. F-14; *Canadian Navigable Waters Act*, R.S.C. 1985, c. N-22; *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33; and *Species at Risk Act*, S.C. 2002, c. 29.

Clause 7 of Bill C-39 adds new section 8.1 to the IAA whereby a federal authority other than the minister must not issue federal authorizations listed in Schedule 5 that could allow a designated project, for which the IAAC is the responsible authority, to proceed, unless:

- the IAAC has posted its decision that no impact assessment is required;
- the federal authorization is for the purpose of allowing the proponent to undertake early construction activities the minister considers in the public interest prior to issuing an impact assessment decision (in accordance with section 7(3)(d) of the IAA).

New section 8.1of the IAA also sets out that the minister must decide when a designated project's construction phase, as described in the section 65 decision statement, is complete.

Clause 15 of Bill C-39 amends section 18 of the IAA to set out a requirement for the IAAC to, prior to issuing the notice of commencement of the impact assessment of a designated project, consult the relevant federal authorities for any required federal authorizations listed in Schedule 5 to the IAA. When the IAAC issues the notice of commencement of the impact assessment, it must include the information and studies that are required of the proponent for all federal authorizations listed in Schedule 5 which apply to the designated project, along with the information and studies that are required for the impact assessment.

Clause 18 of Bill C-39 adds new section 20.1 to the IAA to provide for an exception by which the proponent may notify the IAAC that it will not provide all information and studies required for a federal authorization set out in Schedule 5 to the IAA that were listed as required in the notice of commencement (in accordance with section 18(1.01) of the IAA). Clause 16 of Bill C-39 adds section 19(5) to the IAA to oblige the IAAC to consult with the relevant federal authority and, if the IAAC is satisfied that all other information and studies have been received from the proponent, it must post a public notice that all required information has been received (in accordance with section 19(4) of the IAA).

Clause 43 of Bill C-39 adds new sections 59.1 and 59.2 to the IAA, whereby a federal authority implicated in the provisions listed in Schedule 5 must:

- inform the IAAC in writing as soon as feasible if it becomes "aware that there is a barrier to the granting of the federal authorization or that the federal authorization is not required"; and
- provide specialist or expert information or knowledge, upon request, regarding a project for which the IAAC is the responsible authority.

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Clause 43 of Bill C-39 adds new section 59.3 to the IAA with a requirement for the Minister of the Environment to consult the minister(s) responsible for provisions set out in Schedule 5 (where such a federal authorization is required in order for the project to proceed) prior to the Minister of the Environment exercising a power or performing a duty or function that will lay out the conditions under which the decision statement or federal authorizations for the project are issued.

Clause 49 of Bill C-39 adds new section 64.2 to the IAA, which obliges the minister of the Environment to decide whether to issue federal authorizations listed in Schedule 5 prior to issuing the impact assessment decision statement. Section 64.2 sets out circumstances and requirements for issuing the federal authorization, including that "all of the requirements that must be met under any Act of Parliament in relation to the granting of the federal authorization are met."

Clause 56 of Bill C-39 adds new sections 69.1 to 69.3 to the IAA. Section 69.1 provides authority to the Minister of the Environment to grant any federal authorizations listed in Schedule 5 required for the designated project to proceed *if* the minister or Governor in Council have issued a decision statement permitting the project to proceed (i.e., the effects are not likely to be significant or the effects are justified in the public interest). Section 69.1 also sets out the circumstances for granting the federal authorizations, and requires the minister to amend the decision statement to inform the proponent of the decision of the minister or Governor in Council on whether to grant federal authorizations and, if granted, set out those authorizations and conditions.

New section 69.2(1) of the IAA provides an exception for Schedule 5 authorizations, which limits the minister's ability, under section 68, to amend the portion of the decision statement set out in sections 65(1)(e) to 65(1)(h) or sections 69.1(5)(a) to 69.1(5)(d) (see section 2.1.1.7.1 of this legislative summary). New section 69.2(2) of the IAA does, however, provide the minister with the authority to, after consulting with the minister responsible for the provision under which a federal authorization listed in Schedule 5 is granted, add to, remove or amend conditions of that federal authorization. In this case, the minister must amend the decision statement and post it to the Canadian Impact Assessment Registry's Internet site. New section 69.2(4) of the IAA provides a limitation by which no federal authority other than the minister may add to, remove or amend the conditions established for a federal authorization issued in conjunction with the decision statement.

New section 69.3 of the IAA states that the administration and enforcement provisions (sections 120 to 152 of the IAA) do not apply in relation to any condition of a federal authorization referred to in section 65(1)(f) (federal authorizations granted by the minister set out in the decision statement) or section 69.1(5)(b)

(federal authorizations granted by the minister set out in an amended decision statement) of the IAA.

Clause 62 of Bill C-39 adds new section 75.1 to the IAA to provide the IAAC with the authority to establish "a participant funding program to facilitate consultations with Indigenous groups in relation to required federal authorizations" set out in Schedule 5.

Clause 73 of Bill C-39 adds new section 110.1 to the IAA to enable the Governor in Council to, "by order, amend Schedule 5 by adding, replacing or deleting the name of an Act of Parliament or a regulation or the reference to a provision of an Act of Parliament or a regulation."

2.1.1.4.1 National Interest Project

Clause 43 of Bill C-39 adds new section 59.4 to the IAA to provide that, if a designated project has been deemed a national interest project as defined in section 2 of the *Building Canada Act* (i.e., any projects set out in Schedule 1 of the *Building Canada Act*), the sections related to issuing federal authorizations listed in Schedule 5 (sections 59.1, 59.2, 64.1, 64.2, and 69.1 of the IAA) do not apply.

2.1.1.5 Permission to Do Work Before Impact Assessment Decision Is Made, if It Is Considered in the Public Interest

Clause 5 of Bill C-39 provides a new authority to the minister and the CNSC (for designated project for which they are the responsible authority) to permit the proponent to do an act or thing considered in the public interest to be carried out *prior* to issuing a decision statement with respect to the designated project (new sections 7(3)(d) and 7(3)(e) of the IAA). In using this authority, the minister or CNSC specifies the works that can be undertaken and must also specify conditions that they consider appropriate "requiring the proponent to remediate any adverse effects within federal jurisdiction caused by the doing of that act or thing" (new section 7(6) of the IAA). The IAAC and the CNSC are required to post on the Internet site any decisions taken to permit the proponent to engage in early works (new sections 7(4) and 7(5) of the IAA).

Clause 5 of Bill C-39 explicitly states that the minister and the CNSC are not authorized "to permit a proponent to carry out the whole of a designated project" under these new sections 7(3)(d) and 7(3)(e) (new section 7(7) of the IAA).

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Clause 49 of Bill C-39 adds new section 64.1 to the IAA to allow the Minister of the Environment to issue federal authorizations listed in Schedule 5 required for the proponent to undertake works prior to the completion of the impact assessment, if the minister is of the opinion that it is in the public interest.

2.1.1.6 Designated Minister

Clause 3(3) of Bill C-39 adds a definition of "designated minister" as a minister designated by regulations made by the Governor in Council in respect of a designated physical activity or class of physical activities, linked to the IAAC (designated in Governor in Council regulations made under section 109(b) of the IAA).

Clause 8 of Bill C-39 amends section 9 of the IAA to require that, when the Minister of the Environment designates a physical activity as requiring an impact assessment, they must specify whether the designated physical activity is linked to the IAAC or the CNSC. Clause 8 of Bill C-39 also sets out that, when the minister designates a physical activity that is linked to the IAAC, the Governor in Council must identify a designated minister by order in respect of the physical activity, and this order must be made before the IAAC posts the impact assessment report on the Internet.

Other clauses add reference to the designated minister along with the minister with respect to decisions that will be taken together (e.g., clauses 44 and 69(3) of the bill).

2.1.1.7 Decision Making

Clause 46 of Bill C-39 adds new section 61.1 and amends section 62 of the IAA to set out the determination process for an impact assessment for which the CNSC is the responsible authority whereby, if adverse effects are determined to be significant, the Governor in Council must determine if they are justified in the public interest, and must include the reasons for their decision. The Governor in Council may extend the time limit for the assessment "to take into account circumstances that are specific to the designated project or to facilitate cooperation with a jurisdiction referred to in section 21."

Clauses 47 and 48 of Bill C-39 amend sections 63 and 64 of the IAA to include decisions made by the minister or the Governor in Council, for IAAC- or CNSC-led impact assessments, on determining whether adverse effects are justified as being in the public interest, and the setting of conditions to mitigate adverse effects within federal jurisdiction and direct or incidental adverse effects.

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Clause 50(3) of Bill C-39 amends sections 65(2) and 65(3) of the IAA to add to the content of the decision statement (section 65 of the IAA) that the minister must issue to the proponent to include which federal authorizations the minister or Governor in Council is granting (as the case may be), along with their conditions.

Clause 50 of Bill C-39 also modifies section 65(3) of the IAA to set the amount of time that the minister or the Governor in Council have to issue the decision statement from the current 30 days to 65 days after the report on the impact assessment of the designated project, or a summary of that report, is posted on the Internet site if the decision is that the project may proceed because: (1) the adverse effects are not likely to be significant; or (2) they are likely to be significant but are justified as being in the public interest. Under amended section 65(5) of the IAA (in accordance with clause 50(6) of the bill), the minister may still extend the time limit by up to a maximum of 90 days if necessary to facilitate cooperation with a jurisdiction referred to in section 21, but may no longer do so to "to take into account circumstances that are specific to the designated project."

2.1.1.7.1 Amendment of Conditions of the Decision Statement, if It Is in the Public Interest

Clause 53 of Bill C-39 amends section 68(1) of the IAA such that the minister may only amend a decision statement issued by the minister under section 65 (i.e., not a decision statement issued by the Governor in Council). It also amends section 68(2) to state that the minister may add, remove or amend a condition only if the minister is of the opinion that doing so will not increase the extent to which the effects indicated in the impact assessment report of the designated project are "significant" (rather than the current "adverse"). Notably, new section 68(2.1) of the IAA allows the Governor in Council or the minister and the designated minister to add, amend or remove conditions that may increase the extent to which effects are significant if they are of the opinion that the addition, removal or amendment is in the public interest.

New section 68(2.2) of the IAA also restricts the minister from adding, removing or amending a condition that will result in permitting a physical activity not already included in the designated project as described in the decision statement.

Clause 54 of Bill C-39 adds new section 68.1 to the IAA to provide similar caveats for CNSC-led impact assessments as for IAAC-led ones: the CNSC may amend a decision statement but not change the decision itself; and the CNSC may only add, remove, or amend conditions in the decision statement if it is of the opinion that this will not increase the extent to which the effects are significant.

New section 68.1(3) also provides greater certainty that the CNSC may exercise powers or perform duties or functions conferred on it under the *Nuclear Safety and Control Act* for projects for which a licence is issued under section 24 of the *Nuclear Safety and Control Act*.

2.1.1.8 *Statutory Instruments Act*

Clause 76 of Bill C-39 adds to the existing list of sections (9(1) and 115(1)) under which an order made is not subject to the *Statutory Instruments Act*,[33] by adding to section 116 of the IAA:

- section 9(6.2) – designating a minister in respect of a physical activity;
- section 110.1 – amendments to Schedule 5, the list of federal authorizations under certain Acts and regulations with respect to a designated project; and
- section 115(2) – excluding a designated project from the application of the IAA if the designated project is to be carried out in response to an emergency or a national emergency (for which measures are taken under the *Emergencies Act*).[34]

Bill C-39 specifies that various orders, permits, guidelines or decrees made under various Acts are not subject to the *Statutory Instruments Act*. These Acts include, in addition to the *Impact Assessment Act*, the *Building Canada Act* (clause 103 of the bill), the *Canadian Environmental Protection Act, 1999* (clause 167 of the bill), the *Species at Risk Act* (clause 176 of the bill), the *Fisheries Act* (clauses 181 and 182 of the bill), the *Canada Marine Act* (clauses 201, 206, 209 and 250 of the bill), the *International Bridges and Tunnels Act* (clauses 293 and 297 of the bill), the Enabling Digital Trade Act (clause 302 of the bill) and the *Canada Labour Code* (clause 352 of the bill). Among other practical effects of this designation is that they would not need to be published in the *Canada Gazette* or be subject other aspects of the regulation-making process under the *Statutory Instruments Act*.

2.1.1.9 Transitional Amendments

Clause 90 of Bill C-39 adds new sections 189 to 194 to the IAA, which set out the conditions under which designated projects, having already completed certain steps under the current version of the IAA, will continue their impact assessment processes under either the current version of the IAA, or under the version that will come into force as a result of Bill C-39.

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2.1.1.10 Coming into Force

Clause 93 of Bill C-39 sets out that Division 1 comes into force on a day to be fixed by order of the Governor in Council (with the exception of the coordinating amendments in clause 92 of the bill).

2.1.2 Division 2: Amendments to the *Building Canada Act*

Division 2 of Bill C-39 amends the *Building Canada Act* (BCA, former Bill C-5) by increasing ministerial authority to determine regions of national interest, removing its five-year time limits, and adjusting the public disclosure rules.

Clauses 94 to 97 of Bill C-39 expand the scope of the BCA by adding "regions of national interest" or "projects of an eligible type within a region of national interest" after references to "projects." The "regions of national interest" are to be named in Schedule 3 of the BCA (added by clause 113 of the bill), which requires the name, description, types of projects and information from project proponents.

Section 5(2) of the BCA provides a five-year sunset clause for the Governor in Council to be able to define "national interest," ending on 26 June 2030. Clause 98(1) of Bill C-39 removes this sunset clause from the BCA while retaining the limit that prevents the Governor in Council from defining national interest "while Parliament is prorogued or dissolved."

Clause 99 of Bill C-39 repeals section 5.1 of the BCA, which establishes and maintains an Internet public registry of the national interest projects. Clause 103 of Bill C-39, however, introduces new section 8.7 of the BCA which reproduces the requirements of the repealed section 5.1 of the BCA, and adds the requirement to include information required by new section 8.2 of the BCA regarding regions of national interest.

Section 8(2) of the BCA allows the minister responsible – designated as the President of the King's Privy Council for Canada[35] – to amend the document issued to the proponents of authorized national interest projects to "specify additional authorizations" as outlined in section 7. Clause 100 of Bill C-39 adds the ability for the minister to remove any condition, and add any condition beyond those outlined in section 7(1), in addition to maintaining the ability for the minister to maintain the document. Clause 100 of Bill C-39 also eliminates the five-year time limit set out in section 8(4) that limited the minister to acting within five years of when the section came into force.

Clause 101 of Bill C-39 adds section 8.01, which outlines the minister's ability to add, remove or amend any conditions for national interest projects and the requirement for the minister to consult with the minister responsible for enacting any of the Acts listed in Schedule 2 of the BCA, and with affected Indigenous peoples. Any condition so added by the minister is to be treated as though it were imposed by the appropriate Act of Parliament, and must be within the scope and powers of that Act.

Section 8.1(3) of the BCA requires the minister to make public the information in the document issued to the proponent of a national interest project no later than 30 days before the document is issued. Clause 102 of Bill C-39 amends this requirement so that the publication of that information is to be no later than 30 days after the day that a document is issued.

Clause 103 of Bill C-39 adds new section 8.2 to 8.6 of the BCA, outlining the requirements for the Governor in Council to designate or delete regions of national interest in Schedule 3.

Clauses 104 to 106 of Bill C-39 amend the *Canada–Newfoundland and Labrador Atlantic Accord Implementation and Offshore Renewable Energy Management Act*,[36] the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation and Offshore Renewable Energy Management Act*,[37] the *Nuclear Safety and Control Act*,[38] and the *Canadian Energy Regulator Act*[39] to include relevant sections from clause 8 of Bill C-39 and to include the minister's additional powers to add or remove conditions, in addition to making amendments.

For projects that are also "designated projects" under the *Impact Assessment Act* (IAA), clause 107 of Bill C-39 amends section 19 of the BCA to extend the exemption from certain time limits set out in the IAA to eligible projects within a region of national interest that the minister is satisfied meets the Schedule 3 criteria. Such projects would be exempt from the initial planning phase that allows the Impact Assessment Agency of Canada (IAAC) to determine whether an impact assessment is required. Instead, the IAAC is deemed to have already determined that an impact assessment is required.

Clause 108 of Bill C-39 replaces section 20 of the BCA to include projects within regions of national interest in the mandate of the coordinating office that serves as a central point of contact for the purposes of the BCA.[40]

Clauses 109 to 111 of Bill C-39 remove the five-year time limit provided for in several provisions for the making of orders and regulations under the BCA. In effect, these clauses would enable the Governor in Council to make orders and regulations under the BCA unless Parliament is prorogued or dissolved.

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Clauses 114 and 115 of Bill C-39 are consequential and transitional provisions that amend the *Federal Courts Act*[41] to empower the Federal Court of Appeal to hear and determine applications for judicial review made in respect of the making of an order to designate a national interest project or region.

Clause 117 of Bill C-39 provides that these amendments to the BCA come into force on a day or days fixed by order of the Governor in Council.

2.1.3 Division 3: Amendments to the *Canadian Energy Regulator Act*

Division 3 of Part 1 of Bill C-39 amends the *Canadian Energy Regulator Act* (CERA). Among other measures, Division 3 introduces tiered approval frameworks for pipeline projects and power lines requiring a certificate. These new frameworks are based on the length of the "new right of way" required for a project, with different timelines and decision-making processes applying to each of the tiers.

This division also introduces new measures relating to the coordination of federal reviews and related consultations with Indigenous peoples. The following sections examine these changes and the related rules on timing, conditions and review.

2.1.3.1 Certificates for Pipeline Projects (Clause 128)

Currently, sections 182 to 186 of CERA set out a single approval process for *all* pipeline certificate applications. Bill C-39 would replace these sections with new sections 182 to 186.2, which set out a tiered approval process based on the length of the new right of way required for a given pipeline project.

Bill C-39 establishes two main categories of pipeline project: those requiring less than 300 kilometres (km) of new right of way and those requiring 300 km or more of new right of way. It also provides for a third category – in essence a subcategory of the first category – those projects requiring less than 40 km of new right of way.

This section considers some of the key features of the certificate issuance processes for the three categories of pipeline, focussing on the decision-maker, the decision-making process and time limits.

2.1.3.1.1 Decision-Maker

Under the existing CERA, the Governor in Council is responsible for deciding whether a pipeline certificate be issued; under the proposed new rules, decision-making authority will be transferred to the Commission of the Canadian Energy Regulator (the Commission) for certain projects. Specifically, new section 183(1) of CERA empowers the Commission to make a decision as to whether a certificate should be

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issued for all or any part of a pipeline that does not require a total of 300 km or more of new right of way. For a pipeline requiring 300 km or more of new right of way, new section 186.1 of CERA provides that decision-making authority remains with the Governor in Council.

2.1.3.1.2 The Decision-Making Process

In the case of an application for a certificate in respect of a pipeline that requires less than 300 km of new right of way, new section 183(1) of CERA provides that the Commission, if it considers the application to be complete, must prepare a public report setting out its decision, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and detailing the reasons for that decision. New section 183(1)(b) of CERA further provides that, if it decides to issue a certificate, the Commission's report must also set out the conditions to which the certificate will be subject.

In the case of applications in respect of a certificate that requires 300 km or more of new right of way, the Commission must prepare a report, which is both submitted to the minister identified under section 8 of CERA and made public (new section 186(1) of CERA). The report must consider whether the pipeline is and will be required by the present and future public convenience and necessity. The Governor in Council then directs the Commission to issue a certificate or dismiss the application and must explain its reasons (new section 186.1 of CERA). Where the Commission is directed to issue a certificate, it sets the conditions (new section 186.2(1) of CERA) to which the certificate will be subject, and, on the issuance of the certificate, the Commission must publish a report explaining the reasons for the conditions it has included (new section 186.2(4) of CERA).

Bill C-39 sets out factors the Commission must consider when making its decision in relation to pipelines requiring less than 300 km of new right of way (new section 183(2) of CERA) and in preparing its report to be submitted to the minister and made public in relation to pipelines requiring more than 300 km of new right of way (new section 186(2) of CERA). These factors are largely unchanged from those listed in the current CERA, except that for pipeline projects requiring 300 km or more of new right of way, a relevant *Impact Assessment Act* assessment is no longer a factor to be considered by the Commission for the report it submits to the minister. Rather, such assessments are considered when the Commission sets certificate conditions under new section 186.2(2) of CERA.

The new certificate issuance framework provides various opportunities for public input, both in relation to applications for pipeline projects requiring less than 300 km of new right of way (new section 183(3) of CERA) and in relation to applications for pipelines requiring 300 km or more of new right of way (new section 186(3) of CERA).

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Members of the public may also make representations about the conditions to which the certificate will be subject (new section 186.2(3) of CERA).

2.1.3.2 Time Limits

Clause 118 of Bill C-39 amends the preamble to the CERA to, among other things, articulate the government's commitment to ensuring that decisions in relation to pipelines (and power lines and offshore renewable energy projects) are made within one year of the applicant providing the necessary information. Specific time limits are then introduced through clause 128 of Bill C-39.

For pipelines that require less than 300 km of new right of way, the Commission's report must be made public within the time limit specified by the Lead Commissioner. This time limit must not be longer than 300 days after the day on which the applicant has, in the Commission's opinion, submitted a complete application (new section 183(4) of CERA). Provisions governing excluded periods for the calculation of the time limit and extensions are set out in new sections 183(5) and 183(6) of CERA, respectively. New section 184 of CERA further provides that the Commission must issue a certificate or dismiss the application for a certificate as soon as possible after making the report containing its decision public.

For pipelines that require 300 km or more of new right of way, the report must be submitted to the minister within the time limit specified by the Lead Commissioner. In such cases, the specified time limit must be no longer than 180 days after the day on which the applicant has, in the Commissioner's opinion, a submitted a complete application (new section 186(4) of CERA). Provisions governing excluded periods for the calculation of the time limit and extensions are set out in new sections 186(5) and 186(6) of CERA, respectively. New section 186.1(3) of CERA provides that the Governor in Council must make an order directing the Commission to issue a certificate or dismiss the application within 60 days after the day on which the report is submitted. New section 186.2(6) of CERA then provides that the Commission must issue the certificate within 125 days of order being made.

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Table 2 compares the ordinary time limits and decision-making responsibilities under the current CERA and clause 128 of Bill C-39.

Table 2 – Comparison of Pipeline Certificate Time Limits and Decision-Making Authorities

Procedure	Commission's Assessment and Report	Governor in Council	Commission's Action Following the Decision
Current *Canadian Energy Regulator Act* (CERA)	Submits its recommendation and proposed conditions within a deadline set by the Lead Commissioner, normally no more than 450 days after the application is complete.	Normally makes its order within 90 days after the report, subject to the rules for designated projects and reconsideration.	Complies with the order within seven days.
Bill C-39, An Act respecting certain measures to strengthen the economy (Bill C-39): less than 300 km of new right of way	Makes its decision report public within a deadline set by the Lead Commissioner, normally no more than 300 days after the application is complete.	No decision under this certificate process.	Issues the certificate or dismisses the application as soon as possible after making the report public, with no separate fixed deadline.
Bill C-39: 300 km or more of new right of way	Submits its report within a deadline set by the Lead Commissioner, normally no more than 180 days after the application is complete.	Directs certificate issuance or dismissal within 60 days after the report is submitted.	If directed to issue a certificate, sets conditions and issues the certificate within 125 days after the order.

Note: Time limits are subject to applicable exclusions and extensions. Under Bill C-39, the minister identified under section 8 of the CERA may extend the Commission of the Canada Energy Regulator's report deadlines and the 125-day certificate deadline where required to fulfil the Crown's duty to consult with Indigenous peoples. An extension may not exceed 90 days.

Source: Table prepared by the Library of Parliament.

2.1.3.2.1 Exemptions for Pipelines that Do Not Require a Total of 40 km or More of New Right of Way (Clause 137)

Among other measures, current section 214(1) of CERA permits the Commission to exempt, by order, "pipelines or, branches of or extensions to pipelines of not more than 40 kilometres in length" from the application of certain provisions relating to certificate, construction and route requirements. Clause 137 of Bill C-39 amends this section to, among other things, introduce new section 214(1)(a) to CERA, which provides the Commission with the power to make exemptions for "pipelines or branches of or extensions to pipelines that do not require a total of more than 40 km of new right-of-way." In other words, the new threshold is based on length of new right of way rather than total pipeline length.

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Clause 137 of Bill C-39 also adds new section 214(1)(a.1) to CERA, which enables exemptions to be ordered for a pipeline, branch or extension requiring 40 km or more of new right of way if the Commission determines that such an order is in the public interest. The Commission, in making its determination, must consider the project's size, complexity and potential impacts, including impacts on Indigenous rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

New section 214(4) of CERA reduces the ordinary maximum time limit for the Commission to make the requested exemption order or dismiss an application from 300 days to 180 days after the applicant has, in the Commission's opinion, provided a complete application.

2.1.3.3 Issuance of Certificates for Power Lines (Clause 146)

Bill C-39 also introduces a tiered approval framework for designated power lines. Under the current CERA, existing section 262(1) provides that, where the Commission is satisfied that a power line "is and will be required by the present and future public convenience and necessity," it may, subject to certain requirements, including obtaining the approval of the Governor in Council, issue a certificate in respect of certain power lines. Clause 146 of Bill C-39 replaces the existing certificate issuance process with a new tiered approval framework based on the length of the new right of way required.

2.1.3.3.1 Decision-Maker

For a power line requiring less than 300 km of new right of way, new section 262.1(1) of CERA empowers the Commission to make the decision as to whether to issue the certificate. For a power line requiring 300 km or more of new right of way, new section 263.2(1) of CERA provides that the Governor in Council must direct the Commission to issue a certificate, subject to any conditions the Commission considers necessary or in the public interest or dismiss the application.

2.1.3.3.2 Decision-Making Process

As is the case for the new tiered approval process for pipeline projects, the new tiered approval process for power lines imposes obligations on the Commission with regard to preparing its report, among other matters. For power lines requiring less than 300 km of new right of way, new section 262.1(1) of CERA provides that the Commission's report must set out its decision and reasons, taking into account whether the line is and will be required by the present and future public convenience and necessity. If the decision is favourable, the report must also set out the certificate conditions.

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For power lines requiring 300 km or more of new right of way, new section 263.1(1) of CERA requires the Commission to submit to the minister, and make public, a report considering whether the line is and will be required by the present and future public convenience and necessity. The Governor in Council then directs the Commission to issue a certificate or dismiss the application (new section 263.2(1) of CERA). The Governor in Council's order directing the Commission must set out the reasons for its decision (new section 263.2(2) of CERA). If directed to issue a certificate, new section 263.3(1) of CERA provides that the Commission must set the conditions it considers necessary or in the public interest.

Bill C-39 sets out factors the Commission must consider when making its decision in relation to power lines requiring less than 300 km of new right of way (new section 262.1(2) of CERA) and in preparing its report to be submitted to the minister and made public in relation to pipelines requiring more than 300 km of new right of way (new section 263.1(2) of CERA). These factors are largely unchanged from those listed in the current CERA, with the addition of a public interest consideration (new sections 262.1(2)(g) and 263.1(2)(g) of CERA). As well, for power lines requiring 300 km or more of new right of way, a relevant *Impact Assessment Act* assessment is no longer a factor the Commission must consider when preparing the report it submits to the minister. Rather, such assessments are considered when the Commission sets certificate conditions under new section 263.3(2)(f) of CERA.

The new certificate issuance framework provides various opportunities for public input, both in relation to applications for power line projects requiring less than 300 km of new right of way (new section 262.1(3) of CERA) and in relation to applications for power lines requiring 300 km or more of new right of way (new section 263.1(3) of CERA). Members of the public may also make representations about the conditions to which the certificate will be subject (new section 263.3(3) of CERA).

2.1.3.3.3 Time Limits

For power lines requiring less than 300 km of new right of way, new section 262.1(4) of CERA provides that the Commission's report must be made public within the time limit specified by the Lead Commissioner, a date which cannot exceed 300 days after the day on which the applicant has, in the Commission's opinion, submitted a complete application. For power lines requiring 300 km or more of new right of way, new section 263.1(4) of CERA stipulates that the Commission must submit its report to the minister within a specified time limit no longer than 180 days after the day on which the applicant has, in the Commission's opinion, submitted a complete application. New section 263.2(3) of CERA in turn specifies that the Governor in Council must make an order within 60 days of the day on which the report is submitted. Finally, new section 263.3(6) of CERA provides that the

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Commission must issue the certificate within 125 days after the day on which the order is made. As with the approval process for pipelines, certain provisions regarding exemptions and extensions apply.

Table 3 compares the ordinary time limits and decision-making responsibilities under the current CERA and clause 146 of Bill C-39.

Table 3 – Comparison of Power Line Certificate Time Limits and Decision-Making Authorities

Procedure	Commission's Assessment and Report	Governor in Council	Commission's Action Following the Decision
Current *Canadian Energy Regulator Act* (CERA)	Decides within a deadline normally no more than 300 days after the application is complete; recommends approval if favourable or dismisses the application.	Normally approves or refuses issuance within 90 days after the recommendation, subject to the rules for designated projects and extensions.	Commission issues the certificate within seven days after approval.
Bill C-39, An Act respecting certain measures to strengthen the economy (Bill C-39): less than 300 km of new right of way	Makes its decision report public within a deadline normally no more than 300 days after the application is complete.	No decision under this certificate procedure.	Commission issues the certificate or dismisses the application as soon as possible after making the report public; no separate fixed deadline.
Bill C-39: 300 km or more of new right of way	Submits its report within a deadline normally no more than 180 days after the application is complete.	Directs issuance or dismissal within 60 days after submission of the report.	If directed to issue, Commission sets conditions and issues the certificate within 125 days after the order.

Note: The Commission of the Canada Energy Regulator (the Commission) report and decision periods begin after the applicant has, in the Commission's opinion, provided or submitted a complete application. Time limits are subject to applicable exclusions, extensions and provisions preserving the authority of the Commission after a missed deadline. Current section 263 of CERA provides separate timing rules for designated projects subject to an impact assessment.

Source: Table prepared by the Library of Parliament.

2.1.3.4 Consultation with Indigenous Peoples and Coordination of Federal Review Processes (Clauses 118 and 127)

Clause 118 of Bill C-39 amends the preamble to CERA to recognize the importance of coordinating both "review processes for federal authorizations in relation to pipelines, power lines and offshore renewable energy projects, and consultations with the Indigenous peoples of Canada in relation to the review processes for those federal authorizations."

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The current CERA does not set out a mechanism for the Canadian Energy Regulator (the Regulator) to coordinate with other federal authorities responsible for other federal authorizations in relation to pipelines, power lines and offshore renewable energy projects. Clause 127 of Bill C-39 introduces new section 75.1 to CERA, which allows the Regulator's Chief Executive Officer to work with other federal authorities to ensure that:

- review processes in respect of pipelines, power lines and offshore renewable energy projects are coordinated;
- consultations with the Indigenous peoples of Canada in relation to these processes are coordinated; and
- federal authorizations that are required in respect of any such project are, to the extent possible, issued at the same time.

New section 75.2 of CERA places an obligation on federal authorities to work with the Regulator's Chief Executive Officer to meet these objectives, while new section 75.3 introduces an information sharing requirement.

2.1.3.5 Coming into Force (Clause 158)

Clause 158 of Bill C-39 provides that the amendments to CERA come into force on a date to be fixed by the Governor in Council.

2.1.4 Division 4: Amendments to the *Canadian Navigable Waters Act*

Division 4 of Part 1 of Bill C-39 amends the *Canadian Navigable Waters Act* (CNWA). The CNWA protects the waters on which the public has a right to travel. The amendments create a power to exclude specified things from the CNWA's definition of "work"; require the Minister of Transport to take into account the feasibility of terms and conditions for the approval of structures, devices, dumpings of fill, excavation or dredging in navigable waterways; and allow the Minister of Transport to decide some exemption applications currently decided by the Governor in Council.

2.1.4.1 Exclusions from the Definition of "Work" (Clause 161)

The CNWA defines "work" broadly to include human-made structures, devices and other things, as well as certain dumping and excavation activities. Clause 161 of Bill C-39 authorizes the Governor in Council to make regulations excluding a structure, device or other thing from that definition. An exclusion would affect the application of provisions that depend on whether something is a "work."

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2.1.4.2 Feasibility Factors (Clauses 159 and 162)

Current sections 7 and 9 of the CNWA allow the minister to attach or amend approval conditions for "works" (which include certain structures, devices, dumpings of fill, excavation or dredging activity) that may interfere with navigation, including changing water levels or flow. Clause 159 of Bill C-39 adds a requirement that the minister consider the "technical, economic and practical feasibility" of conditions before attaching, adding or amending conditions to an approval for a work under section 7(6) of the CNWA. This requirement only applies if the work is linked to a designated project under the *Impact Assessment Act*; is regulated under the *Canadian Energy Regulator Act*; or is prescribed by the minister, individually or as part of a class of works, in regulations under new section 9.01(2) of the CNWA. Clause 162 of Bill C-39 provides that the new requirement does not apply if the application for the approval was made before Division 4 comes into force.

2.1.4.3 Exemptions from Deposit and Dewatering Provisions (Clause 160)

Sections 21 and 22 of the CNWA restrict the deposit of specified materials in waters that are navigable in whole or in part, or that flow into navigable waters. Section 23 prohibits actions that lower the level of a navigable water enough to extinguish navigation. Under current section 24 of the CNWA, if the Minister of Transport receives an application for an exemption from sections 21 to 23 of the CNWA, only the Governor in Council can make the decision to exempt waters in whole or in part from any of those sections if it is satisfied that doing so is in the public interest.

In situations where the Minister of Transport receives an application to exempt waters from the application of sections 21 to 23 of the CNWA, clause 160 of Bill C-39 amends the CNWA to allow the minister to grant an exemption by order, when the minister is satisfied that it would be in the public interest. Alternatively, the minister may choose to refer an application to the Governor in Council, which retains the power to grant the exemption. In addition, if an application for exemption is made to the Governor in Council (instead of the minister), then the Governor in Council retains the power to exempt waters in the public interest. The amendment therefore changes who may make the exemption decision, while retaining the public interest test and limiting the exemption to sections 21 to 23 of the CNWA.

2.1.5 Division 5: *Canadian Environmental Protection Act, 1999*

Division 5 of Part 1 of Bill C-39 contains changes to the *Canadian Environmental Protection Act, 1999* (CEPA).[42] Clauses 164 through 170 of Bill C-39 amend various provisions of Part 7, Division 3 of CEPA which regulate the disposal of substances at

sea. Clauses 164 and 165 of Bill C-39 amend permit application provisions in sections 127 and 128 of CEPA requiring that notice of an application be "made public in a manner specified by the Minister [of the Environment]," removing previous reference to publication "in a newspaper circulating in the vicinity."

Clause 166 of Bill C-39 amends sections 129(2) and 129(3) of CEPA to allow the minister, subject to regulations, to specify a duration longer than the current one-year limit for a disposal at sea permit. Clause 170 of Bill C-39 amends the regulatory authority in section 135(1) of CEPA to reflect the Governor in Council's ability to make regulations regarding this change to the time limits.

Clause 166 of Bill C-39 also expands the minister's powers to suspend, revoke or vary a disposal at sea permit. Currently, under section 129(3) of CEPA, the minister may suspend or revoke a permit, or vary its conditions where, having regard to Schedule 6, which concerns the assessment of waste or other matter, or a Board of Review proceeding, the minister considers it advisable to do so. Clause 166 of Bill C-39 adds that the minister can revoke or vary a permit if they consider it "advisable to do so for the protection of marine life, any legitimate uses of the sea or human life," or if they have reasonable grounds to believe that the permit holder has: (1) contravened Part 7, Division 3 of CEPA; (2) contravened the conditions of their permit; or (3) provided the minister with false or misleading information in their application.

Clause 166 of Bill C-39 also introduces new section 129(4) to CEPA, which allows the minister to transfer a permit, on request from the permit holder and prospective transferee, and subject to regulations. Clause 170 of Bill C-39 allows the Governor in Council on the recommendation of the minister to make regulations regarding the transfer of permits.

Clauses 168 and 169 of Bill C-39 make related changes to sections 133 (publication) and 134 (notice of objection) to account for this new transfer power and the changes to the revoking or varying of a permit.

Clause 167 of Bill C-39 requires the minister to "take into account the technical, economic and practical feasibility of the conditions" when establishing, adding or varying any conditions in a disposal at sea permit for an activity that is: (1) related to a designated project under section 2 of the *Impact Assessment Act*; (2) regulated under the *Canadian Energy Regulator Act*; or (3) prescribed by regulations under section 135(3)(g) of CEPA.[43]

Section 235 of CEPA authorizes enforcement officers to issue protection orders to persons in contravention of the Act or its regulations. Clause 173 of Bill C-39 amends section 235(1) of CEPA to add "remedy the effects of" an alleged contravention to

the reasons an enforcement officer may issue an order. Clause 173 of Bill C-39 also expands the circumstances under which an order can be issued to include actions related to "a thing to which this Act applies."

Furthermore, clause 173 of Bill C-39 amends the list of specific measures that enforcement orders may contain, adding that such orders can require a person to manage, return, dispose of or destroy a substance in the manner specified in the order.

Clause 175 of Bill C-39 adds a transitional provision providing that provisions that exist in CEPA before the bill receives Royal Assent continue to apply to pending permit applications and permits previously issued under the provisions of this division of CEPA.

2.1.6 Division 6: Amendments to the *Species at Risk Act*

Section 73 of the *Species at Risk Act* (SARA)[44] currently allows the competent minister to issue a permit or enter into an agreement authorizing a person to engage in activities affecting a wildlife species that is listed as endangered or threatened under SARA; any part of its critical habitat; or the residence of its individuals (such as nests or dens). Clause 177 of Bill C-39 creates new section 73.1(1) of SARA, which requires the competent minister[45] to "take into account the technical, economic and practical feasibility" of terms and conditions when establishing, adding or varying any terms and conditions in agreements or permits made under section 73 of SARA. This requirement only applies to an activity: (1) related to a designated project under section 2 of the *Impact Assessment Act*;[46] (2) regulated under the *Canadian Energy Regulator Act*;[47] or (3) prescribed in regulations created under the new section 73.1(2) of SARA by the Minister of the Environment after consultation with the Minister responsible for the Parks Canada Agency and the Minister of Fisheries and Oceans.

Clause 178 of Bill C-39 clarifies that the changes made to SARA are not retrospectively applied to agreements or permits under section 73(1) that predate the Royal Assent of Bill C-39.

2.1.7 Division 7: Amendments to the *Fisheries Act*

Division 7 of Part 1 of Bill C-39 proposes various changes to the *Fisheries Act*,[48] some of which are technical or administrative in nature. An overview of key clauses is provided by theme.

2.1.7.1 Regulation-Making Powers (Clauses 181, 182 and 187–189)

Clause 189 of Bill C-39 allows the Minister of Fisheries and Oceans to make regulations for authorizations to carry out works, undertakings or activities that may cause the death of fish, otherwise prohibited under section 34.4(1) of the *Fisheries Act*, or the harmful alteration, disruption or destruction (HADD) of fish habitat, otherwise prohibited under section 35(1) of the *Fisheries Act*. Among the regulatory powers created by clause 189 of Bill C-39, are the powers previously found in sections 34.4(4) and 35(4) of the *Fisheries Act*, which are repealed by clauses 181 and 182 of the bill.

Clause 188 of Bill C-39 transfers certain of the Governor in Council's regulatory-making powers in section 43(1)(i.11) to the minister in new section 43.31(1)(c) of the *Fisheries Act* created by clause 189 of the bill.[49] Similarly, clause 187 of Bill C-39 transfers the responsibility of the Governor in Council for making regulations related to habitat credits (as listed in section 42.04 of the *Fisheries Act*) to the minister.

2.1.7.2 Feasibility Factors (Clause 183)

Clause 183 of Bill C-39 requires that the minister consider the "technical, economic and practical feasibility of conditions" when they establish, add or amend conditions to an authorization of a work, undertaking or activity (or class thereof) that may cause the death of fish or the HADD of fish habitat. This requirement only applies to a work, undertaking or activity that is linked to a designated project under the *Impact Assessment Act*, is regulated pursuant to the *Canadian Energy Regulator Act*, or is prescribed by the minister in regulations under new section 35.01(2) of the *Fisheries Act*.

2.1.7.3 Habitat Credits (Clauses 185–186)

Habitat credits are defined in section 42.01 of the *Fisheries Act* as units of measure that quantify "the benefits of a conservation project" and are used to offset the negative impacts of works, undertakings or activities. Clause 185 of Bill C-39 expands the existing authority under section 42.02(1)(a) of the *Fisheries Act*, which allows the minister to establish a system that can create, allocate and manage habitat credits, to also permit the transfer, use, revocation and tracking of habitat credits.

Habitat credits are used to offset harmful effects on fish and fish habitat. Clause 186 of Bill C-39 modifies the *Fisheries Act* to permit for the transfer of habitat credits, allowing third parties to produce habitat credits and transfer them to satisfy offset

requirements. In those cases, the obligations associated with a habitat credit are transferred to the new holder, along with the credit itself under new section 42.021 of the *Fisheries Act*.

2.1.7.4 Fees to Offset Harms (Clauses 179 and 189)

Clause 189 of Bill C-39 allows the minister to prescribe, by regulation, the circumstances under which a proponent – who is authorized to carry out a work, undertaking or activity that may result in the death of fish or the HADD of fish habitat – can offset harms by paying a fee. Clause 179 of Bill C-39 requires that fees be directed to the Environmental Damages Fund (the Fund). New section 16.1 of the *Fisheries Act* states that, when fees are directed to the Fund, they can be used for one of three purposes: (1) to conserve and protect fish; (2) to conserve, protect or restore fish habitat; or (3) to contribute to the administration of the Fund.[50]

2.2 PART 2: IMPLEMENTATION OF CERTAIN MEASURES IN RELATION TO SUPPLY CHAINS

2.2.1 Division 1: *Department of Transport Act*

Clause 192 of Bill C-39 amends the *Department of Transport Act* (DTA)[51] to authorize the Minister of Transport to coordinate review processes that relate to federally regulated transportation projects and to establish a transportation project office for that purpose. Clause 193 of Bill C-39 amends the DTA's definition of "transportation project" to exclude selected projects in a region of national interest, in accordance with amendments to the *Building Canada Act* under clause 96 of Bill C-39.

2.2.2 Division 2: *Canada Transportation Act*

Clause 194 of Bill C-39 amends the National Transportation Policy in section 5 of the *Canada Transportation Act* (CTA), specifically the list of factors identified to achieve the Policy's objectives, by adding new section 5(f) to the CTA, which reads that "the transportation system promotes the efficiency of supply chains in the movement of goods."

Clause 197 of Bill C-39 adds section 6.01 to the CTA to clarify that an undertaking engaged in constructing, altering, operating or maintaining pipelines or electric lines is not a transportation undertaking. The CTA does not define "undertaking" or "transportation undertaking."

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Clause 198 of Bill C-39 introduces sections 49.01 through 49.06 to the CTA, a new set of provisions under the heading "Trade Corridors." New section 49.01 of the CTA allows the Minister of Transport to designate any geographic area as a trade corridor.

New section 49.02(1) of the CTA empowers the minister to establish a National Trade Corridors Council (the Council). Section 49.03(1) of the CTA provides that the members of the Council are to be appointed by the minister at pleasure for a renewable term of not more than three years. The Council's mandate includes monitoring the movement of goods in designated corridors, analyzing disruptions that may affect these corridors and making recommendations to and advising the minister.

Under new section 49.05 of the CTA, the Council must, on request, provide a report to the minister on any matter relating to the Council's mandate. New section 49.06 of the CTA allows the Governor in Council to make regulations establishing performance indicators and targets to assist the Council in its mandate of monitoring the movement of goods in trade corridors.

Clause 198 of Bill C-39 also adds section 49.07 to the CTA. This section allows the minister to make regulations if the minister is of the opinion that it is in the public interest to do so and if the regulations give effect to an international standard or ensure compliance with Canada's international obligations. The regulations made under this section must be consistent with the provisions that may be contained in a transportation regulation. This new section of the CTA is similar to section 49.1 of the CTA, enacted on 26 March 2026 by the *Budget 2025 Implementation Act, No. 1* (formerly Bill C-15).[52] A notable difference between these two sections of the CTA is that section 49.1 of the CTA empowers the minister to make an interim order rather than regulations.

Section 114(1) of the *Competition Act* describes a number of cases where the parties to a proposed transaction must notify the Commissioner of Competition before completing the transaction.[53] Under the current section 53.1(1) of the CTA, the parties must also notify the minister when a transaction involves a transportation undertaking. Clause 201(1) of Bill C-39 amends section 53.1(1) of the CTA to exempt from this requirement undertakings that transport freight by truck or passengers by bus. Moreover, clause 201(2) of Bill C-39 adds section 53.1(1.1) to the CTA so that the requirement to give notice to the Commissioner of Competition and the minister also applies to transactions involving a transportation undertaking situated in a port, subject to certain conditions and exceptions. At the same time, these transactions are subject to other requirements applicable to transactions referred to in section 53.1(1) of the CTA, such as the requirement to secure the Governor in Council's approval before completing a transaction, as proposed by clause 202(1) of Bill C-39, which amends section 53.2(1) of the CTA. These amendments concerning transportation

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undertakings situated in a port were previously proposed during the 44th Parliament, in Bill C-33, An Act to amend the Customs Act, the Railway Safety Act, the Transportation of Dangerous Goods Act, 1992, the Marine Transportation Security Act, the Canada Transportation Act and the Canada Marine Act and to make a consequential amendment to another Act[54] (which died on the *Order Paper*).

Clause 206 of Bill C-39 creates Part I.1 – Security Clearances in the CTA, which covers sections 54.1 to 54.4 of the CTA. The purpose of this part of the CTA is to modernize the port and airport Transportation Security Clearance Program, which has been in effect for over 40 years.[55] Security clearances allow individuals to access certain restricted areas of ports and airports.[56] The new section 54.1(1) of the CTA allows the minister to grant a security clearance to any physical person, or to suspend or cancel it. Under the new section 54.3 of the CTA, the minister may enter into an arrangement with a foreign state respecting security clearances and the new part of the CTA created by clause 206 of Bill C-39. Before entering into such an arrangement, the Minister of Transport must first consult with the Minister of Public Safety and Emergency Preparedness. Section 54.4 of the CTA empowers the Governor in Council to make regulations respecting security clearances, including regulations specifying which physical persons are required to obtain security clearances.

Section 98(1) of the CTA requires railway companies to obtain approval from the Canadian Transportation Agency (the Agency) to construct a railway line. Section 98(3) of the CTA currently provides for two exceptions, including the construction of a railway line within 100 m of an existing railway line for a distance of no more than 3 km. Clause 207 of Bill C-39 amends section 98(3) of the CTA. Specifically, it amends the above-mentioned exception so that it now applies to the construction of a railway line within 300 m of an existing railway line for a distance of no more than 5 km. Clause 207 of Bill C-39 also adds an exception to section 98(3) of the CTA, when the construction of a railway line has already been the subject of an assessment under the *Impact Assessment Act*.[57]

Section 127 of the CTA governs interswitching between two connected railway lines operated by different railway companies.[58] Clause 208(1) of Bill C-39 adds section 127(2.1) to the CTA to allow the Agency to order interswitching between two railway lines in the provinces of Manitoba, Saskatchewan and Alberta. Clause 211(1) of Bill C-39 adds section 127.1(1.1) to the CTA, which requires the Agency to determine, no later than 90 days after the day on which this section comes into force, the rate per car for that year for interswitching the traffic referred to in the new section 127(2.1) of the CTA. Under clause 214(1) of Bill C-39, the sections concerning this type of interswitching will come into force on a day to be fixed by order of the Governor in Council. The Government of Canada anticipates that these sections will only come into force “when there is a reliable trading relationship with

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the United States."[59] They will be automatically repealed four years after they come into force pursuant to clauses 208(2), 208(4), 210, 211(2), 211(4) and 211(6), as well as clause 214(3) of Bill C-39.

Clause 212 of Bill C-39 adds section 172.5 into the CTA, which declares terminals situated within a port to be "works for the general advantage of Canada." Like this clause of Bill C-39, the *Budget 2025 Implementation Act, No. 1* enacted the *High-Speed Rail Network Act*, which declares in section 4 that the railways constructed to be part of the high-speed rail network are "works for the general advantage of Canada" (in French, the bill speaks of "ouvrages à l'avantage général du Canada," whereas the *High-Speed Rail Network Act* speaks of "ouvrages d'intérêt général pour le Canada").[60]

2.2.3 Division 3: *Canada Marine Act*

2.2.3.1 Purpose of the *Canada Marine Act* (Clause 215)

Clause 215(1) of Bill C-39 amends section 4(a.1) of the *Canada Marine Act* (CMA) to add, as a purpose of the CMA, that it promote the success of ports for the purposes of "contributing to inter-port connectivity, investment in marine infrastructure, strategic and collaborative partnerships."[61] Section 4(f) of the CMA indicates that another purpose of the CMA is to "manage the marine infrastructure and services in a commercial manner that encourages, and takes into account, input from users and the community in which a port or harbour is located." Clause 215(2) of Bill C-39 amends this section so that the input of Indigenous peoples is also taken into account.

2.2.3.2 Canada Port Authorities (Clauses 216–241)

2.2.3.2.1 Special Purpose Entity

Clause 216 of Bill C-39 amends section 5 of the CMA to add a definition of the term "special purpose entity," an entity created by a port authority to conduct the port activities provided for under sections 28(2)(a) and 28(2)(b) of the CMA. These activities include, but are not limited to, those related to shipping, navigation, transportation of passengers and goods, real property and immovables that are not adjacent to navigable waters, and all activities that are deemed in the letters patent to be necessary to support port operations.[62] Clause 217(2) of Bill C-39 adds sections 7(2.1) and 7(2.2) to the CMA to specify that when a port authority enters into a joint (shared) liability arrangement with a special purpose entity to conduct port activities, that entity is not an agent of His Majesty in right of Canada.[63]

Clause 218 of Bill C-39 amends section 8 of the CMA to add provisions to the letters patent regarding the creation of special purpose entities and the arrangements between the port authorities and those entities. The provisions must be approved by the Governor in Council on the recommendation of the Minister of Transport and the Minister of Finance.

Clause 225(1) of Bill C-39 amends section 27(1) of the CMA so that the Governor in Council can make regulations for the corporate management and control of special purpose entities. Clause 225(3) of Bill C-39 also adds sections 27(1)(g.1) and 27(1)(g.2) to the CMA, which indicate that regulations may be made to govern the information and documents that special purpose entities must provide at the Minister of Transport's request, as well as the information that must be included in the port authority's business plan under section 39 of the CMA.

Clause 231(1) of Bill C-39 amends section 39 of the CMA, concerning business plans, to specify that, in addition to providing the Minister of Transport with a five-year business plan of their activities and those of their wholly-owned subsidiaries within three months after the end of each fiscal year, port authorities must also submit a plan for each special purpose entity in which they hold an ownership interest. Clause 231(2) of Bill C-39 adds section 39(2) to the CMA to specify that the business plan must be prepared in consultation with the National Trade Corridors Council.

Clauses 226(4) and 226(5) of Bill C-39 add sections 28(14)(d.1) and 28(14)(f) to the CMA. Unless the letters patent of a port authority provide otherwise, these sections prohibit the port authority or any wholly-owned subsidiaries of the port authority from selling or otherwise disposing of the ownership of a special purpose entity and from causing the dissolution or amalgamation of such an entity.

2.2.3.2.2 Governance of Port Authorities

Bill C-39 amends the process for appointing certain directors to the boards of port authorities and the duration of their appointment. Clauses 219(1) and 219(2) of Bill C-39 amend sections 14(1)(a) and 14(1)(d) of the CMA to authorize the Minister of Transport to appoint certain directors. Clause 221 of Bill C-39 gives the minister the authority to direct the board of directors to elect a new chairperson at any time. Clause 223 of Bill C-39 adds sections 22.1(1) and 22.1(2) to the CMA to require every director to undergo an annual performance evaluation and to require the chairperson to submit an annual report on those evaluations to the Minister of Transport.

Currently, the letters patent of port authorities must set out their borrowing limitations or include a code governing their power to borrow. Bill C-39 removes all references to a code from the CMA and instead refers to a borrowing plan.

Clause 227 of Bill C-39 replaces section 30.1 of the CMA, which refers to a borrowing policy, with a new section 30.1, which refers to borrowing plans. Under this new section, port authorities must submit a borrowing plan to the Minister of Transport within one year after the later of the day on which this section comes into force and the day on which the port authority's letters patent are issued. Subsequent borrowing plans must be submitted to the minister in accordance with the schedule set out in the letters patent.

Clause 228 of Bill C-39 adds section 33.1 to the CMA to require every port authority to establish an Indigenous advisory committee, which must be consulted at least once a year with respect to port activities. Clause 228 of Bill C-39 also adds section 33.2 to the CMA to require port authorities to assess their governance practices and performance based on criteria set out in the regulations.

Clause 236(1) of Bill C-39 amends section 48(1) of the CMA to require port authorities to develop a land-use plan in accordance with the schedule set out in their letters patent. Under clause 218(3) of Bill C-39, which amends section 8(2) of the CMA, the plans must be developed at intervals of no more than five years. Clause 236(2) of Bill C-39 adds section 48(1.1) to the CMA to specify that the plans must be developed in consultation with the National Trade Corridors Council.

Bill C-39 amends several sections of the CMA pertaining to the port authorities' obligation to share information with the public to specify that such information must be posted on the port authorities' websites.

2.2.3.2.3 Port Fees

Bill C-39 makes changes to further regulate the process of setting fees for port services. Section 49 of the CMA currently provides that port authorities may fix fees for users of its port facilities, that those fees must enable the port authority to operate on a self-sustaining financial basis and that they must be fair and reasonable for users. The amendments that clause 237(1) of Bill C-39 makes to section 49(3) of the CMA add other considerations, such as the fact that the fees must be fixed in a way that does not unjustly discriminate among users. The port authority must also publish the method it uses to establish the fees.

Clause 238 of Bill C-39 replaces sections 50 to 52 of the CMA with new sections. New section 51 increases the amount of information that a port authority must provide in its notice of new or revised fees. It must provide the reasons for changing the fees and indicate that any person can make written representations until a specified date. Bill C-39 also expands the grounds under which anyone who has made written representations can file a complaint with the Canadian Transportation Agency (CTA) regarding the process for setting or revising fees (new sections 52(1)

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and 52(2) to the CMA). If the CTA determines that the complaint is well founded, it can reconsider or cancel the new fee. It can also reinstate the fee that was in effect immediately before the new fee took effect or order the port authority to refund users the amount they overpaid (new sections 52(4) and 52(5) to the CMA).

Clause 239(2) of Bill C-39 amends section 62(1) of the CMA to enable the Governor in Council to make regulations respecting the management of marine traffic and the fees to be paid.

2.2.3.3 St. Lawrence Seaway (Clauses 247–249)

The St. Lawrence Seaway Management Corporation is a not-for-profit corporation which, in accordance with section 80(5) of the CMA, entered into an agreement with the Minister of Transport to assume responsibility for the safe and efficient movement of marine traffic through the Government of Canada–owned portions of the St. Lawrence Seaway (the Seaway). This system of locks and canals extends from Montréal to the Welland Canal, establishing a marine trade route connecting the Great Lakes to the Atlantic Ocean.

Clause 247 of Bill C-39 amends the CMA to allow the Governor in Council, under certain circumstances, to appoint an administrator to oversee a not-for-profit corporation with whom the Minister of Transport has an agreement under section 80(5) of the CMA, with respect to the Seaway. Unless otherwise specified in the order, such an administrator has exclusive authority to exercise all the powers and functions of the corporation itself and those of its directors. Said directors may not exercise any of their powers during the administrator's appointment, nor seek any remedies under the corporation's articles, bylaws, or related legislation. The Governor in Council may, by order, suspend in whole or in part the corporation's articles or bylaws.

The administrator may be appointed at full time or part time for a term of two years, which may be extended but may not last for more than three years total. The Governor in Council may revoke the appointment or make orders to direct or prevent the actions of the administrator. While the administrator has immunity for their actions or omissions during their appointment, the corporation remains liable.

Clause 248 of Bill C-39 allows the Minister of Transport to terminate any agreement with the corporation (in whole or in part), regardless of the provisions of the agreement itself. The minister must give notice to the corporation, following which good-faith negotiations must take place to discuss a transfer of powers. Any outstanding disputes are to be resolved by arbitration. Any outstanding issues following arbitration may only be heard in Federal Court. The corporation must continue to exercise its duties until termination.

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2.2.3.4 Ministerial Order – Imminent and Serious Threat (Clause 250)

Clause 250 of Bill C-39 amends the CMA to grant the Minister of Transport the power, under certain circumstances, to make an order requiring or preventing any action they deem necessary to prevent or mitigate an imminent and serious threat. The order may be directed to a port authority, any person in charge of or occupying a port facility, any person responsible for any aspect of the St. Lawrence Seaway or its operations or associated property, or anyone occupying or in charge of any federal property relating to the Seaway. This power may not be used to address a labour dispute, strike or lockout.

2.2.3.5 Consequential Amendments to the *Port Authorities Operations Regulations* (Clauses 251 to 253)

The *Port Authorities Operations Regulations* (PAOR)[64] establish limits to the activities permitted in Canadian ports. Section 3 of the PAOR exempts from the regulations aspects of a work for which the Minister of Transport makes a determination under the *Canadian Navigable Waters Act*[65] relating to potential interference with navigation. Clauses 251 and 253 of Bill C-39 eliminate these exceptions for works not authorized prior to the bill receiving royal assent. As such, the PAOR apply to the navigable waters, works, and activities approved following royal assent in all ports, as well as to the property managed, held, or occupied by any port authority.

2.2.4 Division 4: *Marine Liability Act*

The *Safeguarding Canada's Seas and Skies Act* (SCSSA),[66] which received Royal Assent in 2014, amended the *Marine Liability Act* (MLA)[67] for the purpose of implementing the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* (HNS Convention).[68] The HNS Convention has recently been ratified by a sufficient number of States and will enter into force on 29 November 2027. It will, among other things, establish a Hazardous and Noxious Substances Fund (HNS Fund) to provide a second tier of compensation for pollution damage.[69]

Division 4 of Part 2 of Bill C-39 makes several amendments to the MLA and the SCSSA to refer to the HNS Convention or HNS Fund. This includes establishing a simplified definition of "receiver" (clauses 261 and 265 of the bill), and clarifying language in the MLA to indicate that the Minister of Transport may designate someone to undertake investigative actions relating to the enforcement of the HNS Convention and is not required to undertake them in person (clause 265 of the bill). Clauses 284(1), 284(3) and 285 of Bill C-39 also set maximum fines of $250,000 for contravening

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certain provisions of the HNS Convention and for certain offences relating to documents and accounts under the MLA.

Clause 264(1) of Bill C-39 establishes a new section that outlines the entitlement and calculation process for interest accruing on a claim against a ship's owner or their guarantor.

Clause 266 of Bill C-39 adds a provision to allow the incumbent Deputy Administrator of the Ship-source Oil Pollution Fund to continue to hold office past the expiry of their term until a date fixed by the Governor in Council, or until a successor is appointed.

Clause 270(1) of Bill C-39 expands the list of sections for which an administrative monetary penalty may be imposed. Newly added violations concern obstruction and false statements relating to the minister's enforcement of the HNS Convention, record-keeping requirements relating to international conventions, disclosure of information to the minister, and obstruction and false statements relating to the Ship-source Oil Pollution Fund.

Clauses 270 to 283 of Bill C-39 amend the MLA to allow ships, in addition to persons, to be found to have contravened certain provisions of the MLA or its regulations, with a maximum penalty of $250,000 per violation.

2.2.5 Division 5: *Coasting Trade Act*

Under the *Coasting Trade Act*,[70] foreign vessels and non-duty paid vessels may not engage in commercial activity in Canadian waters without a licence. Clause 289 of Bill C-39 amends the *Coasting Trade Act* to provide an exception for vessels operating in response to an emergency that is declared under the *Emergencies Act*,[71] or under a provincial or territorial law.

2.2.6 Division 6: *Shipping Conferences Exemption Act, 1987*

Under the *Shipping Conferences Exemption Act, 1987* (SCEA),[72] "shipping conferences" are exempt from the *Competition Act*.[73] Clause 290 of Bill C-39 repeals the SCEA.[74] Removal of this exemption was recommended, in 2015[75] and again in 2024,[76] by the Competition Bureau, which claimed that "[b]oth the justification for the exemption and the practice of entering into shipping conferences is outdated."

2.2.7 Division 7: *International Bridges and Tunnels Act*

The *International Bridges and Tunnels Act* (IBTA)[77] establishes the powers of the Governor in Council to approve the construction of, or alterations to, international bridges and tunnels. The Governor in Council, on the recommendation of the

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Minister of Transport, is also responsible for issuing letters patent for corporations relating to the construction or operation of an international bridge or tunnel.

Division 7 of Part 2 of Bill C-39 amends the IBTA to allow the Minister of Transport to approve proposed alterations to an international bridge or tunnel, and granting the minister full authority over letters patent for corporations relating to the construction or operation of an international bridge or tunnel. The minister may also delegate any of their powers under the IBTA.

2.2.8 Division 8: Enabling Digital Trade Act

2.2.8.1 Background

One of the objectives of Bill C-39 is to incorporate into Canadian law the *UNCITRAL Model Law on Electronic Transferable Records* from 2017 (the Model Law), as developed by the United Nations Commission on International Trade Law (UNCITRAL).[78] For this purpose, Division 8 of Part 2 enacts, in clause 302 of Bill C-39, An Act respecting the use of electronic records related to trade in goods and the provision by electronic means of information related to importation or exportation. Its short title, Enabling Digital Trade Act (EDTA), appears in section 1 of the EDTA.

The purpose of the Model Law is to enable the legal use of electronic transferable records both domestically and across borders. These records are functionally equivalent to paper-based transferable documents or instruments, such as bills of lading, bills of exchange, promissory notes and warehouse receipts, that entitle the holder to claim the performance of the obligation indicated in the document or instrument and to transfer the right to performance of the obligation indicated in the document or instrument through the transfer of that document or instrument. Two key aspects of the Model Law underpin the provisions of the EDTA: the reliability of the methods used to identify and control records and to retain their integrity, and the fundamental notion of control, which represents the functional equivalent of possession of a paper-based transferable document or instrument.[79]

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2.2.8.2 Description and Analysis

According to the Government of Canada, the changes brought by the EDTA "clarify the validity of electronic transferable records in accordance with the UNCITRAL to ensure that these documents can be easily exchanged in the context of international trade processes." They also "enable the sharing of trade and administration data among departments and agencies to avoid importers and exporters having to share the same information to multiple federal departments and agencies," in accordance with the "Tell Us Once" principle.[80] The EDTA is structured in two parts in relation to these two main themes: the first deals with electronic trade documents and the second, the provision by electronic means of information related to importation or exportation.

2.2.8.3 Electronic Trade Documents (Sections 5–22 of the EDTA)

The EDTA clarifies that Part 1 does not apply to securities (section 5) and does not affect the application of any rule of law governing a paper trade document to an electronic trade document (section 6). Part 1 also does not affect the application of any rule of private international law governing a paper trade document to an electronic trade document (section 7). These clarifications are based on the view according to some that the specified elements touch on provincial legislative powers and that the implementation of the EDTA will likely require some coordination between the federal and provincial governments.[81]

Section 8 of the EDTA sets out the conditions an electronic document must satisfy to meet the federal law requirement for a paper trade document. These conditions include the fact that, by means of a reliable method, the electronic record:

- can be identified as being distinguishable from any copies of it;
- is capable of being controlled from the time that it is created until the time that it ceases to have any effect or validity; and
- is protected against unauthorized alteration.

A paper trade document may be replaced by an electronic record on the condition that a reliable method is used for the change of medium. This change of medium does not affect the rights and obligations of the parties. Conversely, section 20 sets out similar conditions for the replacement of an electronic trade document by a paper trade document.

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Under the EDTA (sections 12 to 14), the federal law requirements for an electronic trade document and for the signature and possession of a paper trade document and the indication of time or place with respect to a paper trade document are met if a reliable method is used to:

- identify the person;
- establish exclusive control of the electronic trade document by the person; and
- indicate that time or place with respect to the electronic trade document.

The requirement to transfer possession of a paper trade document is met with respect to an electronic trade document through the transfer of control over the latter (section 13(2) of the EDTA).

Under section 17 of the EDTA, if a federal law permits or requires an amendment of a paper trade document, that requirement is met in respect of an electronic trade document if a reliable method is used for the amendment.

Section 18 provides that nothing in Part 1 is to be construed as requiring a person to use an electronic trade document without the person's consent and specifies that this consent may be inferred from the person's conduct.

The international aspect of the EDTA's provisions is established in section 19, which states that an electronic trade document is not to be considered to be without effect, invalid or unenforceable solely on the ground that it was issued or used abroad.

Section 21 of the EDTA empowers the Governor in Council to make regulations respecting the matters to be taken into account when determining whether a method is reliable for the purposes of Part 1. This approach differs from that of the Model Law, which provides for a general reliability standard under which the method must be "[a]s reliable as appropriate for the fulfilment of the function for which the method is being used, in the light of all relevant circumstances."[82] It also provides a non-exhaustive list of relevant circumstances, including any operational rules relevant to the assessment of reliability and the assurance of data integrity.[83]

The minister tasked with administering the EDTA (designated by order of the Governor in Council under section 4 of the EDTA) has the authority to exempt, on any terms and conditions that the minister considers necessary, by order, any category of paper trade documents from the application of Part 1 in whole or in part (section 22).

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2.2.8.4 Provision by Electronic Means of Information Related to Importation or Exportation (Sections 23–27 of the EDTA)

Under section 23 of the EDTA, any person may, under an Act of Parliament, provide information to a federal minister, or to an officer or employee of a department or agency of the Government of Canada, in relation to goods that are subject to an import or export process by any electronic means specified by the minister for the purposes of the EDTA in an order made under the EDTA, subject to any conditions set out in the order.

Similarly, under section 24, a federal minister, or an officer or employee of a department or agency of the Government of Canada, may use any electronic means – specified by the minister for the purposes of the EDTA in an order made under the EDTA, subject to any conditions set out in the order – in providing, under an Act of Parliament, a document or other information in relation to goods that are subject to an import or export process.

Under section 26 of the EDTA, a federal minister, or an officer or employee of a department or agency of the Government of Canada, may, in respect of any information that is related to the importation or exportation of goods, disclose that information to another federal minister, or any officer or employee of a department or agency of the Government of Canada, who is permitted by law to collect the information. This disclosure may be made despite any Act of Parliament or any regulation under an Act of Parliament, or any portion of such an Act or regulation, that is listed in the schedule to the EDTA (which can be found in Schedule 3 to Bill C-39). The schedule to the EDTA lists nine statutes with the relevant portions of those statutes; it does not enumerate any regulations.[84] Section 26(3) empowers the Governor in Council to amend, by order, the schedule to the EDTA by adding, amending or deleting the name of an Act of Parliament or of a regulation, or a reference to a portion of such an Act or regulation. The approach embodied in section 26 is based on the "Tell Us Once" principle.[85]

Section 27 grants the minister the authority to specify, by order, that the disclosure of information between ministers and public officials under section 26 does not apply in any circumstances that the minister may specify. Regarding the provision of information under sections 23 and 24, the minister has the authority to specify the electronic means to be used and the conditions of their use and the fact that these provisions do not apply to the provision of information under an Act of Parliament in any circumstances that the minister may specify.

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2.2.8.5 Coming into Force

Clause 303 of Bill C-39 states that the EDTA will come into force on a day or days to be fixed by order of the Governor in Council.

2.3 PART 3: IMPLEMENTATION OF CERTAIN MEASURES RELATED TO THE WORK FORCE

2.3.1 Division 1: Amendments to the *Canada Labour Code*

Division 1 of Part 3 of Bill C-39 amends Part I of the *Canada Labour Code* (CLC),[86] which governs workplace relations and collective bargaining between unions and employers.

2.3.1.1 Residence of Members of the Canada Industrial Relations Board

Clause 305 of Bill C-39 repeals section 10.1 of the CLC, which requires full-time members of the Canada Industrial Relations Board (CIRB) to reside in the National Capital Region, or within a prescribed distance from it, unless exempted by order of the Governor in Council.

2.3.1.2 Certification in the Long-Shoring and Other Prescribed Industries

Clause 307 of Bill C-39 amends section 34 of the CLC to allow for certification on application by two or more employers engaged in an industry in a geographic area, by ministerial referral or on the CIRB's own initiative. In these cases, the CIRB is allowed to determine that two or more bargaining units of employees working for different employers in the same industry and geographic area constitute an appropriate collective bargaining unit and to certify a trade union as the bargaining agent for that unit (new section 34(1.1) of the CLC).

The other provisions of Part I of the CLC apply despite a trade union or council of trade unions not having applied for certification as a bargaining agent (new section 34(1.2) of the CLC). Where a trade union is certified under new section 34(1.1), the CIRB must, by order, appoint a representative jointly chosen by the employers as the employer representative (amended section 34(3) of the CLC).

Clause 306 of Bill C-39 amends section 15(c) of the CLC to allow the CIRB to make regulations respecting certification in the cases described under new section 34(1.1) of the CLC.

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2.3.1.3 Contractor Succession

Clause 310 of Bill C-39 amends section 44 of the CLC to introduce a new framework regarding contractor succession. When a new contractor replaces a previous contractor, the bargaining agent, certification applications, existing collective agreements and pending proceedings under Part I continue to apply or are transferred to the new contractor (new section 44(2.1) of the CLC). The term "previous contractor" is defined as an employer who provided services to another employer at an airport or in another prescribed industry, under a contract or other arrangement no longer in force. The term "new contractor" is defined as an employer who provides the same or substantially similar services as the previous contractor (amended section 44(1) of the CLC). The Governor in Council, on the minister's recommendation, may make regulations prescribing services, industries or locations in this regard (new section 44(4) of the CLC). Clause 311 of Bill C-39 amends sections 45 and 46 of the CLC to expand the existing CIRB's powers to review bargaining units and determine questions so they apply in relation to successorship.

Clause 313 of Bill C-39 repeals section 47.3 of the CLC which, among other things, defines the term "previous contractor" (now included under amended section 44(1) of the CLC) and provides equal remuneration protections in the case of successive contracts for services.

2.3.1.4 Mandatory Early Bargaining

Clause 315 of Bill C-39 adds early bargaining obligations under new section 50.1 of the CLC. Under the new provision, parties are required to commence bargaining to enter into, renew or revise a collective agreement between 200 and 180 days before the expiry of the collective agreement. They must do so where the collective agreement resulted from an imposed binding dispute-resolution process, was reached after a strike or lockout, or has a term of at least five years (new section 50.1(1) of the CLC).

Parties must give notice to the minister and the CIRB of the first collective bargaining meeting as well as engage with the Federal Mediation and Conciliation Service (new sections 50.1(2) and 50.1(3) of the CLC). The parties are required to bargain in good faith and make every effort to enter into, renew or revise a collective agreement (new section 50.1(4) of the CLC). The employer has a duty not to alter the rates of pay or any other term or condition of employment, or any right or privilege of the employees or bargaining agent, as of 200 days before the expiry of the collective agreement, unless consented to by the bargaining agent (new section 50.1(5) of the CLC).

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Note that clause 304(1) of Bill C-39 amends the definition of "bargaining agent" under the interpretation provision of Part I of the CLC to add that a bargaining agent also means the trade union required to commence early bargaining under section 50.1(1) of the CLC (amended section 3(1) of the CLC).

Clause 314 of Bill C-39 amends section 49(1) of the CLC (setting out that notice to commence collective bargaining must be given at least four months before the collective agreement's expiry) to make the provision subject to early bargaining obligations under new section 50.1 of the CLC. A transitional provision under clause 347(1) of Bill C-39 provides that the current framework under section 49(1) of the CLC continues to apply to parties to a collective agreement if, upon the coming into force of clause 304 of Bill C-39, there are less than 200 days until the expiry of the collective agreement.

Various clauses make additional amendments to incorporate a reference to new section 50.1 of the CLC throughout Part I of the CLC. For example, clause 329 of Bill C-39 amends section 97(1)(a) to allow any person or organization to make a complaint to the CIRB where an employer, a trade union, a person acting on behalf of the employer or a trade union, or an employee have failed to comply with section 50.1 of the CLC. Furthermore, clause 330 of Bill C-39 amends section 99(1) of the CLC to allow the CIRB to make an order requiring the party to comply with section 50.1 of the CLC.

2.3.1.5 Conciliation Timelines

Clauses 318 to 320 of Bill C-39 amend sections 73 to 75 of the CLC to, among other things, extend the time limits related to conciliation. Notably, the timeline for the minister to be deemed in receipt of a report from a conciliation commissioner or board is extended from 60 to 90 days of their appointment or establishment, unless further extended by mutual agreement of the parties (amended section 75(3) of the CLC).

A transitional provision under clause 347(2) of Bill C-39 provides that the current framework under sections 73 to 75 of the CLC continues to apply if the minister receives a notice of dispute before the coming into force of clause 304 of Bill C-39 (which amends the definition of "bargaining agent" and adds a definition for "special mediator").

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2.3.1.6 Changes to First Collective Agreement

Clause 321 of Bill C-39 replaces section 80 of the CLC to allow either party to apply to the CIRB for an order directing a binding dispute resolution mechanism if, after nine months of bargaining for a first collective agreement, the parties have not entered into a collective agreement (amended section 80(1) of the CLC). The CIRB is required to issue such an order after receipt of the application (amended section 80(2) of the CLC). The parties may nevertheless enter into a collective agreement before a binding determination is made resolving the disputed issues (amended section 80(3) of the CLC). An order by the CIRB directing a binding dispute resolution mechanism has the effect of suspending the right to strike or lockout until a binding determination is made (amended section 80(4) of the CLC).

A transitional provision under clause 347(4) of Bill C-39 provides that the new framework under section 80(1) of the CLC applies to parties if, on or after the coming into force of clause 304 of Bill C-39, it has been nine months since notice to bargain collectively to enter into a first collective agreement was given.

Under the current section 80 framework, the minister (rather than the parties) may direct the CIRB to inquire into a dispute regarding bargaining for a first collective agreement. The CIRB may then settle the terms and conditions of the first collective agreement. A transitional provision under clause 347(3) of Bill C-39 provides that the current framework continues to apply to ministerial directions made under section 80(1) of the CLC before clause 304 of Bill C-39 comes into force as well as to any resulting proceedings.

2.3.1.7 Special Mediation

Clause 322 of Bill C-39 adds Division V.01 to Part I of the CLC, entitled "Special Mediation." Under this new division, the minister may appoint a special mediator for 21 days, provided this is done within 75 days of the appointment or establishment of a conciliation officer, commissioner or board (new section 87.01(1) of the CLC). Note that clause 304(2) of Bill C-39 adds a definition for "special mediator" under the interpretation provision of Part I of the CLC to mean a person appointed by the minister under new section 87.01(1) of the CLC (amended section 3(1) of the CLC).

The purpose of new Division V.01 is to have the special mediation process happen, and to give the public at least 10 days with the mediator's report, before any strike or lockout (new section 87.03 of the CLC). The appointment of the special mediator, however, does not suspend the right to strike or lockout (new section 87.04(h) of the CLC).

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The special mediator is required to assist the parties in settling a dispute. If no collective agreement or tentative agreement is reached, the special mediator must submit a report to the minister "without delay" at the end of the 21 days. A report must also be submitted "without delay" if one of the parties rejects the tentative agreement (new section 87.01(2) of the CLC). Note that clause 338 of Bill C-39 amends section 113 of the CLC to provide that a late report from a special mediator does not invalidate the proceeding or terminate the special mediator's authority.

The mediator's report must outline the disputed issues, the parties' positions on these issues, an assessment of the parties' participation, the likelihood that the parties will reach a collective agreement within a "reasonable time," and the special mediator's views and recommendations (new section 87.01(3) of the CLC). Special mediators who are not employed in the federal public administration are to be paid the remuneration that is fixed by the minister along with any reasonable expenses incurred while performing their functions (new section 87.01(4) of the CLC).

If no collective agreement or tentative agreement is reached, the minister must provide a copy of the mediator's report to the parties "without delay" and, subsequently, with any redactions of personal or confidential business information, to the public. The report must also be shared where one of the parties rejects the tentative agreement (new section 87.02 of the CLC).

2.3.1.8 Post-bargaining Mediation

Clause 333 of Bill C-39 adds section 105.1 to, within six months of the parties having entered into, renewed or revised a collective agreement, require the minister to appoint a mediator to assist them in improving their relationship. The minister is required to do so if the collective agreement was the result of a binding dispute resolution mechanism imposed on the parties, or if a strike or lockout happened during the bargaining process that led to the collective agreement (new section 105.1(1) of the CLC). The parties are required to meet with the mediator following their appointment (new section 105.1(2) of the CLC).

A transitional provision under clause 347(5) of Bill C-39 provides that new section 105.1 applies to parties to a collective agreement entered into, renewed or revised on or after the coming into force of clause 304 of Bill C-39.

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2.3.1.9 Revised Framework Under Section 107 of the *Canada Labour Code*

Currently, section 107 of the CLC gives the minister the power to refer any question to the CIRB or direct the CIRB to act in a certain manner to "maintain or secure industrial peace and to promote conditions favourable to the settlement of industrial disputes or differences." Clause 334 of Bill C-39 renumbers section 107 as section 107(1), and makes the ministerial direction power subject to conditions under new section 107(2).

Under new section 107(2), if a lawful strike or lockout occurs, the minister may direct the CIRB to: (1) order the employer to resume or continue their operations, or the employees to resume or continue their duties of employment; (2) extend the terms of the collective agreement; or (3) impose a binding dispute resolution mechanism. The minister may only do this if they have considered the special mediator's report, and if they are of the opinion that the strike or lockout adversely affects, or may adversely affect, the "national interest" (new sections 107(2)(a) and 107(2)(b) of the CLC).

The aspects the minister may consider in the "national interest" are outlined under new section 107(3) and include whether the strike or lockout may have a significant impact on the Canadian economy or cause any serious social disruption (new sections 107(3)(a) and 107(3)(b) of the CLC). The minister may also assess whether their direction has any impact on the freedom of association (new section 107(3)(c) of the CLC).

A transitional provision under clause 347(6) of Bill C-39 provides that the current framework under section 107 continues to apply regarding any ministerial action, referral or direction issued before the coming into force of clause 304 of Bill C-39 as well as to any resulting proceedings.

2.3.1.10 Regulations

Clauses 336 and 337 of Bill C-39 amend or add various regulation-making powers of the Governor in Council under Division VII of Part I of the CLC. This includes new regulation-making powers for an expedited process regarding the final settlement, by arbitration or otherwise, of differences related to the interpretation, application, administration or alleged contravention of the collective agreement (new section 111(2) of the CLC). Regulation-making powers are also established for prohibiting any person or organization from bringing a complaint to the CIRB under section 97(1) of the CLC that is "frivolous, vexatious or not made in good faith" (new section 111(1)(h) of the CLC), as well as for prescribing the form and service of the special mediator's report (amended section 111(1)(b) of the CLC).

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In addition, the existing regulatory powers of the Governor in Council to establish an administrative monetary penalties scheme are expanded to promote compliance with section 50 of the CLC regarding the duty to bargain and not to change terms and conditions, new section 50.1 of the CLC regarding mandatory early bargaining, and regulations made under new section 111(1)(h) of the CLC.

2.3.2 Division 2: Amendments to the *Canada Labour Code* (Recovery of Wages)

Division 2 of Bill C-39 amends Part III of the *Canada Labour Code* (CLC), which sets labour standards for employers and employees in federally regulated industries.[87] The amendments focus on wage recovery enforcement and employee wage settlements.

2.3.2.1 Settlement Enforcement Orders

Under section 251.04(1) of the CLC, if an employee has made a complaint about the non-payment of wages and a written settlement is reached on the amounts to be paid, the employer may pay the amounts to the employee or the Head of Compliance and Enforcement (the Head). Clause 348 of Bill C-39 amends this section to clarify that the employer must pay these amounts on or before the day specified in the settlement.

Clause 349 of Bill C-39 adds section 251.07(1) to the CLC to authorize the Head to issue a settlement enforcement order requiring the employer – or, in certain cases, a director of a corporation[88] – to pay any outstanding amounts.

Clause 349 of Bill C-39 also introduces new sections 251.07(2) to 251.07(5) to the CLC, setting out requirements pertaining to:

- ways the order may be served (section 251.07(2));
- circumstances under which a certificate is proof that the order was served and is admissible in evidence (section 251.07(3)); and
- circumstances under which a director of a corporation may request a review of a settlement enforcement order or appeal the decision resulting from such a review (sections 251.07(4) and 251.07(5)).

Clause 353 of Bill C-39 amends section 251.17 of the CLC to include settlement enforcement orders in the list of orders to which the *Statutory Instruments Act*[89] does not apply. The *Statutory Instruments Act* sets out requirements for the examination, publication and scrutiny of regulations and other statutory instruments.

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2.3.2.2 Orders to Debtor

Under section 251.1(1) of the CLC, in cases where an employer has not paid an employee wages or other amounts to which they are entitled, the Head may issue a payment order to that employer. Further, section 251.13 of the CLC authorizes the Head to issue an "order to debtor of employer" or "order to debtor of director of corporation" to require the debtor to pay directly to the Head the amount specified in the payment order within 15 days.[90]

Clause 350(1) of Bill C-39 amends section 251.13(1) of the CLC to specify the circumstances under which the Head may issue an order to debtors. Specifically:

- if the Head has issued a settlement enforcement order or payment order to the employer (new section 251.13(1)(a));
- if the Head has received an employee complaint about the employer contravening any order, or a provision or regulation under Part III of the CLC, and has "reasonable grounds" to believe that the employer has failed, or is likely to fail, to pay an amount to which the employee is entitled (new section 251.13(1)(b)); or
- any other circumstances prescribed by regulation (new section 251.13(1)(c)).

Clause 350(1) of Bill C-39 also adds section 251.13(1.01) indicating that in cases where no settlement enforcement order or payment order has been issued, the debtor must pay the amount as estimated by the Head.

Sections 251.101(2) and 251.11(3) of the CLC require employers or directors to pay outstanding amounts before requesting a review of a payment order, or appealing a decision confirming or varying a payment order. Clause 350(2) of Bill C-39 introduces section 251.13(3) to the CLC to clarify that any amount paid to the Head under an order to debtor counts towards this required payment.

Clause 350(2) of Bill C-39 also inserts section 251.13(4) to the CLC to specify when the Head shall authorize payments to employees or other entitled persons in relation to an order to debtor.

Finally, clause 350(2) of Bill C-39 adds section 251.13(5) to the CLC, indicating that the Head shall authorize payment to the employer or director of any amount that remains from money received from the debtor, after paying all amounts to which an employee is entitled and any other amounts owed by the employer or director.

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2.3.2.3 Transitional Provision and Coming into Force

Clause 355 of Bill C-39 prohibits the Head from issuing settlement enforcement orders in relation to settlements reached before the day the clause comes into force.

Division 2 comes into force on the 180th day after the day on which Bill C-39 receives Royal Assent (clause 356 of the bill).

2.3.3 Division 3: Amendments to the *Canada Labour Code* (Medical Leave of Absence with Pay)

Division 3 of Bill C-39 amends Part III of the CLC, which sets labour standards for employers and employees in federally regulated industries.[91]

Under Division XIII of the CLC, employees can earn up to 10 days of paid medical leave per year.[92] Clause 357 of Bill C-39 adds section 239(15) to the CLC to establish that these leave provisions do not apply in cases where there is already a collective agreement which confers equivalent or better rights and benefits on employees, and provides for the settlement of disagreements by a third party. In these cases, the settlement of disagreements relating to paid medical leave is governed exclusively by the collective agreement. This measure comes into force on a day to be fixed by the Governor in Council (clause 358 of the bill).

2.3.4 Division 4: Amendments to the *Wage Earner Protection Program Act*

Division 4 of Bill C-39 amends the *Wage Earner Protection Program Act* (WEPPA),[93] which provides for payments of outstanding wages to individuals whose employers are insolvent.

Clause 359(1) of Bill C-39 amends section 2(1) of the WEPPA to include a definition of "former employer," and clause 359(2) of Bill C-39 amends section 2(2) of the WEPPA, which describes the circumstances under which an employer is subject to a receivership, to replace the term "employer" with "former employer."

Clause 360 of Bill C-39 amends section 4 of the WEPPA, which outlines the objective of the Wage Earner Protection Program, to specify that the program provides for payments with respect to wages owed by "an insolvent former employer that permanently ends its business operations" (formerly "employers who are insolvent") (new section 4(1)). It also adds new section 4(2), which clarifies that an employer or former employer "does not permanently end business operations if the employer continues those operations under a change of ownership or legal form."

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Clause 361 of Bill C-39 amends section 12 of the WEPPA to indicate that the Minister of Labour may confirm, vary or rescind a determination of eligibility for a payment even without a request for review from the applicant.

NOTES

* This Legislative Summary was prepared by the following authors:

- Arsenault-Watters, Joey, section 2.2.2;
- Chalupovitsch, Michael, "Background" section;
- Chong, Jed, section 2.1.5;
- Feldman, Stephanie and Dumont, Marie, section 2.1.2;
- Good, Jesse, sections 2.1.3 and 2.1.4;
- Gosselin, Geneviève and Lafrenière Alexandre, section 2.2.3;
- Kachulis, Eleni, sections 2.3.2, 2.3.3 and 2.3.4;
- Kramski, Natacha, section 2.1.6;
- Lafrance, Daniele, section 2.1.7;
- Lafrenière, Alexandre, sections 2.2.1, 2.2.4, 2.2.5, 2.2.6 and 2.2.7;
- Perez-Leclerc, Mayra, section 2.3.1;
- Thibodeau, Maxime-Olivier, section 2.2.8;
- Yakobowski, Sarah, section 2.1.1.

1. Bill C-39, An Act respecting certain measures to strengthen the economy, 45th Parliament, 1st Session.
2. *Impact Assessment Act*, S.C. 2019, c. 28, s. 1.
3. *Building Canada Act*, S.C. 2025, c. 2, s. 4.
4. *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 10.
5. *Canadian Navigable Waters Act*, R.S.C. 1985, c. N-22.
6. *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.
7. *Species at Risk Act*, S.C. 2002, c. 29.
8. *Fisheries Act*, R.S.C. 1985, c. F-14.
9. Government of Canada, *Getting Major Projects Built in Canada – Discussion Paper on Proposed Legislative, Regulatory, and Policy Reforms*.
10. Government of Canada, *What we Heard: Proposals for Getting Major Projects Built in Canada*.
11. *Department of Transport Act*, R.S.C. 1985, c. T-18.
12. *Canada Transportation Act*, S.C. 1996, c. 10.
13. *Canada Marine Act*, S.C. 1998, c. 10.
14. *Marine Liability Act*, S.C. 2001, c. 6.
15. *Coasting Trade Act*, S.C. 1992, c. 31.
16. *International Bridges and Tunnels Act*, S.C. 2007, c. 1.

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17. *Shipping Conferences Exemption Act, 1987*, R.S.C. 1985, c. 17 (3rd Supp.).

18. Transport Canada, "Context," *Discussion paper: Strengthening One Canadian Economy through trade and transportation*.

19. Transport Canada, *What we heard: Strengthening One Canadian Economy through trade and transportation*; and Transport Canada, *What we heard: Strengthening transportation security clearances for One Canadian Economy*.

20. *Canada Labour Code*, R.S.C. 1985, c. L-2.

21. *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.

22. Government of Canada, *Consultation Document: Building Canada Strong for All – Powered by Canada's Workers*.

23. Government of Canada, *Building Canada Strong for All – Powered by Canada's Workers: Targeted Second Phase: Consultation Document*.

24. Employment and Social Development Canada, *What We Heard: Building Canada Strong for All*, 2026.

25. Senate, Standing Committee on Transport and Communications, *Keep Canada Moving: Labour, Management and Supply Chain in the Rail and Maritime Sectors*, Fourth report, June 2026.

26. Vincent L. Ready, Chair, and Amanda Rogers, Member of the Commission, Industrial Inquiry Commission, *Report and recommendations of the Industrial Inquiry Commission, delivered to the Honourable Steven MacKinnon, Minister of Employment, Workforce Development and Labour, Pursuant to Section 108 of the* Canada Labour Code *on Longshoring Labour Disputes at Canada's West Coast Ports*, 8 May 2025.

27. "Designated projects" are either those listed in the *Physical Activities Regulations*, which list types of projects requiring assessment, or are designated by the Minister of the Environment pursuant to section 9(1) of the *Impact Assessment Act*.

28. *Nuclear Safety and Control Act*, S.C. 1997, c. 9.

29. For example, the Minister of Fisheries issues authorizations under the *Fisheries Act* and, in the case of aquatic species at risk, the *Species at Risk Act*. The Minister of Transport issues certain *Canadian Navigable Waters Act* approvals. The Minister of the Environment issues authorizations for disposal at sea under the *Canadian Environmental Protection Act, 1999* and, in the case of terrestrial species at risk, authorizations under the *Species at Risk Act*.

30. See Impact Assessment Agency of Canada, Impact assessment 101, *Assessments conducted by review panels*.

31. See Impact Assessment Agency of Canada, Impact assessment 101, *Assessments conducted by review panels*.

32. *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 10.

33. *Statutory Instruments Act*, R.S.C. 1985, c. S-22.

34. *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.).

35. *Order Designating the President of the King's Privy Council for Canada as the Minister for the Purposes of the Building Canada Act*, SI/2025-89.

36. *Canada–Newfoundland and Labrador Atlantic Accord Implementation and Offshore Renewable Energy Management Act*, S.C. 1987, c. 3.

37. *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation and Offshore Renewable Energy Management Act*, S.C. 1988, c. 28.

38. *Nuclear Safety and Control Act*, S.C. 1997, c. 9.

39. *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 10.

40. In August 2025, the federal government established the Major Projects Office (MPO), which currently fulfills this role. For more information, see MPO, *About us*.

41. *Federal Courts Act*, R.S.C. 1985, c. F-7.

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42. *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.

43. *Impact Assessment Act*, S.C. 2019, c. 28, s. 1; and *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 10.

44. *Species at Risk Act*, S.C. 2002, c. 29.

45. The competent minister is the Minister of the Environment and Climate Change, the Minister responsible for the Parks Canada Agency or the Minister of Fisheries and Oceans, as the case may be.

46. *Impact Assessment Act*, S.C. 2019, c. 28, s. 1.

47. *Canadian Energy Regulator Act*, S.C. 2019, c. 28, s. 10.

48. *Fisheries Act*, R.S.C. 1985, c. F-14.

49. These regulatory-making powers are related to the process to be used to issue authorizations for works, undertakings or activities that may cause the death of fish or the harmful alteration, disruption or destruction of fish habitat.

50. This change is similar to section 294.1 of the *Canadian Environmental Protection Act, 1999*, where certain fees collected pursuant to the Act are directed to the Environmental Damages Fund (the Fund) for conservation, protection or restoration projects, or to administer the Fund. See *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.

51. *Department of Transport Act*, R.S.C. 1985, c. T-18.

52. *Budget 2025 Implementation Act, No. 1*, S.C. 2026, c. 3, s. 499.

53. *Competition Act*, R.S.C. 1985, c. C-34, s. 114(1).

54. Bill C-33, An Act to amend the Customs Act, the Railway Safety Act, the Transportation of Dangerous Goods Act, 1992, the Marine Transportation Security Act, the Canada Transportation Act and the Canada Marine Act and to make a consequential amendment to another Act, 44th Parliament, 1st Session, cl. 94.

55. One Canadian Economy, *Bill C-39 Introduction*; Transport Canada, *Transportation Security Clearance Program: Aviation Security*, March 2026; and Transport Canada, *Marine Transportation Security Clearance Program (MTSCP)*, 2008.

56. Transport Canada, *Applying for transportation security clearances: Overview*.

57. *Impact Assessment Act*, S.C. 2019, c. 28, s. 1.

58. See the Canadian Transportation Agency's definition of "interswitching": Canadian Transportation Agency, *Interswitching*.

59. One Canadian Economy, *Bill C-39 Introduction*.

60. *Budget 2025 Implementation Act, No. 1*, S.C. 2026, c. 3, s. 191; and *High-Speed Rail Network Act*, S.C. 2026, c. 3, s. 191, s. 4.

    See the description of a declaration by the Government of Canada that a work is for the general advantage of Canada: Transport Canada, "a. Declare the Railways Constructed for the High-Speed Rail Network for the General Advantage of Canada," *FINA – Bill C-15, An Act to Implement certain provisions of the budget tabled in Parliament on November 4, 2025 – February 02, 2026*.

61. *Canada Marine Act* (CMA), S.C. 1998, c. 10.

62. Each port authority is governed by its own letters patent, which are issued by the Minister of Transport. The letters patent outline, among other things, the port's major activities, the port authority's governance structure, the navigable waters under its jurisdiction, as well as the property and immovables that it occupies or holds. Transport Canada, *Port Authorities*.

63. Under section 7(1) of the CMA, port authorities are agents of His Majesty in right of Canada only for the purposes of engaging in the port activities referred to in paragraph 28(2)(a) of the CMA. When conducting non-core activities, port authorities are not acting as agents of the Crown and are solely responsible for such undertakings. *Canada Marine Act*, S.C. 1998, c. 10, s. 7(1); and Transport Canada, *Port Authorities*.

64. *Port Authorities Operations Regulations*, SOR/2000-55.

65. *Canadian Navigable Waters Act*, R.S.C. 1985, c. N-22.

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66. *Safeguarding Canada's Seas and Skies Act*, S.C. 2014, c. 29.

67. *Marine Liability Act*, S.C. 2001, c. 6.

68. See *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* (HNS Convention).

69. The HNS Convention establishes the "polluter pays" principle. According to its website, as of 30 June 2026, the following 13 States had acceded to/ratified the HNS Convention: Belgium, Canada, Denmark, Estonia, Finland, France, Germany, the Netherlands, Norway, Slovakia, South Africa, Sweden and Türkiye.

70. *Coasting Trade Act*, S.C. 1992, c. 31.

71. *Emergencies Act*, R.S.C. 1985, c. 22 (4th Supp.).

72. *Shipping Conferences Exemption Act, 1987*, R.S.C. 1985, c. 17 (3rd Supp.).

73. *Competition Act*, R.S.C. 1985, c. C-34.

74. *Access to Information Act*, R.S.C. 1985, c. A-1.

75. Commissioner of Competition, "A. The *Shipping Conferences Exemption Act*," *Submission to the* Canada Transportation Act *Review Panel: Rail, air and marine transportation*, 27 February 2015.

76. Competition Bureau Canada, *Review of the* Shipping Conferences Exemption Act*: Competition Bureau Submission to Transport Canada*, 28 November 2024.

77. *International Bridges and Tunnels Act*, S.C. 2007, c. 1.

78. United Nations Commission on International Trade Law (UNCITRAL), *UNCITRAL Model Law on Electronic Transferable Records* (the Model Law); and UNCITRAL, *Overview of the status of UNCITRAL Conventions and Model Laws*. Thirteen countries, including China, France and the United Kingdom, have enacted legislation that is based on or inspired by the *UNCITRAL Model Law on Electronic Transferable Records*: see UNCITRAL, *Status: UNCITRAL Model Law on Electronic Transferable Records (2017)*.

79. UNCITRAL, *UNCITRAL Model Law on Electronic Transferable Records (2017)*.

80. One Canadian Economy, "Part 2.2 Regulatory certainty and red tape reduction," *Bill C-39 Introduction*.

81. See Michael Geist, *Buried in Bill C-39: The Enabling Digital Trade Act Brings Canada Its First Federal Electronic Trade Documents Law*, 28 September 2026; and Chris Papp, TransPacific Trade Nexus, *Bill C-39: From Legal Recognition to Trade Execution*, 30 September 2026.

82. UNCITRAL, *UNCITRAL Model Law on Electronic Transferable Records*, 2018, Art. 12.

83. UNCITRAL, *UNCITRAL Model Law on Electronic Transferable Records*, 2018, Art. 12.

84. The nine statutes and their portions enumerated in the schedule to the Enabling Digital Trade Act are the *Customs Act* (section 107); the *Canada Transportation Act* (section 51); the *Transportation of Dangerous Goods Act, 1992* (section 24); the *Safe Food for Canadians Act* (sections 46 and 47); the *Special Import Measures Act* (sections 84 and 85); the *Income Tax Act* (section 241); the *Excise Tax Act* (section 295); the *Pest Control Products Act* (section 44); and the *Canadian Environmental Protection Act, 1999* (sections 313 and 314).

    Of note, there seems to be an error in the French version of Bill C-39, because there is no "*Loi de 1992 sur le transport des matières dangereuses*." The English version of the bill refers to the "*Transportation of Dangerous Goods Act 1992*", whose French title is *Loi de 1992 sur le transport des marchandises dangereuses*. See: *Loi de 1992 sur le transport des marchandises dangereuses* (L.C. 1992, ch. 34).

85. One Canadian Economy, "Part 2.2 Regulatory certainty and red tape reduction," *Bill C-39 Introduction*.

86. *Canada Labour Code*, R.S.C. 1985, c. L-2. For a list of federally regulated industries to which Part I of the *Canada Labour Code* applies, see Government of Canada, *List of federally regulated industries and workplaces*.

87. For a list of federally regulated industries to which Part III of the *Canada Labour Code* applies, see Government of Canada, *List of federally regulated industries and workplaces*.

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88. Note that under section 251.18 of the *Canada Labour Code*, a director of a corporation is "jointly and severally liable" for an amount of up to six months' wages in cases where an employee's entitlement to that amount arose during that director's incumbency, and recovery of the amount from the corporation is either impossible or unlikely. *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 251.18.

89. *Statutory Instruments Act*, R.S.C. 1985, c. S-22.

90. See also Government of Canada, "Wage recovery assistance," *Pay and minimum wage, deductions, and wage recovery*.

91. For a list of federally regulated industries to which Part III of the *Canada Labour Code* applies, see Government of Canada, *List of federally regulated industries and workplaces*.

92. *Canada Labour Code*, R.S.C. 1985, c. L-2, s. 239. See also Government of Canada, "Medical leave (paid and unpaid) and leave for work-related illness and injury (unpaid)," *Types of leaves you can receive as an employee working in federally regulated industries and workplaces*.

93. *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.