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Legislative Summary

BILL C-52: AN ACT TO ENACT THE AIR TRANSPORTATION ACCOUNTABILITY ACT AND TO AMEND THE CANADA TRANSPORTATION ACT AND THE CANADA MARINE ACT

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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 Senate and House of Commons 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 to this Library of Parliament legislative summary that have been made since the preceding issue are indicated in **bold print**.

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CONTENTS

LEGISLATIVE SUMMARY OF BILL C-52: AN ACT TO ENACT THE AIR TRANSPORTATION ACCOUNTABILITY ACT AND TO AMEND THE CANADA TRANSPORTATION ACT AND THE CANADA MARINE ACT

1 BACKGROUND

Bill C-52, An Act to enact the Air Transportation Accountability Act and to amend the Canada Transportation Act and the Canada Marine Act (short title: Enhancing Transparency and Accountability in the Transportation System Act)[1] was introduced in the House of Commons by the Minister of Transport on 20 June 2023 and received first reading the same day. The Minister of Justice has prepared a Charter statement for this bill.[2]

The bill contains 22 clauses, divided into three parts. Part 1 of the bill enacts An Act respecting accountability in the air transportation sector (short title: Air Transportation Accountability Act). This Act seeks to establish various responsibilities across the aviation ecosystem, notably in relation to noise management and climate change. It also authorizes the creation of a regulatory framework for service standards in the aviation sector.

Part 2 makes amendments to the *Canada Transportation Act* (CTA)[3] that relate to accessibility in the aviation sector, notably to authorize the establishment of a complaints process through regulation.

Part 3 amends the *Canada Marine Act* (CMA)[4] to establish a new framework for the fixing of port fees by port authorities which includes a dispute resolution process.

1.1 REPORTS BY THE HOUSE OF COMMONS STANDING COMMITTEE ON TRANSPORT, INFRASTRUCTURE AND COMMUNITIES

A recent report by the House of Commons Standing Committee on Transport, Infrastructure and Communities (TRAN), *Strengthening Air Passenger Rights in Canada*,[5] touched on topics that relate to Part 1 of Bill C-52.

In particular, TRAN's Recommendation 6 proposed performance evaluations of service standards in the air transportation sector. During the study, some airline representatives suggested that a broader shared-responsibility model was needed, with broader service standards applicable to other members of the aviation ecosystem, such as the Canadian Air Transport Security Authority (CATSA), the Canada Border Services Agency (CBSA) and NAV CANADA.[6] Part 1 of this bill covers the legislative authority to make regulations on such service standards.

TRAN also published a report in March 2019, *Assessing the Impact of Aircraft Noise in the Vicinity of Major Canadian Airports*.[7] Several of the recommendations made in this report are also reflected in the provisions of Bill C-52 on airport noise management committees.

1.2 AUDITOR GENERAL REPORT: *ACCESSIBLE TRANSPORTATION FOR PEOPLE WITH DISABILITIES*

On 27 March 2023, the Auditor General of Canada released a report, *Accessible Transportation for People with Disabilities*.[8] This report contains a recommendation that the Canadian Transportation Agency (the Agency) gather more data on accessibility-related complaints filed against transportation service providers to better inform its enforcement strategy.

The Agency agreed with this recommendation; in its response to the Auditor General, it explained that it would seek opportunities to collect more data from transportation service providers on a voluntary basis by March 2024. However, amendments proposed in Bill C-52 to the CTA authorize the making of regulations that require these providers to gather and report the necessary data to the Minister of Transport and the Agency. These amendments also establish a specific process for accessibility-related complaints in the transportation sector.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: AIR TRANSPORTATION ACCOUNTABILITY ACT (CLAUSE 2)

Clause 2 of Bill C-52 enacts An Act respecting accountability in the air transportation sector (short title: Air Transportation Accountability Act), which comprises 68 sections.

Sections 1 and 2 of the Air Transportation Accountability Act (ATAA) set out its short title and the definitions applicable to it. Sections 3 and 64 establish the method of calculating passenger thresholds for the purposes of the ATAA.

Section 4 affirms the supremacy of the *Aeronautics Act* and section 5 stipulates that the ATAA is binding on the Crown. The ATAA does not apply to military airports or to airspace design or flight path alterations made directly by the Governor in Council or the Minister of Transport.

Section 6 authorizes the Minister of Transport to issue a written direction requiring an airport operator to take any action the minister considers necessary for Canada to meet its international obligations relating to an aeronautics agreement.

Section 7 requires airport operators, air carriers that serve an airport and "any entity that provides flight-related services at an airport" to provide to the Minister of Transport, upon request, any information the minister may consider necessary to exercise their functions under the Act or for "the development of transportation policies." Although the bill does not define "flight-related services," these would presumably involve entities like CATSA, the CBSA and NAV CANADA. Under section 8, the information provided to the minister is confidential, unless specifically stated otherwise in other legislation, or unless required in the prosecution of a person or entity for making false or misleading statements under section 39. Exceptions to the confidentiality requirements include information provided to the Agency or to Statistics Canada, aggregated data and public information (section 8(2)).

2.1.1 Aircraft Noise Consultations

Sections 9 to 32 of the ATAA establish new requirements for consultations on aircraft noise that will come into force six months after Bill C-52 receives Royal Assent (section 68(1)). Sections 10 to 32 apply only to airports which have seen, for each of the three previous calendar years, more than 60,000 movements using instrument flight rules (IFRs), or another number fixed by regulation (sections 9(1) and 65). These sections continue to apply to an airport that has previously met this threshold and no longer does, until the number of IFR movements at this airport falls below the threshold for three consecutive years (section 9(2)).

Sections 10 and 11 set out the requirements for an airport operator to establish a noise management committee. In addition to other responsibilities assigned to it under the ATAA, the committee deals with questions or concerns from the public, notifies the public of alterations and undertakes consultations as required.

A noise management committee must include at least one representative:

- of the airport operator;
- of NAV CANADA;
- of the municipal or local government where the airport is located; and
- from among all the air carriers that serve the airport.

The airport operator oversees the governance and functioning of the committee and ensures that it meets at least four times per year, with public participation at each meeting.

2.1.1.1 Temporary Alterations to Flight Paths

Sections 13 to 19 set out the procedures a noise management committee must follow in the event of a temporary flight path alteration. A temporary alteration affects a flight path below an altitude of 2,438 metres (8,000 feet) above ground level. It does not result from weather or other short-term uncontrollable causes and is expected to be in effect for less than one year (section 12).

The proponent of a temporary alteration must notify the noise management committee of the alteration (section 13); the committee must then publish a notice at least 60 days before the alteration's expected date of implementation (section 14(1)). The information in the notice must include the purpose of the alteration, along with its anticipated effect on noise levels, the area and number of residents likely to be affected, the proposed implementation and end dates, contact information for both the proponent and the noise management committee, as well as any other information prescribed by regulation (section 14(2)).

A proponent must wait at least 60 days after the notice is published before implementing the alteration (section 14(3)). If the end date is to be delayed, a new notice must be published at least 14 days before that initially proposed end date (section 14(4)).

These publication timelines do not apply in the case of a temporary alteration required for aviation safety and security, if no alternative is available. In such an event, the noise management committee must publish the notice "as soon as feasible" (section 15).

Sections 16 to 19 set out the procedure for making a complaint to the Agency for individuals who are affected or who are likely to be affected by aircraft noise at their ordinary place of residence or work.

A complaint must be made within 30 days after a temporary alteration is implemented and may relate either to the alteration itself or to the publication of notices (section 16(1)). However, no time limit is given for making a complaint about the failure to publish a notice concerning a temporary alteration (section 16(2)).

When it receives a complaint, the Agency must notify the proponent and the noise management committee of that complaint (section 16(3)). The Agency must decide on the substance of the complaint within 60 days; a 30-day extension is possible in special circumstances (section 18(2)). The Agency must provide written reasons for its decision (section 19).

A complaint does not prevent a proponent from implementing an alteration (section 17). However, when the Agency deems it appropriate, it may order the noise management committee to issue further notices, thereby triggering another 60-day waiting period during which the alteration cannot be implemented (section 18(1)).

2.1.1.2 Permanent Alterations to Airspace Design or Flight Paths

Sections 21 to 32 apply to permanent alterations that affect airspace design and flight paths below an altitude of 2,438 metres (8,000 feet) above ground level and that are expected to be in effect for at least one year (section 20).

For a permanent alteration, the noise management committee must hold a public consultation session presided by a representative of the proponent (section 23), after having published a notice of consultation at least 30 days in advance of the session. This notice must include information about how to participate and how to make representations (section 22).

Anyone who is likely to be affected by aircraft noise at their ordinary place of residence or work due to the permanent alteration may make representations either during the consultation session or in writing prior to the session. The proponent must consider all representations made at the session and, within 30 days, prepare a summary of these representations, which the committee will publish (section 24).

After the consultation session, the proponent may change, go forward or not go forward with their permanent alteration. In the event of a change, the consultation process begins anew (section 25). If the proponent chooses not to go forward, they must give notice of their decision to the noise management committee, which will publish a notice of the decision (section 26).

Where the proponent does choose to go forward with the alteration, section 27 sets out the process for publishing a notice of implementation, which largely mirrors the information to be included in the notice of a temporary alteration. This information is subject to the same 60-day restriction on implementation, and here too, the provisions of section 27 do not apply in the event of alterations required for aviation safety or security (section 28). A notable addition to this notice is information about how to make a complaint to the Agency (section 27(2)(h)).

The process for making complaints to the Agency is set out in sections 29 to 32. Complaints relating to a notice published or consultation undertaken must be made within 180 days after the permanent alteration is implemented (section 29(1)). Complaints alleging the failure to publish a notice or to hold consultations may be made at any time (section 29(2)).

Upon receiving a complaint, the Agency must notify the proponent and the noise management committee about the complaint, as well as publish a notice of complaint. Representations may be made by the complainant, the proponent, the noise management committee or any individual who made representations during the consultation session (section 29). Unlike the procedure for temporary alterations, if a complaint is made about a permanent alteration before its implementation date, the alteration must not be implemented until the Agency has dealt with the complaint (section 30).

As with complaints about temporary alterations, the Agency has 60 days in which to reach a decision, with the possibility of one 30-day extension, and it must provide written reasons for its decision (sections 31 and 32). Section 31(1) establishes the Agency's power to make orders if it finds a complaint made under section 29 to be well-founded. These powers are worded differently for permanent alterations than in section 18 for temporary alterations; here, they explicitly allow the Agency to prevent a proponent from implementing an alteration until the proponent has fulfilled its consultation obligations.

2.1.2 Diversity Reports and Environmental Obligations

Section 33 of the ATAA requires airport authorities to publish an annual diversity report that includes information about its directors and members of its senior management. Details of this requirement are to be established through regulation. Although this section comes into force separately from other provisions in the ATAA on a day to be fixed by order of the Governor in Council (section 68(2)), airport authorities are not required to comply with it until the calendar year following the year in which it comes into force (section 66).

Sections 35 to 38 set out the requirements for certain airport authorities to prepare and publish five-year climate change plans, as well as five-year plans for climate change adaptation actions, both of which must be developed according to international standards. These sections apply to airports that reach an annual passenger threshold of four million, or any other number fixed by regulation (section 34).

A climate change plan must include a reduction target for greenhouse gas emissions, a description of actions to be taken to reach that target and any material changes to the information provided in the previous five-year plan (section 35(2)).

An action plan for climate change adaptation must describe the current and anticipated impacts of climate change on airport operations, the adaptation actions taken in response to these impacts, the current and future commercial opportunities that arise from them and actions taken, as well as any material changes in the information provided in the previous five-year plan (section 36(2)).

2.1.3 General Provisions

Sections 41 and 42 exempt Agency decisions and actions from various sections of the CTA to strengthen the Agency's independence with relation to the ATAA. Specifically, the Governor in Council cannot rescind, vary or appeal to the Federal Court of Appeal a decision of the Agency made under the ATAA. In addition, Governor in Council policy directions to the Agency do not apply in respect of the ATAA.

Section 43 allows the Agency to make regulations, after holding consultations, for setting fees and charges relating to its duties under this Act.

Under section 44, the airport operator is responsible for ensuring the compliance of any entity that provides flight-related services on its behalf. However, airport operators are not responsible for ensuring that these entities meet the service standards established in the regulations in section 63(1)(j).

Section 45 specifies the acceptable methods of publication to satisfy requirements under the ATAA, and section 46 clarifies that an airport authority is not an agent of the Crown.

2.1.4 Enforcement

Sections 47 and 48 specify the powers and authority of enforcement officers, who may be designated by the minister. These include reasonable grounds to believe they might find something relevant to verifying compliance or preventing non-compliance with the Act, "entering into any place, other than a dwelling-house" and examining or removing physical or digital documents. The owner or person in charge of such a place must assist the enforcement officer and provide any information that may reasonably be required.

A contravention of the ATAA can be pursued as either a violation or an offence. The offence stream can be considered the default, as it applies to all sections of the Act, whereas the violation stream can be pursued only for specified sections, and administrative monetary penalties (AMPs) are imposed as a result.

Violations do not constitute an offence under section 126 of the *Criminal Code*,[9] which deals with disobeying a statute (section 49(7) of the ATAA). Where the contravention of a provision can be dealt with either as violation or as an offence, choosing one stream precludes proceeding with the other (section 49(6)). Proceedings for an offence cannot be instituted more than one year after the day the alleged conduct took place (section 62). A notice of violation may be issued up to two years after the alleged conduct occurred (section 59).

2.1.4.1 Violations

Sections 49 to 59 establish AMP parameters for violations of any section of the ATAA specified in a regulation, or any of the following sections:

- section 6 (written directions issued by the minister to an airport operator with regard to international obligations);
- section 7 (obligation to provide information upon request by the minister); and
- section 10 (establishment of a noise management committee).

The purpose of these penalties is to "promote compliance," rather than to punish (section 49(5)). A violation may result in an AMP of up to $5,000 for an individual or $250,000 for an entity (section 49(3)). Specifically, in the case of a failure to provide information to the minister as required under section 7, each day constitutes a separate violation, with a total maximum amount to be prescribed by regulation (section 49(2)).

Section 50 outlines the procedure for an enforcement officer to issue and serve a notice of violation on an individual whom or entity which they have reasonable grounds to believe has committed a violation.

The payment of a penalty precludes any further action concerning that particular violation (section 51(1)). Alternatively, individuals or entities who are served with a notice of violation may negotiate a compliance agreement with the minister, in keeping with the procedure outlined in sections 52 and 53. These individuals or entities may also request a review before the Transportation Appeal Tribunal of Canada (the Tribunal) in accordance with the procedure outlined in sections 54 and 55. A determination made by the Tribunal can be appealed to the Tribunal's appeal panel (section 56).

Sections 57 and 58 outline the process the minister must follow to obtain and register a certificate from the Tribunal that details the amounts payable as the result of a Tribunal decision.

2.1.4.2 Offences

Offences under the ATAA are punishable by summary conviction and can result in fines in the same amounts as those established in the case of a violation, in other words, up to $5,000 for an individual or up to $250,000 for an entity (section 60(1)). For section 7 offences, as with violations, each day represents a separate offence (section 60(2)).

Section 60(3) explicitly stipulates that due diligence is a valid defence against alleged offences under the ATAA, with the exception of breaching confidentiality obligations under sections 8(1) and 8(4), making false or misleading comments in contravention of section 39 or obstructing an enforcement officer in contravention of section 48(4). Section 60(4) clarifies that guilt can be established with proof of an action by an employee, agent or mandatory, regardless of whether they have been identified or prosecuted for that offence, subject to the same exceptions given in section 60(3) above.

Defaulting on the payment of fines imposed under the ATAA cannot be punished by imprisonment (section 61).

2.1.5 Regulations

Section 63 authorizes the minister to make a wide range of regulations, many of which are administrative or procedural in nature. They include methods of calculating the number of movements at an airport (section 63(1)(b)), details about the collection and distribution of aircraft noise data (section 63(1)(g)) and the contents of five-year plans (section 63(1)(i)(iv)).

Of particular note is section 63(1)(j); it authorizes the making of regulations to establish service standards for flights and "flight-related services at an airport." These regulations also clarify the manner in which service standards are to be applied, establish a dispute resolution mechanism and establish the Agency's role in administering and overseeing this mechanism. As previously mentioned, an airport operator is not responsible for compliance with these regulations by entities that provide flight-related services on its behalf, unless explicitly stated otherwise in the regulations (section 44(2)).

Also of note is the Governor in Council's authority to regulate customer service communications concerning flights and flight-related services (section 63(1)(k)). It should be noted again that Bill C-52 does not provide a definition of "flight-related services." Presumably, this is meant to be clarified in the regulations.

2.1.6 Transitional Provisions and Coming into Force

Sections 64 to 68 of the ATAA and clauses 3 and 4 of Bill C-52 contain transitional and coming-into-force provisions. The key provisions in these sections and clauses are addressed earlier in this legislative summary.

2.2 PART 2: *CANADA TRANSPORTATION ACT* (CLAUSES 5 TO 12)

Part 2 of Bill C-52 amends the *Canada Transportation Act* (CTA) to authorize the making of regulations that allow the Minister of Transport and the Agency to collect certain information from the CBSA, excluding personal information, to help improve accessibility in the Canadian transportation system (clause 6(1)).

Clause 11 also authorizes the making of regulations empowering the CBSA to establish a process for dealing with accessibility-related complaints about the transportation system.

Clauses 5 and 6(2) to 10 make consequential amendments in the CTA to refer to these new regulatory sections. The amendment addressed in clause 12 concerning the publication of information is conditional upon the *Budget Implementation Act, 2023, No. 1*[10] receiving Royal Assent, which it received on 22 June 2023.

2.3 PART 3: *CANADA MARINE ACT* (CLAUSES 13 TO 22)

Part 3 of Bill C-52 amends the *Canada Marine Act* (CMA) to create a new framework for a port authority to establish fees.

The amendments to the CMA made under clause 13(1) of this bill provide a set of principles that a port authority must observe when fixing its fees. These principles include existing requirements that fees fixed by a port authority must allow that port authority to be financially self-sustaining and be "fair and reasonable"[11] (section 49(3)(b)). In addition, fees must:

- be fixed using an established and published methodology (section 49(3)(a));
- not be reasonably expected to result in revenues that exceed the port authority's existing and future financial requirements (section 49(3)(c));
- not encourage user practices that reduce safety for the purpose of avoiding a fee (section 49(3)(d)); and
- be consistent with a port authority's obligations to avoid discrimination among users (section 49(3)(e)).

An existing transitional provision, which granted port authorities six months to implement fees in accordance with the legislation, is repealed (clause 13(2)) and replaced (clause 20). Fees fixed in accordance with pre-existing requirements, therefore, remain in effect until they are revised in a manner consistent with the requirements set out in section 49(3).

Amendments under clause 14 establish a new process for a port authority to give notice of new or revised fees. They add requirements for a more detailed description and rationale for the fees, and describe how to make written representations or, ultimately, a complaint to the Agency about the fees.

Clause 15 establishes new section 51.1 of the CMA, regarding a port authority's obligations to provide a decision regarding a fee proposal, and it replaces section 52 with a significantly expanded complaints process.

A port authority must consider written representations and publish a decision regarding its fee proposal no fewer than 60 days before the fees come into effect. Unless it is withdrawing the proposal, the port authority's decision must include a description of the fee, its reasons for the fee, a summary of the written representations it received and a notice informing persons who made written representations of their right to file a complaint with the Agency.

Every person who made a written representation about the proposal can file a complaint with the Agency in relation to a port authority's decision (section 52(1)). Complaints may only relate to a failure by the port authority to follow either the principles outlined in section 49(3) or the processes outlined in section 51 or 51.1 relating to notices and decisions (section 52(1.2)).

The filing of a complaint does not prevent the fee from being implemented, and indeed, the Agency is explicitly forbidden from making an order preventing the fee from taking effect (section 52(1.3)). Sections 52(1.4) to 52(1.6) outline the options and processes available to the Agency when it decides that a complaint is well-founded. These include ordering the port authority to:

- cancel the fee;
- reinstate the previous fee;
- refund users for amounts paid for the cancelled fee;
- reconsider or revise the fee; and
- take any other measure the Agency deems appropriate.

The Agency's decision must be justified in writing (section 52(1.6)) and can be varied or rescinded by the Governor in Council (section 52(2)).

Clauses 16 and 17 repeal sections 62(4) and 63(5) respectively; these sections contain previous transitional provisions that date back to the CMA's inception in 1998.

Clause 18 adds section 64.94 to the CMA authorizing the establishment, by regulation, of an alternative dispute resolution process to address issues relating to a lease between a port authority and a port user. This clause is not overly prescriptive, and details will likely follow in the regulations.

Clauses 19 to 22 contain transitional provisions and establish that all the amendments to the CMA come into force together on a day to be fixed by order of the Governor in Council.

NOTES

1. Bill C-52, An Act to enact the Air Transportation Accountability Act and to amend the Canada Transportation Act and the Canada Marine Act, 44th Parliament, 1st Session.
2. Government of Canada, *Bill C-52*: An Act to enact the Air Transportation Accountability Act and to amend the Canada Transportation Act and the Canada Marine Act – *Charter Statement*, 20 September 2023.
3. *Canada Transportation Act*, S.C. 1996, c. 10.
4. *Canada Marine Act*, (CMA), S.C. 1998, c. 10.

5. House of Commons, Standing Committee on Transport, Infrastructure and Communities (TRAN), *Strengthening Air Passenger Rights in Canada*, Tenth report, April 2023.

6. Ibid., p. 16.

7. TRAN, *Assessing the Impact of Aircraft Noise in the Vicinity of Major Canadian Airports*, Twenty-eighth report, March 2019.

8. Office of the Auditor General of Canada, *Accessible Transportation for Persons with Disabilities*, Report 1 in *2023 Reports 1 to 4 of the Auditor General of Canada to the Parliament of Canada*.

9. *Criminal Code*, R.S.C. 1985, c. C-46, s. 126.

10. *Budget Implementation Act, 2023, No. 1*, S.C. 2023, c. 26.

11. The term “fair and reasonable” is not defined in the CMA. In fact, in its decision, the Canadian Transportation Agency found that it did not have jurisdiction to determine whether a port authority’s fee was fair or reasonable. Rather, it found that “this requirement is left to market forces and competition, or to other possible avenues for complaint if users are not satisfied.” See Canadian Transportation Agency, *Decision No. 293-W-2010*, 9 July 2010.