Legislative Summary **LS-451E**

BILL C-26: TRANSPORTATION AMENDMENT ACT

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LEGISLATIVE HISTORY OF BILL C-26

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	25 February 2003	First Reading:	
Second Reading:	25 March 2003	Second Reading:	
Committee Report:		Committee Report:	
Report Stage:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

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

Legislative history by Peter Niemczak

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BACKGROUND

On 25 February 2003, the Hon. David Collenette, the Minister of Transport, released a document entitled *Straight Ahead – A Vision for Transportation in Canada*. The document is the culmination of extensive consultations that began in June 2000 with the Minister's Millennium Conference on Transportation and continued with roundtable discussions across the country headed by the Minister. It includes the government's responses to many of the recommendations contained in the June 2001 Report of the *Canada Transportation Act* Review Panel and the September 2002 Report of the Independent Transition Observer on Airline Restructuring.

A ministerial press release issued on the same date as *Straight Ahead* notes that it covers the full spectrum of long-term transportation issues in Canada, ranging from airline and railway competition issues to critical infrastructure needs, environmental pressures and safety and security imperatives. According to the press release, the document provides the vision, policy framework and principles that will guide the federal government's decisions in the years ahead in key areas such as marketplace policies, strategic infrastructure investments and initiatives in support of the broader government agenda on competitive cities and healthy communities, climate change, innovation and skills.

On the same date he released that document, the Transport Minister introduced Bill C-26, the Transportation Amendment Act, in the House of Commons. The bill proposes a series of amendments to the *Canada Transportation Act* as a concrete step towards fulfilling a number of commitments made by the Government of Canada in *Straight Ahead*. For example, the bill addresses commitments regarding air transportation (consumer protection and protection of domestic competition are key elements in this category); rail transportation, including freight

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

rail, grain transportation, passenger rail, railway noise, and urban transit and the rail line discontinuance process; the construction of international bridges and tunnels; transportation merger proposals; and mediation powers for the Canadian Transportation Agency. As well, the bill proposes to amend the *Railway Safety Act* and to enact specific legislation for VIA Rail which, unlike most Crown corporations, did not have separate legislation developed for it when it was established in 1977, through incorporation under the *Canada Business Corporations Act*.

DESCRIPTION AND ANALYSIS

A. Introduction

Bill C-26, entitled the Transportation Amendment Act (clause 1), comprises four parts as follows:

- Part 1 – Amendments to the *Canada Transportation Act* (clauses 2-65)
- Part 2 – Amendments to the *Railway Safety Act* (clause 66)
- Part 3 – Proposed Via Rail Canada Act (clause 67)
- Part 4 – Consequential and Coordinating Amendments and Coming into Force (clauses 68-84)

The description and analysis follow the numerical order of the clauses under each part of the bill.

B. Part 1 of Bill C-26 – Amendments to the *Canada Transportation Act* (clauses 2-65)

1. CTA Application and Part I – Administration (clauses 2-11)

a. Conflicts between International Agreements and the *Competition Act*

Clause 2 amends section 4 of the *Canada Transportation Act* (hereinafter referred to as the CTA) to clarify that international agreements or conventions respecting air services to which Canada is a party prevail over inconsistent provisions of the *Competition Act*. Departmental officials point out that the current wording can lead to potential conflicts between provisions negotiated under those international agreements and the *Competition Act*.

b. National Transportation Policy

Section 5 of the CTA contains a Declaration of National Transportation Policy based on a set of principles enunciated by Parliament. Clause 3 amends section 5 to update the National Transportation Policy Statement. Proposed section 5 highlights the key objectives to be pursued, including a new provision dealing with respect for the environment, and the conditions under which these objectives are most likely to be achieved.

c. Applications for Relief

Clause 4 amends section 27 concerning applications to the Canadian Transportation Agency (hereinafter referred to as the Agency) for relief. It removes the current requirement that the Agency must be satisfied that the applicant would suffer "substantial commercial harm" if the relief applied for were not granted. According to the department, this statutory requirement has been seen as an unnecessary barrier to applicants seeking discretionary relief from the Agency.

d. Mediation

Clause 5 adds a new section, 36.1, regarding mediation. It provides the Agency with the power to mediate disputes concerning matters within its jurisdiction as an alternative to proceeding by way of formal adjudication. Departmental officials point out that mediation can help parties resolve their disputes in a more rapid, less litigious and less costly manner, and can narrow the gap between the parties before the Agency exercises its adjudication role. As well, they note that, after a dispute, parties to a mediated agreement are generally more committed to its implementation and have a healthier relationship.

e. Transportation Information

Departmental officials point out that the availability of transportation information is critical in enabling the government to properly exercise its oversight role of the transportation sector and to develop policies and programs. Information is also essential to other transportation stakeholders so that they may effectively carry out their duties and functions. A number of amendments to the provisions dealing with the reporting of transportation information are proposed to ensure that the Minister can collect and share the required information, and has the tools to ensure that the information is actually provided.

Clause 6 clarifies section 50 by specifying the persons who may be required by regulations to provide transportation information to the Minister. Proposed new section 50.1 (in clause 7) states that, if persons referred to in section 50 have already provided transportation information to federal departments or agencies, the Minister may obtain copies from those departments or agencies, thereby avoiding duplication.

Section 51(1) currently states that transportation information required to be provided to the Minister pursuant to the Act is generally confidential, subject to certain specified exceptions where disclosure is permitted. Clause 8 amends section 51 to provide that the Minister may share the transportation information with, among other specified parties, persons retained to advise the government, and providers of services in relation to transportation (including the Canadian Air Transport Security Authority, NAV CANADA, and pilotage authorities), where such information is necessary for them to carry out their duties and functions. As well, the confidentiality requirement does not apply in situations where the information is already in the public domain. The Minister may, with the approval of the Governor in Council, make regulations respecting the terms and conditions of the sharing of information. Persons who receive such information from the Minister must maintain its confidentiality.

f. Industry Review

The CTA currently requires the Minister, *each* year before the end of May, to lay before Parliament a report on the state of transportation in Canada in respect of the preceding year. Clause 9 amends section 52 so as to require the Minister, every *two* years, to lay before the Senate and the House of Commons, within the year after the end of the two-year period, a report briefly reviewing the state of transportation in Canada. According to departmental officials, a two-year reporting cycle allows collection and analysis of sufficient data for reporting significant changes occurring in the industry. The current reporting requirement in respect of the previous year causes a recurrent problem because of the insufficiency of available data.

g. Review of Act

Clause 10 amends section 53 concerning statutory review so as to require the Minister, no later than 2010, to appoint one or more persons to carry out a review of the Act and any other Act of Parliament for which the Minister of Transport is responsible that pertains to the economic regulation of a mode of transportation or to transportation activities under the

legislative authority of Parliament. The person(s) conducting the review must assess whether the legislation provides Canadians with a transportation system that is consistent with the national transportation policy set out in section 5. The review must be completed within 18 months. The current section 53 requires the review to be carried out not later than four years after the Act came into force and stipulates that the review must be completed within one year. The department recognizes that there is a continuing need for a statutory review but maintains that it may take longer than four years for the impact of changes in industry structure and performance to become noticeable.

h. Review of Mergers and Acquisitions

Clause 11 adds new sections, 53.1 to 53.6, to the Act to expand the existing public interest review process for airline mergers (currently set out in sections 56.1 to 56.7) to cover any federal transportation undertaking (for example, air, rail, marine, buses, trucks, airports, marine ports). Once investigations of the public interest and competition issues are complete, the Minister will seek a Cabinet decision as to whether the transaction is to be approved with or without conditions.

The department notes that the proposed merger review mechanism will result in one decision so that the parties to the transaction will not have to wait for two separate decisions. If the Minister decides that the proposed transaction merits a public interest review, a person or the Agency will be appointed to carry out the review of the public interest issues that may arise as they relate to national transportation. In parallel, the Commissioner of Competition will carry out a review of the competition issues. The Commissioner and the Minister will consult regarding the public interest issues and competition issues identified in the reports.

2. CTA Part II – Air Transportation (clauses 12-29)

a. Interpretation and Application

Clause 12 amends section 55, which sets out relevant definitions for the purposes of Part II of the CTA. It adds a definition of a “domestic service provider” in order to explain the new provisions that are being added to the Act to create a new class of service provider. A domestic service provider is a person who represents himself or herself to the public as operating a domestic air service but contracts with another person who is the holder of a domestic licence for the actual provision of the service.

Clause 13 amends section 56 relating to the non-application of Part II of the CTA. Anyone providing an air service must comply with the licensing requirements of Part II unless they are exempt under section 56 or are granted a formal exemption under section 80. Section 56(1) currently provides that Part II does not apply to aircraft that are used by the Canadian Armed Forces or by any other armed forces cooperating with the Canadian Armed Forces *and* that bear the insignia or markings of the Canadian Armed Forces or those other armed forces. It is proposed that section 56 be amended to remove the requirement that the aircraft bear the insignia or markings of the Canadian Armed Forces or any other armed forces cooperating with the Canadian Armed Forces. According to departmental sources, the CAF and other armed forces are already exempt from the requirements of Part II with respect to their own aircraft because their "services" are not publicly available. They point out that the reason for removing the requirement for the aircraft to bear insignia or markings of the CAF or cooperating armed forces in order to be exempt from the requirements of Part II is because the CAF and cooperating forces often lease aircraft or charter aircraft with crew for the purpose of transporting goods or personnel or for other reasons. These aircraft will not typically carry military markings, but the military function of the CAF is such that no external regulatory control over air operations undertaken on their behalf is desirable or practical.

A proposed new section, 56(3), is added to exempt from Part II of the Act air services provided at the request of a government in the context of an emergency situation having been declared by a federal, provincial or municipal government under federal or provincial law. Departmental sources point out that it is neither practical nor desirable in emergency situations to require those who wish to provide much-needed assistance, often small or corporate air operators, to either be licensed in advance or apply for an exemption from the licensing requirement and await the decision.

In order to ensure that there is no abuse of the exemption for emergency service, another new section, 56(4), is added to provide the Minister with the power to, by order, prohibit air services from operating under the exemption under proposed section 56(3), or require the discontinuance of that air service if, in the Minister's opinion, it is in the public interest to do so.

In order to allow the Minister to apply a Ministerial order made pursuant to proposed section 56(4) without delay, another new provision, proposed section 56(5), is being added to exempt the order from the examination, registration or publication normally required by the *Statutory Instruments Act.*

b. Moving of the Review of Mergers and Acquisitions of Airlines Provisions

Clause 14 repeals current sections 56.1 to 56.7 of the Act concerning the public interest review process for mergers and acquisitions of airlines because they are being replaced by proposed sections 53.1 to 53.6, which, as previously noted, expand the process to cover *other* federal transportation undertakings as well.

c. Prohibitions re Air Operations and Services

Clause 15 proposes to add a new section, 57.1, to the CTA in addition to amending current sections 58 and 59 regarding licences for air services. Proposed section 57.1 provides that no person shall carry out activities as a *domestic service provider* unless the person holds a proper licence and has the prescribed liability insurance coverage. Section 58, which currently stipulates that a licence issued under Part II for the *operation of an air service* is not transferable, is amended to apply to *all* licences issued under Part II, thereby extending the requirement to the new class of licensee known as a domestic service provider.

Section 59 prohibits a person from selling, directly or indirectly, an air service unless, where required under Part II, the person holds a licence issued under that Part in respect of the service. The section is amended to also prohibit the sale of an air service while the licence is suspended.

The restriction covers domestic services as well as both international scheduled and non-scheduled (i.e., charter) services.

d. Air Service Price Advertising

Consumer protection is a key element of Bill C-26. Accordingly, clause 16 adds proposed new sections, 60.1 to 60.4, regarding air service price advertising, to the CTA. Proposed section 60.1 requires a licensee or a person acting for a licensee, advertising an air service in Canada or originating in Canada, and that includes a price for the service in that advertisement, to indicate in the same advertisement the *total amount* to be paid by the purchaser for the service. Proposed section 60.2 provides that fees or charges collected on behalf of an airport authority need not be included in the total amount if they are individually identified and their amount, or range of the amount, is indicated in the advertisement. Similarly, a charge payable under section 11 of the *Air Travellers Security Charge Act* or any other fees or charges

collected by the licensee on behalf of a government need not be included if the fee or charge is individually identified and its amount, or the range of the amount, is indicated in the advertisement. As well, a federal or provincial tax payable by the purchaser (for example, GST, HST and PST), other than a charge payable under section 11 of the *Air Travellers Security Charge Act*, need not be included if the tax is identified (it need not be quantified) in the advertisement. The purpose of proposed section 60.1 is to protect the travelling public by ensuring that the pricing information they receive in advertisements is clear and not misleading and that it reflects the total price of the air service they are purchasing. Departmental officials point out that consumers will be able to reasonably estimate the total cost of travel from an advertisement, compare advertisements of different carriers and avoid so-called "sticker-shock" when the total price for air travel is provided at the actual time of purchase.

Proposed section 60.2 prohibits a licensee, or person acting on behalf of a licensee, from advertising the price of an air service if no person can obtain the service at that price. The rationale for this provision is to prohibit the practice of advertising low fares that are not actually available, for example, advertising a fare for one-way travel when such fares can be obtained only if the consumer purchases a return ticket.

Proposed section 60.3 requires licensees to include in their contracts with travel wholesalers, tour operators, charterers or other persons associated with the provision of air services to the public, a requirement that the travel wholesalers, tour operators, charterers and other persons will also act in conformity with proposed sections 60.1 and 60.2. This provision is intended to ensure a level playing field for all advertisers of airfares. Departmental officials point out that an obligation to follow these advertising rules cannot be directly imposed on resellers because they do not fall under federal jurisdiction.

Proposed section 60.4 permits the Agency, on the recommendation of the Minister, to make regulations respecting the advertising of the prices of air services in Canada or originating in Canada. Hence, if the need for greater clarity of the advertising provisions in proposed sections 60.1 to 60.3 should arise, that can be provided through regulations.

e. Domestic Service

Section 62 currently allows the Minister, where he or she considers it advisable in the public interest that a domestic licence be issued to a person who is not a Canadian, to, *by order*, issue a licence exempting the person from the requirement under section 61(a)(i) that he

or she be a Canadian citizen for the duration of the order. Clause 18 amends section 62 to remove the requirement for an order, thereby allowing the exemption to be issued expeditiously where necessary, and avoiding the lengthier process of issuing the exemption by way of an order.

Section 64 concerns notice requirements regarding a licensee's proposal to discontinue or reduce domestic service. Clause 19 adds a new provision, proposed section 64(3.1), to add that the section does not apply to a licensee that operates a domestic service that is seasonal in nature for eight months or less in a 12-month period. The rationale is that seasonal operators provide a unique service to a unique clientele, typically in remote areas, the withdrawal of which does not have the same impact on a community as does the withdrawal of other regular service.

Clause 20 amends section 66(1) so as to provide the Agency with the power to exercise, *on its own motion*, its authority with respect to *unreasonable* fares, cargo rates or increases in fares or cargo rates on routes where there is only one licensee providing a domestic service between two points. Similarly, section 66(2) is amended by providing the Agency with the power to exercise, *on its own motion*, its authority with respect to *inadequate ranges* of fares or cargo rates on routes where there is only one licensee providing a domestic service between two points. The rationale for these amendments, according to departmental officials, is because carriers, travel agents and the travelling public are often unwilling to file a formal complaint with the Agency. Instead, they provide the Agency with the information after which the Agency is left in the position of being aware of the situation but unable to address the matter. With the power to act on its own motion under sections 66(1) and (2), the Agency will be able to investigate and make the appropriate determination regardless of whether it obtains information through a formal complaint or otherwise.

Section 66(3) is amended so that, in making a finding under sections 66(1) or (2), the Agency may (rather than "shall" as is currently the case) consider the factors enumerated in the section. Additional criteria are added; as well, the Agency is now given the power to take into consideration *any* information or factor that it considers relevant.

A proposed new section, 66(4.1), provides that the Agency shall not make an order under sections 66(1) or (2) in respect of a licensee being the only person providing a domestic service between two points if there is another domestic service that is not between the two points but is a reasonable alternative taking into consideration the factors mentioned in the

provision. According to the department, this provision permits the focus of the Agency's investigation to be on markets instead of specific points of service, in order to ensure a proper determination of whether the carrier in question has a monopoly on service.

Section 66(6), which previously provided the Agency with temporary authority to make a finding on its own motion under sections 66(1) or (2), is repealed and the reference to that repealed provision is removed from section 66(7).

Clause 21 amends section 67 concerning the publication of tariffs. Section 67(1)(a) is amended to require the holder of a domestic licence to *prominently* display at its business offices a sign indicating that its tariffs for domestic service, *including the terms and conditions of carriage*, are available for public inspection. The licensee is also required to permit such inspection. Section 67(1)(a.1) is added to require a domestic licensee to publish its terms and conditions of carriage on its Internet site if it sells its domestic service from that Internet site. These amendments ensure that the terms and conditions of carriage, containing valuable information for travellers, are available both at the licensee's business office and on its Web site.

Section 67.2 currently provides that the Agency may, on complaint in writing to it, make a finding that the terms or conditions of carriage applied by a domestic licensee to its domestic service are unreasonable or unduly discriminatory and suspend or disallow those terms or conditions and substitute other terms or conditions in their place. Clause 22 amends the section so as to *also* permit the Agency to exercise, *on its own motion*, the authority to make such a finding. The rationale is the same as for the similar change to sections 66(1) and (2) noted above.

Section 68 currently permits confidential contracts between the holder of a domestic licence (carrier) and "another person" regarding domestic air service. Departmental officials point out that if the confidential contract involves publicly available travel, the confidential contract can work to the disadvantage of the consumer. They give the example of a tour operator who has entered into a confidential contract with an airline but who is then selling seats on that airline to individual passengers. Under these circumstances, the passengers may find that not only do the published rules not apply to them, but also, because the terms of the contract are confidential, they are unable to determine the terms governing their transportation. To remedy this problem, clause 23 amends section 68(1) so that the *terms and conditions of*

carriage relating to the above contracts *cannot* be kept confidential. A new section, 68(1.1), is added to provide an exception to the above where an employer is a party to the contract and the contract relates to travel by its employees. In that case, the employer is aware of the terms and conditions of carriage and is responsible for deciding whether or not to provide the employees with that information.

Clause 24 adds four new sections, 68.1 to 68.4, regarding domestic service provider licences, to the Act. Proposed section 68.1 requires the Agency to issue a domestic service provider licence to an applicant provided that the applicant establishes that it is Canadian; has a contract that meets the prescribed requirements with a domestic licence holder in respect of the service to be provided under the licence; meets prescribed financial and liability insurance requirements; and intends to represent itself to the public as the person offering the service in question. The Agency must also be satisfied that the applicant has not contravened section 59 in respect of a domestic service within the preceding 12 months. Section 59 prohibits the selling of an air service unless the carrier is licensed.

The purpose of the above-mentioned provision is to allow for a new class of licence for domestic service providers (defined in section 55) who represent themselves to the public as providing a domestic air service but actually contract the operation of the service itself to the holder of a domestic licence. Departmental officials point out that the Agency has recently seen a number of instances where entities, such as airport authorities, enter into these contracts. In these cases, the person who represents himself or herself as providing the service does not hold a Canadian aviation document required for obtaining a domestic licence. Instead, the operator of the aircraft with whom the domestic service provider contracts for the actual operation of the service holds this document. Officials note that the new class of licence provides the Agency with a transparent means of recognizing these types of arrangements. To protect the interests of the travelling public, the domestic service provider is required to have appropriate insurance coverage and meet prescribed financial standards.

Proposed section 68.2 permits the Minister, if he or she considers it necessary or advisable in the public interest, to exempt the holder of the domestic service provider licence from being a Canadian. This provides for the same possibility for an exemption to the holder of a domestic service provider licence as exists for a holder of a domestic licence under section 62.

Pursuant to proposed section 68.3, the Agency must suspend or cancel a domestic service provider licence if the holder of the licence ceases to meet any of the requirements of section 68.1.

Proposed section 68.4 provides that sections 63(2) and (3) and sections 64 to 68 apply to holders of domestic service provider licences, thus ensuring that the holders of such licences are subject to the same requirements as holders of domestic licences under Part II of the Act.

f. Licence for Non-Scheduled International Service

Section 73 of the Act sets out the requirements that must be met in order for the Agency to issue a licence to an applicant to operate a non-scheduled international service. Proposed new sections 73(1.1) and (2.1) in clause 25 provide the Agency with the power to refuse to issue a licence for non-scheduled international service to either a Canadian or non-Canadian applicant if, in the opinion of the Agency, it is in the public interest to do so. This power is subject to any Ministerial directions issued under section 76. Departmental officials point out that the Agency has found, at times, that it was prevented from considering factors, such as foreign policy or national security, that it legitimately should have scope to examine in deciding whether to grant a licence for non-scheduled international service. This lack of flexibility, they point out, has not allowed the Agency to be as responsive to international sensitivities. They note that the only means by which the Agency may currently do so is to obtain directions from the Minister under section 76, which also requires the concurrence of the Minister of Foreign Affairs. They maintain that this need for Ministerial directions as the only method of considering the public interest limits the Agency and places an unnecessary burden on the Ministers.

g. Issuance of International Charter Permits

An operator of a non-scheduled international service must have a licence under section 73 to operate the service, as well as a permit for each particular charter program that it operates. Clause 26 proposes to add two new sections, 75.1 and 75.2, pertaining to the issuance of international charter permits. Proposed section 75.1 provides that the issuance, amendment or cancellation of a permit for the operation of an international charter to a licensee *shall* be done in accordance with regulations made pursuant to section 86(1)(e). Proposed section 75.2 provides

the Agency with the power to refuse to issue the permit if, in the opinion of the Agency, it is in the public interest to do so. This power to refuse to issue a permit is subject to any directions issued to the Agency by the Minister under section 76. The rationale is the same as for the proposed change to section 73.

h. Air Travel Complaints Commissioner

Clause 27 amends section 85.1(1) relating to the designation of the Air Travel Complaints Commissioner (ATCC). It is amended to provide that the Minister shall designate a member (either a permanent or temporary member) of the Agency to act as the Air Travel Complaints Commissioner for purposes of the section. Currently the Minister *must* designate a *temporary* member of the Agency. Section 9 provides that a temporary member shall hold office for not more than two consecutive one-year terms. The amendment allows for continuity of valuable work undertaken by the ATCC as well as the building of experience.

i. Agreements

Clause 28 adds a new section, 85.2, to the Act. Proposed section 85.2(1) provides that the Agency may, in the circumstances specified in the provision, order the holder of a domestic licence or a domestic service provider licence to enter into an agreement with another holder of a domestic licence or a domestic service provider licence with respect to access to its loyalty marketing program where it has such a program; the provision of domestic services on a continuous route by both licensees; a common fare applicable to the domestic services provided by both licensees on a continuous route; and the allocation of revenue from a common fare for domestic services between both licensees on a continuous route. Departmental officials describe the agreements pertaining to the latter three matters as "interlining, joint fares and pro-rates agreements."

Proposed section 85.2(2) stipulates that the Agency may make an order under section 85.2(1) only if, after consulting the Commissioner of Competition, the Agency is of the opinion that the absence of an agreement would substantially lessen competition; and if the Agency determines that the agreement would not cause financial hardship for the licensee that is subject to the order.

Section 85.2(3) provides that, in determining whether the agreement will cause financial hardship, the Agency must consider whether the licensee from which the agreement is sought already has interlining, joint fares or pro-rates agreements with another holder of a domestic licence or a domestic service provider licence.

Under proposed section 85.2(4), if the Agency issues an order requiring an agreement but the licensees cannot agree on the terms, the Agency may, on the request of either licensee, impose terms of its own that it believes are "commercially reasonable," including the duration of the agreement. The Agency may specify the time period within which the agreement shall be made. The licensee that requested the agreement may refuse to enter into it if it disagrees with the terms specified by the Agency.

Proposed section 85.2(5) empowers the Agency, on the recommendation of the Minister, to make regulations prescribing the factors that it may consider in determining what constitutes "reasonable commercial terms" and "financial hardship" for purposes of the section.

As rationale for proposed section 85.2, departmental officials point out that while the domestic marketplace is changing (Air Canada now has approximately 67% of the market), access to a national or regional network can still be crucial to an independent carrier's chance of success, as can access to a major loyalty marketing program. They note that the proposed amendments provide access requirements with no expiration date and an ability to take into account ongoing changes, both expected and unforeseen, in the marketplace. For that reason, they are made applicable to all carriers depending on the circumstances, and not just Air Canada. Officials point out that the Agency will be able to assess each application on a case-by-case basis in terms of both competition benefits and financial hardship for the licensee from which the agreement is sought.

j. Transitional Provisions

Clauses 28(2) and (3) are transitional provisions regarding proposed section 85.2. Clause 28(2) provides that current undertakings made by Air Canada to the Commissioner of Competition regarding Aeroplan will cease to have effect on the coming into force of proposed section 85.2(1)(a). The purpose of the transitional provision, according to departmental officials, is to prevent overlap and confusion between the new provision and current undertakings provided by Air Canada to the Commissioner of Competition.

Clause 28(3) provides that the undertakings made by Air Canada to the Commissioner of Competition regarding interlining, joint fares and pro-rates will cease to have effect on the coming into force of sections 85.2(1)(b) to (d). The rationale is the same as for clause 28(2).

k. Regulations

Clause 29 amends section 86(1) concerning the Agency's regulation-making powers for purposes of managing the air service licensing regime. A new paragraph (d.1) gives the Agency power to make regulations respecting the terms and conditions to be included in a contract between a domestic service provider and a holder of a domestic licence for the provision of a domestic service. As well, a new paragraph (h)(iv) is added enabling the Agency to make regulations requiring a licensee to display the terms and conditions of carriage for its international service on its Internet site, if the site is used for selling the international service of the licensee. Paragraph (j) is clarified by replacing "persons in conjunction with whom air services are provided" with "persons associated with the provision of air services to the public." It is also amended, for clarification purposes to include *travel wholesalers*, along with tour operators and charterers, as examples of such persons.

3. CTA Part III – Railway Transportation (clauses 30-54)

a. Definitions

Clause 30 amends section 87, which provides definitions for various terms used in Part III of the CTA. A definition for a "metropolitan area" is added; it is defined to mean any area that is classified by Statistics Canada in its most recent census of Canada as a census metropolitan area. The definition permits the delineation of the geographic areas for which railway lines, sidings and spurs must be offered to governments and urban transit authorities in accordance with sections 145 and 146.2 of the Act.

A definition of a "public passenger service provider" is added; it is defined to mean VIA Rail Canada Inc.; a passenger rail service provider designated by the Minister; or an urban transit authority.

Finally, a definition of an "urban transit authority" is added; it is defined to mean an entity owned or controlled by the federal government or a provincial, municipal, or district

government that provides commuter services in a metropolitan area. This definition permits the identification of entities that are entitled to receive an offer to purchase a surplus railway line, sidings or spurs in metropolitan areas under the processes set out in Part III of the Act.

b. Railway Noise

Existing law provides no review process for complaints dealing with railway noise; complaints are generally triggered by railcar shunting operations. Clause 31 therefore proposes to add new sections, 95.1 to 95.4, to the Act to provide the Agency with authority to address complaints relating to noise from the construction or operation of federally regulated railways.

Proposed section 95.1 provides that when constructing or operating a railway, a railway company must do so in a manner that produces the least possible noise, taking into account the company's statutory obligations, its operational requirements, and the area where such activities take place.

Proposed section 95.2 states that the Agency may issue and publish guidelines, after consultation with interested parties, with respect to: the elements that it will take into consideration when determining whether a railway company is complying with section 95.1; and the collaborative resolution of noise complaints. Such guidelines will inform both communities and railway companies of the factors to be considered in resolving noise complaints.

Proposed section 95.3 provides that the Agency, on receipt of a complaint, may order a railway company to undertake any changes in its railway construction or operation that the Agency considers reasonable in order to keep noise to a minimum, taking into account the factors referred to in section 95.1. If the Agency has published guidelines under section 95.2, it must first satisfy itself that the collaborative measures set out in the guidelines have been exhausted prior to conducting any investigation or hearing. This requirement is intended to encourage the resolution of disputes without regulatory intervention and to narrow to the extent possible the areas of difference before the Agency is involved.

The noise provisions also apply, with any modifications that the circumstances require, to public passenger service providers, such as VIA Rail (proposed section 95.4).

c. Financial Transactions of Railway Companies

Clauses 32 to 35 generally replace much of sections 104 to 106 with modified provisions applicable to the financial transactions of railway companies. Proposed section 104 specifies the types of financial instruments to be deposited in the office of the Registrar General of Canada or in any other place that the Governor in Council, by order, specifies. According to Transport Canada sources, the terminology is modernized to reflect current industry practices related to financial transactions and instruments pertaining to railway equipment. Proposed section 105 allows for the documents evidencing transactions such as mortgages, leases, etc., specified in the provision to be deposited in the office of the Registrar General of Canada or any other place that the Governor in Council, by order specifies. Proposed section 105.1 authorizes the Governor in Council to make regulations respecting the above matters.

Departmental officials point out that sections 106(5) and (6) are being replaced by provisions adding a new condition under which an order of the Federal Court does not affect the rights of creditors to take possession of the rolling stock of a railway company. They note that this amendment addresses a gap created by the interpretation of a U.S. court of a similar provision in the U.S. legislation.

d. Scheme of Arrangement

Clause 36 amends section 108 regarding an application to the Federal Court by the directors of an insolvent railway company for a confirmation of a scheme of arrangement between the company and its creditors. Sections 108(2) and (5) are repealed so that notice of the application for, and notice of confirmation and registration of, the scheme of arrangement need no longer be published in the *Canada Gazette*. Departmental officials note that this is consistent with the current practices for provincial and U.S. registries.

e. Competitive Connection Rates

Clause 37 amends section 111, which sets out certain definitions for purposes of Division IV entitled “Rates, Tariffs and Services” (comprising sections 111 to 139) of Part III (railway transportation) of the CTA. The definition of a “competitive line rate” is repealed and is replaced with a definition of a “competitive connection rate”; as well, the definition of a “connecting carrier” is replaced. A “competitive connection rate” is defined as a rate established

by the Agency as a result of an application under section 131 of the Act. A "connecting carrier" is defined to mean a railway company, other than a local carrier, that moves traffic to or from an interchange over a portion of a continuous route. The definition no longer requires that there be an agreement between the shipper and the connecting carrier for the movement of traffic. The Act maintains the current definition of an "interchange" to mean a place where the line of one railway company connects with the line of another railway company and where loaded or empty cars may be stored until delivered or received by the other railway company.

Section 128(1)(b) currently authorizes the Agency to make regulations regarding a *fixed* rate per car to be charged for interswitching traffic; clause 38 amends the provision to permit the Agency to prescribe the *maximum* rate per car instead of a fixed rate, thereby allowing the parties to agree to a lower rate.

Clause 40 amends section 129 so as to specify the circumstances when a shipper may make an application to the Agency for the determination of a competitive connection rate.

Clause 41 amends section 130 (concerning rates) so as to provide that the local carrier must provide the shipper with a rate for the movement of traffic from the point of origin to the point of destination and from a point of origin or destination to the nearest interchange with a connecting carrier (i.e., nearest point where the traffic could be transferred to a connecting carrier). The reason for this provision is to allow for an assessment to be made by the Agency under section 131(2).

Clause 42 generally replaces current sections 131 to 133 of the Act with proposed sections 131 to 133.1. Proposed section 131 specifies that a shipper may apply to the Agency to establish any of the following matters in respect of which the shipper and local carrier cannot agree: the rate applicable between the point of origin or destination, as the case may be, and the nearest interchange with a connecting carrier; the designation of a continuous route; the designation of the nearest interchange; and the manner in which the local carrier is to fulfil its service obligations. Before an application can be considered by the Agency, it must first determine that: the shipper has no alternative, effective, adequate and competitive means of transporting the goods; and the rate established by the local carrier for the movement of traffic between the point of origin and the point of destination is above the 75th percentile of revenue per tonne-kilometre for movements by the local carrier of similar traffic under similar conditions. The Agency must establish the matter to which the application relates within 45 days after

receiving the application. As well, the shipper is not permitted to apply for final offer arbitration for any competitive connection rate established by the Agency (while it is in effect) or being considered pursuant to the competitive connection rate provisions.

Proposed section 132 provides that the Agency may not establish a competitive connection rate for the movement of trailers on flat cars, containers on flat cars, or less than carload traffic, unless they arrive at a port in Canada by water for movement by rail or by rail for movement by water. This same prohibition currently applies to competitive line rates (current section 131(3) of the Act). As well, proposed section 133 provides that the competitive connection rate may not be established for the portion of a movement of traffic that exceeds 50% of the total number of kilometres over which the traffic is moved by rail or 1,200 kilometres, whichever is greater. This same prohibition currently applies to competitive line rates (current section 131(4)).

Proposed section 133.1 provides that a competitive connection rate must fall in the range of the 75th to the 90th percentile of revenue per tonne-kilometre for the movement by the local carrier of similar traffic under similar conditions. As well, a competitive connection rate must not be less than the variable costs of moving the traffic, as determined by the Agency. The latter provision currently applies in respect of competitive line rates (current section 133(4) of the Act).

Clause 43 adds two new sections, 135.1 and 135.2, to the Act. Proposed section 135.1 provides that the information used by the Agency to make its determination of a competitive connection rate is confidential and may not be disclosed to the applicant. Departmental officials point out that the reason for confidentiality is that the information used by the Agency will include commercially sensitive information in respect of other traffic carried by the railway.

Proposed section 135.2 provides that once a competitive connection rate has been established for a movement of traffic of a shipper, no other competitive connection rate may be established for the same movement while the established rate is in effect. This provision thus ensures that once a competitive connection rate has been established for a specific movement, the applicant cannot apply again for such a remedy while the established rate is in effect.

Clause 44 amends sections 136(1) and (4) to reflect the change from “competitive line rate” to “competitive connection rate.”

Clause 45 adds a new section, 136.1, providing authority for the Governor in Council to suspend the operation of the competitive connection rate provisions if the Governor in Council is of the opinion that the financial viability of a railway company has been seriously affected by their operation.

f. Transferring and Discontinuing the Operation of Railway Lines

Section 141(1) of the CTA currently requires a railway company to prepare and keep up to date a plan indicating for each of its railway lines whether it intends to continue to operate the line or whether, within the next three years, it intends to take steps to discontinue operating the line. Section 141(2) requires the railway company to make the plan available for public inspection in offices of the company that it designates for that purpose. Clause 46 proposes to add a new section, 141(2.1), requiring a railway company to notify, within 10 days of making a change to the plan, the Minister, the Agency, affected governments, and urban transport authorities. This ensures that interested parties have sufficient notice and opportunity to assess their interest in acquiring a line without lengthening the discontinuance process.

The Act sets out a number of steps with which a railway company must comply prior to discontinuing operating a railway line. Clause 47 amends section 143 of the Act to require that the advertisement offering the sale or transfer of a railway line for continued operation (one of the steps) must disclose any agreement between the railway company and a public passenger service provider (for example, VIA Rail) respecting passenger rail service on the line. This ensures that a potential purchaser is aware of the existence of passenger service obligations on the line.

Clauses 48 and 49 repeal current section 144(2) and add, in place of it, a new section, 144.1. Proposed section 144.1 provides that when a public passenger service provider operates a passenger service under an agreement with a railway company on railway line that is sold, leased or transferred, the purchaser assumes the rights and obligations of the transferring railway company in relation to the public passenger service provider for the duration of the agreement. When a railway company's rights and obligations under an agreement with VIA Rail are vested in another entity by virtue of the above provision, the portion of the railway line to which the agreement relates is declared a work for the general advantage of Canada. The declaration ceases to have effect if VIA Rail ceases to operate a passenger rail service on the

portion of the line to which the declaration relates or the operation of the railway line is discontinued.

The above measures ensure the continuity of existing public passenger service agreements when railway lines are sold or transferred. As well, the provision regarding VIA Rail ensures that VIA Rail will continue to have access to transferred railway lines over which its services are operated and will have access to the new recourse (dispute resolution) available to public passenger service providers under proposed sections 152.1 to 152.3.

Clause 50 amends section 145 so that a railway company offering to sell or transfer a railway line in the railway line discontinuance process must offer it to the federal and provincial governments, urban transit authorities and municipal governments through whose territory the line passes. The amendment results in urban transit authorities being included in the sequence of mandatory offers of railway lines to public authorities in the circumstances set out in that section.

Clause 51 replaces current sections 146 and 146.1 with proposed sections 146 and 146.1 to 146.4. Proposed section 146 clarifies that once a railway company has complied with the process set out in sections 143 to 145 of the Act, but any agreement for the sale, lease or other transfer of the railway line is not entered into through that process, and once the railway company has provided notice of discontinuance to the Agency, it is relieved of any obligations under the Act with respect to the operation of a railway line and any operations by public passenger service providers. Also, when a railway line reverts to the railway company at the end of a lease or transfer agreement, the railway company must, within 60 days after the reversion, resume operations on the line or follow the process specified in sections 143 to 145.

Proposed section 146.1 ensures that when a grain-dependent branch line listed in Schedule I is leased and subsequently returned to a railway company, the railway company must follow the discontinuance process specified in sections 143 to 145, in order to provide interested parties with an opportunity to acquire the branch line before it is discontinued. If it is discontinued, the railway company must compensate the municipality or district in which it is located by making three annual payments to it in the amount of $10,000 for each mile of the line in the municipality or district.

Proposed section 146.2 requires railway companies to prepare and keep up to date a list of their "sidings and spurs" (line segments) in metropolitan areas that they plan to dismantle. A railway company must publish the list on its Internet site and notify specified parties of the change within 10 days. A railway company must not take any steps to dismantle a siding or spur until 12 months have elapsed since the siding or spur was added to the list. Prior to dismantling a siding or spur, a railway must offer them to governments and urban transit authorities for not more than their net salvage value. The process parallels the process in amended sections 145 and 146 whereby railway lines are offered to governments and urban transit authorities.

Proposed section 146.3 permits a person to whom a railway line is offered under section 145, or to whom a siding or spur is offered under section 146.2, to apply to the Agency for a determination of the net salvage value (NSV) at any time before the expiry of the period available to the person to accept the offer. The applicant must reimburse the Agency's costs associated with the application. Under the current provisions, a government must accept the railway company's offer to sell prior to the NSV being determined by the Agency. The ability to obtain an NSV determination prior to making an offer gives a government or urban transit authority advance knowledge of the NSV so as to facilitate decision-making regarding the potential purchase of the line, siding or spur.

Proposed section 146.4 states that proposed sections 146.2 and 146.3, referred to above, apply, with any modifications that the circumstances require, to passenger railway stations in Canada that a railway company plans to sell, lease or otherwise transfer or dismantle. In other words, railway companies must offer passenger railway stations that they intend to sell, lease or otherwise dismantle to governments and urban transit authorities in a procedure paralleling that for railway sidings and spurs.

g. List of Available Sidings

Clause 52 introduces a new section, 151.1, that requires railway companies to publish on their Internet sites a list of rail sidings (in the Western Division) where railway cars can be loaded by grain producers. Railway companies must give 60 days' notice prior to removing such sidings from operation. This provision allows farmers time to make alternative arrangements or to work with the railway companies to keep such sidings in operation.

h. Public Passenger Service Providers

Clause 53 adds new sections, 152.1 to 152.4, pertaining to public passenger service providers, to the Act. Proposed section 152.1 specifies that whenever a public passenger service provider and a railway company cannot agree on any rate, term or condition related to the operation of the passenger service on the railway's facilities, the public passenger service provider may, after reasonable efforts to resolve the matter have been made, apply to the Agency to decide the matter. The Agency may also be requested by either the public service passenger provider or the railway company to decide the matter where, after reasonable efforts to resolve the matter have been made, the public passenger service provider and the railway company cannot agree on the implementation of a matter previously decided by the Agency. This procedure replaces the existing final offer arbitration recourse for public passenger service providers currently set out in section 160.

Proposed section 152.2 provides that if, pursuant to an application made under section 152.1, the Agency fixes the amount to be paid by the public passenger service provider's use of the railway company's facilities or service, the Agency must take into consideration, among other things, certain factors specified in the provision.

Proposed section 152.3 provides that any decision of the Agency in respect of matters disputed by the public passenger service provider and the railway company (and where an application has been made by a public passenger service provider pursuant to section 152.1) will be binding on the parties for a period of five years or any other period agreed to by the parties and specified in the decision.

In the interest of greater public transparency, proposed section 152.4 requires that future contracts between railway companies and public passenger service providers must be made available to a member of the public, upon request. This obligation also extends to current contracts except where the Agency has (in its discretion), on application by one of the parties to the contract, excluded an existing contract or a portion of it on the grounds that harm would likely result to the applicant if the contract, or the specified portion, were to be disclosed.

i. Railway Police Constables

Clause 54 repeals section 158 of the CTA, concerning the authority to appoint railway police constables. The reason for this is that the authority is moved to the *Railway Safety Act* as provided for in clause 66 of the bill.

4. CTA Part IV – Final Offer Arbitration (clauses 55-58)

Final offer arbitration is a process generally available to a shipper who is dissatisfied with the rates or conditions of service proposed by a railway company. The final offer arbitration process requires an independent arbitrator to review the final offers made by the shipper and the railway company and to select one or the other.

a. Exemption from Final Offer Arbitration

Clause 55 amends section 160 of the Act to clarify that a public passenger service provider cannot make an application for final offer arbitration to resolve a dispute with a railway company. The reason is that a new dispute resolution mechanism is provided in sections 152.1 to 152.4 to deal with disputes between a public passenger service provider and a railway company. Those sections provide for adjudication by the Agency.

b. Submission for Final Offer Arbitration

Clause 56 amends section 161(1) of the Act to clarify that final offer arbitration also applies to charges, rates, terms or conditions applicable to any *incidental services* in addition to those applicable to the movement of goods.

c. Arbitration Considerations

Clause 57 amends section 164.1 so that the requirement set out in section 164(2) for the arbitrator to have regard to whether a shipper has alternative, effective, adequate and competitive means of transporting the goods applies equally where the dispute is for matters involving freight charges of not more than $750,000. The reason for this amendment is to address an anomaly in the current Act whereby the arbitrator must consider whether a shipper has alternative, effective, adequate and competitive means of transporting the goods, in handling a dispute involving freight charges of more than $750,000, but has no similar obligation when dealing with disputes involving freight charges in an amount of not more than $750,000. The obligation will now apply to all disputes involving freight charges.

d. Joint Offer of Several Shippers

Clause 58 adds proposed new sections, 169.1 and 169.2, to the Act. Proposed section 169.1 provides that two or more shippers may join in one proceeding and submit one offer for arbitration in respect of rates, charges, term or conditions specified in a tariff when the matter submitted to the Agency for final offer arbitration is common to all the shippers. In such cases, the arbitrator may extend the period to issue his or her decision by up to 60 days. Departmental officials note that allowing multiple shippers to join in one proceeding enables a group of shippers with a common complaint to seek redress for matters that may be small for one individual shipper, but which may have a significant cumulative impact on several shippers. They point out that this will help reduce the cost to shippers of filing individual offers for such matters as demurrage (late charges) and car cleaning, because of the high costs for a single shipper to seek relief on these small individual transactions.

e. Offers of Other Persons

Proposed section 169.2 provides that sections 161 to 169 apply to any person (or group of persons seeking common relief) other than a shipper, who is subject to charges or rates charged for the movement of goods or incidental services, or for any term or condition associated with the movement of goods or any incidental services. This provision thus allows any person subject to a tariff, for example a terminal operator, to apply for final offer arbitration.

5. CTA Part V – Transportation of Persons with Disabilities

Bill C-26 proposes no changes to Part V of the CTA.

6. CTA (Proposed) Part V.1 – International Bridges and Tunnels (clause 59)

Clause 59 adds a *new* Part, V.1, comprising proposed sections 172.1 to 172.7, to the CTA, dealing with the authority to approve the construction or alteration of international bridges and tunnels.

The construction and alteration of international bridges or tunnels are matters falling within federal legislative jurisdiction pursuant to section 92(10)(a) of the *Constitution Act, 1867*. Departmental officials point out that currently, in the absence of an "overarching mechanism in Canadian law" governing the construction or alteration of such bridges and tunnels, construction and/or modification is governed on a case-by-case basis without a uniform approach or approval mechanism.

Proposed section 172.1 defines the terms “international bridge or tunnel” and “alteration” for purposes of new Part V.1 of the CTA. An “international bridge or tunnel” is defined to mean a bridge or tunnel, or any part of it, that connects any place in Canada to any place outside Canada.

An “alteration” is defined to include a conversion, an extension and a change in use of an international bridge or tunnel but does not include its operation and maintenance.

Proposed section 172.2 states that Part V.1 does not affect the application of other federal statutes, including those requiring authorizations, in respect of an international bridge or tunnel. Hence, statutes such as the *Navigable Waters Protection Act*, the *Fisheries Act*, and the *Environmental Assessment Act* that may affect the construction or alteration of an international bridge or tunnel will continue to apply.

Proposed section 172.3 requires authorization from the Governor in Council in order to construct an international bridge or tunnel.

Proposed section 172.4 requires a proponent for the construction or alteration of an international bridge or tunnel to submit an application to the Minister for approval by the Governor in Council. The applicant must provide the Minister with plans, specifications, studies, procedures or other information, including information relating to the financing of the proposed construction or alteration of the bridge or tunnel or its operation, that may be requested by the Minister or prescribed by regulations. According to the department, the reason for this provision is that the Minister must be satisfied that the proposed construction or alteration has undergone due diligence and is financially viable.

Proposed section 172.5 authorizes the Governor in Council, on the recommendation of the Minister, to approve such projects under such terms and conditions as the Governor in Council considers appropriate. The Governor in Council may vary or rescind those terms and conditions. Every person who is subject to terms and conditions is under an obligation to comply with them.

Proposed section 172.6 allows the Minister to, among other things, order the removal or alteration of a bridge or tunnel that was constructed or altered without the approval of the Governor in Council.

Proposed section 172.7 sets out offences and punishment for non-compliance with the provisions of Part V.1.

7. CTA Part VI – General (clauses 60-64)

Clauses 60 to 64 amend the provisions of the CTA pertaining to administrative monetary penalties.

Clause 60 amends section 177 so as to permit the Minister to designate any provision of section 51 (confidentiality of transportation information supplied to the Minister pursuant to the Act), or of a regulation made under section 50 or 51, as provisions that may be enforced by way of administrative monetary penalties. Clauses 61-63 amend sections 178-180 to reflect the above amendment to section 177. Clause 64 adds proposed section 180.1 to allow the Minister to delegate the enforcement of the above provisions to the Agency. Departmental officials point out that enforcement by way of administrative monetary penalties in respect of the above is considered more efficient than by way of summary conviction, although proceeding by way of the latter is still possible under sections 173 to 176.

8. CTA Part VII – Repeals, Transitional Provisions, etc.

Bill C-26 proposes no amendments to Part VII of the CTA.

C. Part 2 of Bill C-26 – Amendments to the *Railway Safety Act* (clause 66)

Clause 66 proposes to add a new Part IV.1 entitled "Police Constables," comprising proposed sections 44 and 44.1, to the *Railway Safety Act*. The provisions concerning the appointment of railway police constables currently contained in section 158 of Part III of the CTA are moved to proposed section 44 of the *Railway Safety Act*. Departmental officials point out that the reason for moving the provisions is because they fit more appropriately under the railway safety legislation, which governs safety and security of railway operations.

Clause 66 also adds a totally new provision, proposed section 44.1, requiring each federally regulated railway company to establish procedures for dealing with complaints against railway police constables; designate one or more persons to be responsible for implementing the procedures; and designate one or more persons to receive and deal with the complaints. As well, the railway company must file with the Minister a copy of its procedures in that regard and implement recommendations made by the Minister, including recommendations concerning how these procedures are to be made public. This provision ensures that there is an independent review mechanism to review complaints regarding railway police constables.

D. Part 3 of Bill C-26 – Proposed New Via Rail Canada Act (clause 67)

When VIA Rail was established in 1977, through incorporation under the *Canada Business Corporations Act*, separate legislation was not developed for it. Clause 67 proposes to enact legislation specifically concerning VIA Rail. The proposed Act comprises 20 sections.

Section 1 of the proposed Act entitles the Act the VIA Rail Canada Act (hereinafter referred to as the VRCA).

Section 2 set out definitions for purposes of the proposed VRCA. Section 3 provides for the continuance of VIA Rail Canada Inc., incorporated on 12 January 1977 under the *Canada Business Corporations Act*, under the proposed VRCA under the name VIA Rail Canada.

Section 4 of the proposed VRCA provides that the proposed Act is deemed to be the charter of the corporation for purposes of Part X (pertaining to Crown corporations) of the *Financial Administration Act*. Section 5 states that on the coming into force of section 3 of the proposed VRCA, the *Canada Business Corporations Act* ceases to apply to the corporation; in other words, the Corporation is then governed by the proposed VRCA.

Section 6 of the proposed Act states that the shares of VIA Rail Canada Inc. are cancelled without any repayment of capital in respect of them; as well, the capital constitutes a capital surplus of the Corporation. Departmental officials point out that shares are not necessary because VIA Rail Canada is a sole shareholder corporation.

The Minister of Transport is the appropriate Minister in relation to the Corporation for purposes of Part X of the *Financial Administration Act* (section 7 of the proposed VRCA).

Section 8 of the proposed VRCA provides that the mandate of VIA Rail Canada is to manage and provide a safe and efficient passenger rail service in Canada. It also allows for the use of excess equipment, facilities and resources for commercial purposes ancillary to its mandate with a view to reducing the need for payments to the Corporation out of the Consolidated Revenue Fund. For so doing, the Corporation has the capacity, and subject to the proposed VRCA, the "rights, powers and privileges of a natural person."

The Corporation is not an agent of the federal Crown (section 10 of the proposed VRCA).

The Corporation's headquarters are in Montreal, unless otherwise specified by the Governor in Council (section 11 of the proposed VRCA). Section 12 of the proposed VRCA establishes a board of directors comprising up to 15 directors, including the chair and the chief executive officer. The chair and the chief executive officer are appointed by the Governor in Council, while the other directors are appointed by the Minister, with the approval of the Governor in Council. Departmental officials point out that the above is consistent with the size of the current Board of Directors, and that the process for appointments is consistent with the *Financial Administration Act*.

Section 13 requires the chair to preside at meetings of the board and to carry out other duties set out in the corporate by-laws. In the absence of the chair, the board may designate another director to serve as the chair for up to 90 days or, with the approval of the Governor in Council, a longer period.

Section 14 specifies that the chief executive officer is responsible for the direction and management of the business and day-to-day operations of the Corporation and must perform any duties assigned by the corporate by-laws. In the absence of the chief executive officer, the board may appoint an officer or employee of the Corporation to perform the duties of the chief executive officer for up to 90 days or, with the approval of the Governor in Council, a longer period.

Sections 15 to 20 of the proposed VRCA are transitional provisions that allow for the corporation to continue operating as is. Members of the board of directors, the chair and the chief executive officer continues to hold office until the expiry of their terms. The property, rights and obligations, legal actions or claims, and by-laws of VIA Rail Canada Inc. are continued under VIA Rail Canada.

In essence, the proposed VRCA changes the governance of VIA Rail Canada from the *Canada Business Corporations Act* to the proposed VRCA. It does not change the corporation's corporate structure, its operations or its status as a Crown corporation.

E. Part 4 of Bill C-26 – Consequential and Coordinating Amendments and Coming into Force (clause 68-84)

The clauses in Part 4 of the bill make a number of consequential and coordinating amendments to other Acts and provide for the coming into force of the provisions of the bill.

COMMENTARY

The amendments to the *Canada Transportation Act* contained in Bill C-26 reflect broad consultations with industry, stakeholders, the provinces and territories, including the *Canada Transportation Act* Review Panel's extensive public consultations.

To date, there has been some commentary in the press concerning Transport Canada's policy document, *Straight Ahead*, which was released on the same date as Bill C-26, but there has been little commentary on the bill itself.

For example, in an article entitled "Air Canada, railways slam transportation blueprint," which appeared in the *National Post* on 26 February 2003, it was noted that both Air Canada and Canadian National Railway Co. were critical of the blueprint for transportation set out in *Straight Ahead*, saying that the guidelines fail to address pressing concerns and present a path toward re-regulation.