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## LEGISLATIVE SUMMARY



### ***Bill C-52:***

### ***An Act to amend the Canada Transportation Act (administration, air and railway transportation and arbitration)***

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## **Legislative Summary of Bill C-52**

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*Ce document est également publié en français.*

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

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

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# LEGISLATIVE SUMMARY OF BILL C-52: AN ACT TO AMEND THE CANADA TRANSPORTATION ACT (ADMINISTRATION, AIR AND RAILWAY TRANSPORTATION AND ARBITRATION)

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## 1 BACKGROUND

Bill C-52, An Act to amend the Canada Transportation Act (administration, air and railway transportation and arbitration) (short title: Fair Rail Freight Service Act) was introduced in the House of Commons and passed first reading on 11 December 2012.

The bill amends the *Canada Transportation Act*<sup>1</sup> to:

- give freight shippers the right to enter into service agreements with railway companies and establish an arbitration process in the event of a dispute between a shipper and a railway company regarding such an agreement;
- streamline administrative procedures related to air transportation; and
- update certain provisions related to the administration of the Act.

The Act is umbrella legislation governing air and railway transportation markets. Passed by Parliament in 1996, it sets out the National Transportation Policy<sup>2</sup> and establishes open competition – particularly between carriers and between modes of transport – as the basic principle for the country's transportation markets.<sup>3</sup> It also contains provisions on the operation of the Canadian Transportation Agency.<sup>4</sup>

The provisions of the bill relating to railway transportation stem from the statutory review of the Act in 2000–2001. In its report presented in 2001,<sup>5</sup> the *Canada Transportation Act Review Panel* made 21 recommendations to increase competitive rail access and improve shipper protections. Between 2001 and 2007, Transport Canada drafted proposals to implement the Committee's recommendations and held consultations with railway companies and other rail transportation stakeholders.<sup>6</sup> A bill amending the Act was introduced later in 2007 and received Royal Assent in 2008.<sup>7</sup>

In 2009, the Minister of State (Transport) established the Rail Freight Service Review Panel, comprised of a group of transportation experts, and directed it to examine rail freight service in Canada. Rail access, which had been reviewed in 2001 by the *Canada Transportation Act Review Panel*, was one of the key issues identified in the report of the Panel. Shippers complained about inconsistent and inadequate rail service,<sup>8</sup> while railway companies said that service interruptions could be attributed to other players in the system and that railway companies alone could not be held responsible for unexpected incidents on their network.<sup>9</sup>

The Rail Freight Service Review Panel made this recommendation, among others:

Railways should enter into good faith negotiations to establish service agreements upon request by stakeholders who have an operational or commercial relationship with them, including the establishment of “boiler plate” agreements with groups, such as small shippers.

Disputes related to the initial establishment or renewal of service agreements, i.e. failure to reach agreement on the terms and conditions of service agreements or renewals, should be eligible for dispute resolution.<sup>10</sup>

In its response to the review panel, the federal government made a commitment to implement this recommendation.<sup>11</sup> Bill C-52 fulfills this commitment.

## 2 DESCRIPTION AND ANALYSIS

Bill C-52 contains 14 clauses. The description that follows highlights the three key elements of the bill.

### 2.1 SERVICE AGREEMENTS AND ARBITRATION (CLAUSES 8 TO 14)

The Act requires railway companies to provide shippers with certain services provided for under the Act and to publish the respective tariffs.<sup>12</sup> Sections 113 and 126 of the Act also allow a railway company to enter into a service agreement (called a “confidential contract”) with a shipper setting out the level of services to be provided and the rates for those services. In the event of a dispute regarding the terms of the contract, such as the level of services provided or the rates charged, a shipper may submit the matter for arbitration.<sup>13</sup> Railway companies are not required to enter into a confidential contract with shippers. However, approximately 75% of the business of Canadian Pacific Railway, for example, is covered by such contracts.<sup>14</sup>

Section 8 of the bill adds sections 126(1.1) to 126(1.5) to the Act to give shippers the right to enter into a confidential contract with a railway company. In this way, new section 126(1.1) allows a shipper to request that a railway company make it an offer to enter into a confidential contract. New section 126(1.2) sets out the elements that must be included in the shipper’s request, including the services it requires and any undertaking it is prepared to give to the railway company. Under new section 126(1.3), the railway company must respond to the request and make an offer within 30 days following receipt of the request. New section 126(1.4) exempts railway companies from including in their offer terms with respect to a matter that is already governed by an agreement between the shipper and the railway company, that is the subject of an order, that is set out in a published tariff or that is the subject of an arbitration decision, unless, under new section 126(1.5), the agreement, order, tariff or arbitration decision is expiring.

Clause 11 of the bill establishes a new arbitration procedure to settle disputes between a shipper and a railway company regarding the offer of a confidential contract (new sections 169.31 to 169.43). To be eligible for arbitration, the shipper must demonstrate that attempts have been made to arrive at an agreement with the railway company (new section 169.33). In its decision, the arbitrator establishes the

level of services the railway company must provide, its obligations to the shipper if it is unable to provide the level of services required by the arbitrator, as well as the shipper's obligations to the railway company (new section 169.37). In making his or her decision, the arbitrator must, among other things, be commercially fair to both the shipper and the railway company (new section 169.37). The arbitrator must also consider the traffic that the shipper requires (new section 169.37(a)).

With the addition of the new arbitration procedure mentioned above, Part IV of the Act has two arbitration procedures. Clauses 9 and 10 of the bill amend the Part IV headings so that sections 159 to 169.3 of the Act on the current arbitration procedures are preceded by the headings "Division I" and "Final Offer Arbitration." The new arbitration procedures introduced by new sections 169.31 to 169.43 created by clause 11 of the bill are preceded by the new headings "Division II" and "Arbitration on Level of Services."

In addition, clause 12 of the bill adds section 177(1.1) to the Act. Under this new provision, the Canadian Transportation Agency may impose monetary penalties of up to \$100,000 on a railway company that does not follow the arbitrator's decision made under the new arbitration procedure. Clauses 13 and 14 of the bill amend sections 178(1) and 180.8(1) of the Act to take new section 177(1.1) into account.

## 2.2 STREAMLINING PROCEDURES FOR AIRLINE COMPANIES (CLAUSES 5 AND 7)

Clauses 5 and 7 of the bill simplify the procedures enabling an airline company to hold a licence to operate an air transport service. Clause 5 amends section 62 of the Act to exempt from the *Statutory Instruments Act* an order issued by the Minister of Transport allowing a non-Canadian to hold a licence to operate a domestic air transport service.<sup>15</sup> Currently, such an order must, among other things, be reviewed and registered by the Clerk of the Privy Council<sup>16</sup> and published in the *Canada Gazette*.<sup>17</sup> From now on, the order need only be made public through the Internet.

Clause 7 of the bill amends section 80 of the Act to limit the extent of the exemptions that may be granted by the Canadian Transportation Agency. Currently, section 80 allows the Agency to exempt a person or an airline company from the application of any provision in the Act related to air transportation. New section 80(3) provides that the Agency cannot exempt an applicant for a licence to operate a scheduled international air transport service from the requirement to be previously designated as eligible by the Minister of Transport or a foreign government to hold such a licence.

Clause 6 of the bill amends section 69(2) of the Act to harmonize the English and French versions.

## 2.3 UPDATE OF CERTAIN PROVISIONS RELATED TO THE ADMINISTRATION OF THE CANADA TRANSPORTATION ACT (CLAUSES 2 TO 4 AND 6)

Clause 2 amends section 42(1) so that the Canadian Transportation Agency is required to report on its annual activities to the Governor in Council before the end of July each year, rather than before the end of May, as is currently the case.

Clause 4 adds to the Act sections 50.01 and 50.02, which authorize the government to incorporate by reference any document that is produced by a person or body other than the Minister in regulations made under section 50(1). This section gives the Governor in Council the authority to make regulations requiring certain persons to provide information to the Minister of Transport enabling him or her, among other things, to develop a transportation policy, plan transportation infrastructure requirements and administer the Act.

Sections 3 and 6 of the bill amend sections 50(1) and 69(2) of the Act to harmonize the English and French versions.

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## NOTES

1. [Canada Transportation Act](#), S.C. 1996, c. 10.
2. *Ibid.*, s. 5.
3. Joseph P. Dion, *The Report of the Canada Transportation Act Review*, Publication no. 01-12E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 4 October 2001, p. 4.
4. The Canadian Transportation Agency is an economic regulator and quasi-judicial tribunal for transport-related matters under the authority of Parliament. Information on the role of the Agency can be found on the "[About the Agency](#)" page on its website.
5. *Canada Transportation Act Review Panel*, [Vision and Balance: Report of the Canada Transportation Act Review Panel](#), Public Works and Government Services Canada, Ottawa, 2001.
6. Transport Canada, [Rail Freight Service Review – Final Report](#), 2011, p. 1.
7. [An Act to amend the Canada Transportation Act \(railway transportation\)](#), S.C. 2008, c. 5. For more information on this act, see David Johansen, [Bill C-8: An Act to amend the Canada Transportation Act \(railway transportation\)](#), Publication no. LS-569E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 27 June 2008.
8. Transport Canada (2011), p. 22.
9. *Ibid.*, p. 29.
10. *Ibid.*
11. Transport Canada, "[Government of Canada Acts to Improve Rail Freight Supply Chain \(Winnipeg\)](#)," News release, Winnipeg, 18 March 2011.
12. *Canada Transportation Act*, ss. 113, 117 and 118.
13. *Ibid.*, s. 161.
14. Transport Canada (2011), p. 9.
15. [Statutory Instruments Act](#), R.S.C. 1985, c. S-22.
16. *Ibid.*, s. 3.
17. *Ibid.*, s. 10.