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Making environmental assessment work

Municipal perspectives on Bill C-69

Federation of Canadian Municipalities
April 6, 2018



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Standing Committee on Environment and Sustainable Development
House of Commons
Ottawa, Ontario
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Making environmental assessment work

Dear Committee Members,

The Federation of Canadian Municipalities (FCM) welcomes this opportunity to bring Canada's municipal voice to your review of Bill C-69, *An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts*.

As environmental and economic leaders, municipalities support the federal government's efforts to improve environmental assessment processes. We understand the need to balance economic activity and environmental protection as complementary priorities. Local governments work to achieve this balance within our own communities every day, from coast to coast to coast.

Municipalities are uniquely impacted by federal environmental assessments, sometimes as proponents, sometimes as interested participants, but always as a level of government protecting the interests of our citizens.

Municipalities regularly participate in assessments where outcomes have a local impact on areas of municipal responsibility, such as environmental sustainability, emergency response planning, land-use planning, and the construction and maintenance of municipal infrastructure. At the same time, many projects, including within the resource development sector, are important to economic prosperity and quality of life in local communities, especially in rural and northern Canada. And municipal governments are directly affected by federal environmental assessments when municipal infrastructure projects are subject to federal approval.

Given the unique perspective and role of local governments in these processes, FCM has filed nine submissions over the past year with recommendations to improve environmental and regulatory reviews. These recommendations were developed through extensive consultation with FCM's National Board of Directors over the last two years and reflect the views of our diverse membership of 2000 municipalities, representing more than 90 percent of Canadians. A common theme guided all nine submissions: With responsibility for 60 per cent of this country's public infrastructure and vital roles in development planning, municipalities help drive Canada's economic prosperity, environmental sustainability and quality of life.

This submission outlines where Bill C-69 has addressed our recommendations and highlights those municipal recommendations that were either not addressed or that have created new concerns for the municipal sector.



To address outstanding and new concerns outlined below, FCM calls on the Standing Committee on Environment and Sustainable Development to recommend:

- that Transport Canada conduct a review of the existing Minor Works Order, under the *Navigation Protection Act*, to assess whether more types of works need to be added in view of the changes proposed under Bill C-69;
- that Transport Canada create a standardized mechanism for project proponents to notify the public to meet new requirements under the proposed *Canadian Navigable Waters Act*;
- that the timelines for public notification and consultation outlined in section 10(3) and 10.1 and 10.1(3) of the *Canadian Navigable Waters Act* are enforced, recommending that these timelines are reviewed and amended as provided for in regulation if they are deemed to be ineffective;
- that section 11 of the *Impact Assessment Act* is expanded to expressly include consultation with municipal governments;
- that the regulations made under paragraph 112(a) include consultation with municipalities as a required component of the initial project description that proponents must file with the Impact Assessment Agency of Canada;
- that section 22(1) of the *Impact Assessment Act* is amended to include “comments from a municipal government impacted by the designated project” as one of the factors that must be considered by the Impact Assessment Agency of Canada in conducting an impact assessment;
- that as a result of the above changes, the Preamble of the *Impact Assessment Act* be expanded to clarify that consultation with municipalities is an objective of the legislation;
- that the *Impact Assessment Act* and the *Canadian Energy Regulator Act* are amended to provide greater flexibility in determining the maximum time limits for conducting an impact assessment of a proposed pipeline.

Finally, we note that as a result of the changes brought forward in Bill C-69 the government will be drafting or amending numerous related regulations and developing associated policies. It will be necessary for the government to actively engage and consult municipal governments as these regulatory frameworks are created to ensure the new regime ensures that local input is considered and allows local projects to move forward.

Thank you for considering our comments on these important legislative changes. If you have any questions or would like to discuss FCM’s recommendations further, please contact Hardave Birk, Government Relations Advisor, at hbirk@fcm.ca or 613-907-6331.

Sincerely,



Jenny Gerbasi
Deputy Mayor, City of Winnipeg
FCM President





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Navigation Protection Act

FCM has consistently recommended aligning legislation with current transportation demands, which depend more on the construction of bridges and roads than expanding water navigation. With input from FCM and other stakeholders, the former *Navigable Waters Protection Act's* scope was refined in 2009 to include an exemption for minor works and waters with little impact on navigation. Until then, the legislation had not substantially changed in over a century. Several amendments in 2012—including a name change to *Navigation Protection Act* (NPA)—brought aspects of the law closer to Canada's modern realities. These changes addressed municipal concerns about project delays and expenses caused by federal reviews triggered by small-scale projects. At the same time, we recognize and share concerns that have been expressed about the large number of lakes and rivers that no longer have oversight under the NPA.

In our response to the June 2017 Discussion Paper on Environmental and Regulatory Reviews, FCM called on the government to create a new process for adding water bodies to the list of scheduled waters. FCM is pleased to see that Bill C-69 proposes a new process with clear criteria for adding navigable waters to the list of waters needing extra oversight.

The proposed *Canadian Navigable Waters Act* includes other changes that FCM did not call for and that will have considerable impact on municipalities. These include:

- A new requirement that project proponents notify and consult on proposed works on all navigable waters, including both scheduled and *non-scheduled* water bodies; and
- A new resolution process that would allow the Minister of Transport to review navigation concerns on *non-scheduled* water bodies.

FCM expects that these changes will result in significantly more municipal infrastructure projects falling under federal review. In particular, FCM is concerned about the expansion of the scope of the legislation to include what is effectively a new class of works that fall outside of the existing “minor works” and “major works” categories, which will now be regulated on all navigable waters in Canada. These ‘in-between’ works are likely to include municipal infrastructure projects that are critical to public health, safety, transportation and commerce, such as bridges, water control structures and flood mitigation infrastructure.

Recommendations

In order to address the above concerns and mitigate the administrative burden for municipalities associated with the broader application of the proposed *Canadian Navigable Waters Act* to works that fall outside of the existing “major works” and “minor works” categories on non-scheduled waters, FCM recommends that the Standing Committee on Environment and Sustainable Development:

- Recommend that Transport Canada conduct a review of the existing Minor Works Order to assess whether more types of works need to be added;
- Recommend that Transport Canada create a standardized mechanism for project proponents to notify the public in order to meet the new requirements under the Act;
- Highlight the importance of enforcing the timelines for public notification and consultation outlined in Sec 10(3) and 10.1 and 10.1(3) as a means of reducing untimely delays, recommending that these timelines are reviewed and amended as provided for in regulation if they are deemed to be ineffective.



Canadian Environmental Assessment Act

FCM supports the proposed approach of having designated projects jointly reviewed by the proposed Impact Assessment Agency of Canada and the relevant federal lifecycle regulators, such as the Canadian Nuclear Safety Commission or the proposed Canadian Energy Regulator. This was one of our primary recommendations to the NEB and CEEA Expert Panels.

We also support broadening the scope of assessment to include economic, social and health impacts to support holistic and integrated decision-making, including positive and negative impacts on local communities. As noted elsewhere in this submission, FCM recommends that legislative and policy changes specifically require the consideration of local impacts brought forward by municipal governments whose communities are impacted by designated projects.

FCM also supports the “one project, one-review” objective that Bill C-69 strives to achieve. We recognize the importance of inter-jurisdictional cooperation to reduce duplication, promote harmonization of regulation, and incorporate each level of government’s plans and policies into the assessment process.

Recommendations

Building on what is proposed in Bill C-69, FCM recommends the following amendments:

- That section 11 of the *Impact Assessment Act* is expanded to expressly include consultation with municipal governments.
- That “comments from a municipal government impacted by the designated project” is added as one of the factors that must be considered by the Impact Assessment Agency of Canada under section 22(1) of the *Impact Assessment Act*.
- That, as a result of the above amendments, consultation with municipalities is added to the Preamble of the *Impact Assessment Act*, making it clear that this is an objective of the legislation.

FCM also calls for consultation with municipalities to be included as a required component of the initial project description that proponents must file with the Impact Assessment Agency of Canada subject to the regulations made under paragraph 112(a).

In addition, please be advised that FCM also intends to submit comments on the Consultation Paper on Approach to Revising the Project List. We support the intention to limit federal impact assessments to “major projects that have the greatest potential impacts in areas of federal jurisdiction.”



National Energy Board Act

Municipalities interact daily with the existing network of NEB-regulated pipelines and transmission lines, and communities of all sizes benefit from economic activity associated with resource development and energy transportation infrastructure.

Municipal governments are directly impacted by pipelines through emergency response planning, land-use planning, construction and maintenance of municipal infrastructure, and enforcement of municipal by-laws. The possibility of a pipeline failure presents considerable risks to local drinking water; local ecosystems, including marine environments; and local economies.

FCM was encouraged that the final report of the Expert Panel on NEB Modernization recognized municipalities' unique and critical roles and interests in Canada's energy transportation infrastructure: *"municipalities maintain networks of infrastructure that abuts energy infrastructure, are responsible for a large part of emergency planning and, in many cases, municipal first responders are the first on site in the wake of a disaster, and because of these many obligations municipalities bear costs and liabilities that other players may not"* (p. 68). We were pleased that the Panel called on the federal government to ensure that the NEB "consider municipal issues in all of its operations" and "consider targeted engagement with municipalities when updating regulatory policy and frameworks that affect them" (p.68).

Given the importance of this issue to municipalities, FCM made a comprehensive submission to the Expert Panel that included 37 recommendations. Individual cities and communities also made submissions and attended open houses held by the Panel.

Bill C-69 addresses a number FCM's recommendations including:

- the requirement that applications for new interprovincial pipeline projects are reviewed by a joint review panel with members from the proposed Canadian Energy Regulator and the proposed Impact Assessment Agency of Canada;
- expanding the list of factors that the joint review panel must take into consideration in making its "public interest determination" to include community impacts and economic, environmental, safety, social and health considerations; and
- removing the requirement that board members reside in Calgary.

Other proposed changes that are consistent with FCM's recommendations include:

- The removal of the "standing test" to determine whether interested parties, including municipalities, can participate in public hearings. FCM is pleased to see that Bill C-69 requires the Commission to consider all public input, including the input of all municipalities regardless of whether they are located directly along the route of a proposed pipeline.
- The creation of the early engagement and planning phase, requiring project proponents to demonstrate how they have considered and addressed concerns raised by municipalities before a project can move to the impact assessment stage. In particular, FCM is pleased that Bill C-69 proposes to require government to consider any study or planning document submitted by an affected municipality. This requirement ensures that municipal concerns will be considered early in the review process.
- The emphasis placed on board and commission members having expertise in municipal, engineering and environmental issues.
- The proposed expansion of the participant funding program.



- The inclusion of a new cost allocation mechanism as the Damage Prevention Regulations to more fairly allocate costs between pipeline companies and municipalities regarding the construction and maintenance of municipal infrastructure.

Recommendations

There are other recommendations that FCM has put forward that are not clearly addressed in the bill. Notably, FCM called for the NEB Act to be amended to recognize municipal by-laws and require pipeline companies and the NEB to abide by them, within the limits of the Constitution; and to require municipal consent for the route that a pipeline takes. Building on what is proposed in Bill C-69, FCM recommends the following amendments:

- That section 11 of the *Impact Assessment Act* is expanded to expressly include consultation with municipal governments.
- That “comments from a municipal government impacted by the designated project” is added as one of the factors that must be considered by the Impact Assessment Agency of Canada under section 22(1) of the *Impact Assessment Act*.
- That, as a result of the above amendments, consultation with municipalities is added to the Preamble of the *Impact Assessment Act*, making it clear that this is an objective of the legislation.
- That the Impact Assessment Agency of Canada and the Canadian Energy Regulator are granted greater flexibility in determining the maximum time limits for conducting an impact assessment of a proposed pipeline. While FCM supports timelines for environmental and regulatory reviews, we have previously recommended that time limits should be determined on a project-by-project basis, considering a project’s size, scope and potential impact on communities, rather than applying a one-size-fits-all timeline.

FCM also calls for consultation with municipalities to be included as a required component of the initial project description that proponents must file with the Impact Assessment Agency of Canada subject to the regulations made under paragraph 112(a).

Finally, we note that because of the changes brought forward in Bill C-69, the Canadian Energy Regulator and the Impact Assessment Agency of Canada will be drafting or amending numerous regulations and developing associated administrative policies and programs. Related to pipelines, changes to the Damage Prevention Regulations under the *Canadian Energy Regulator Act*, the development of regulations governing the impact assessment process under the *Impact Assessment Act*, and the development of a Participant Funding Program under the *Impact Assessment Act*, will all directly impact municipalities. FCM calls on the federal government to ensure that municipalities are adequately consulted in their development.

