Legislative Summary **LS-537E**

BILL C-20: CANADA AIRPORTS ACT

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LEGISLATIVE HISTORY OF BILL C-20

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
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Second Reading:		Second Reading:	
Committee Report:		Committee Report:	
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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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TABLE OF CONTENTS

Page

Page

CANADA

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BACKGROUND

On 15 June 2006, the Honourable Lawrence Cannon, Minister of Transport, Infrastructure and Communities, introduced Bill C-20, the Canada Airports Act, in the House of Commons. A ministerial press release issued on the same date noted that the bill modernizes the corporate governance regime for the airport authorities and establishes a framework for disclosure and accountability for Canada's major airports.

The bill contains a new Canadian Airport Policy declaration that builds on the 1994 National Airports Policy (NAP), which provided the framework that enabled the federal government to promote the commercialization of federally owned airports. However, the NAP did not address the ongoing economic behaviour of airports. Bill C-20 establishes a framework for that behaviour. The bill completes the legislative framework for Canada's transportation infrastructure under federal jurisdiction, in keeping with other legislative initiatives such as those for Canada's air navigation and ports systems. At the current time, airports remain the only part of the national transportation system under federal jurisdiction without a legislated economic policy framework.

The bill sets out the roles and obligations of the Minister and the affected airport operators to which it will apply.

A predecessor bill, C-27, an Act respecting airport authorities and other airport operators and amending other Acts (Canada Airports Act), was introduced in the House of Commons by a previous government on 20 March 2003 (2nd Session, 37th Parliament), but subsequently died on the *Order Paper*, having only been debated at second reading.

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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.

Departmental officials point out that the current bill, C-20, is more flexible, focused and less prescriptive than the 2003 version. They note that through the tiering of obligations, Bill C-20 provides a clearer recognition of the differences among airports in terms of their role in the national network of airports and their capacity to fulfil specific obligations. The result is a significant reduction in requirements, particularly in the area of fees, for smaller airport authorities and operators of non-federal airports that are subject to the bill. Airports operated by the governments of each of the three territories in their respective capitals (sometimes referred to as the territorial capital airports) were already subject to a lighter regime under the previous bill.

A number of key differences from the earlier bill are highlighted under the appropriate headings in the description and analysis of the current bill, C-20.

Bill C-20 establishes an economic framework for airports and the operators of significant airports in the national network of airports, with a focus on airport authorities. The highlights of the bill are that it provides for the following:

- a Canadian airport policy declaration;
- an enunciation of certain powers, duties and functions of the Minister of Transport in relation to all airports in the national network; this includes hundreds of smaller airports in respect of which the bill imposes no specific obligations on their operators;
- a number of basic obligations for airport operators in Canada to which the bill applies, including equitable access of air carriers to airport facilities, respect for Canada's international obligations, protection of confidential information provided by air carriers, disclosure of basic airport information, and transparency in the setting of fees;
- the continuation under the bill of airport authorities as not-for-profit corporations without share capital;
- the powers and capacity of airport authorities and the scope of their activities, including investments in other corporations;
- a complete governance and accountability framework for airport authorities that addresses matters such as the structure and duties of their boards of directors, director eligibility, duties, liabilities and indemnification of directors and officers, conflict of interest rules, enhanced disclosure of operational and financial information, and consultations with users and the public in the region served by the airport. A small number of requirements differ among airport authorities, based on their passenger levels;

- a framework for the establishment and revision of fees, founded on the principles of transparency, disclosure and consultation. All airport operators subject to the bill have obligations in this respect, but the specifics of the obligations differ between two tiers of airports, to recognize significant differences among airports (for example, role in the national network of airports, complexity of fee structure, and resources to implement specific obligations);

- a process to ensure the transparency of fees that are imposed by airport authorities that fall within the second tier (i.e., those operating airports that meet a passenger threshold of 2 million passengers annually) and the compliance of those fees with the framework, including requirements for public notice of a fee proposal and its justification, consultations with users and other stakeholders and with the public in the region served by the airport, consideration of representations received and an opportunity for users to appeal, in certain circumstances, new or increased fees to the Canadian Transportation Agency;

- certain obligations of all airport authorities, including a requirement to have a land use plan and to report environmental incidents; and

- compliance and enforcement mechanisms based on proceedings either by way of summary conviction or by way of administrative monetary penalty (AMP) with an opportunity for persons subject to an AMP to appeal to the Transportation Appeal Tribunal of Canada.

DESCRIPTION AND ANALYSIS

A. Short Title, Interpretation, Application of Proposed Act and Canadian Airport Policy (Clauses 1-8)

1. Short Title and Interpretation (Clauses 1-5)

Bill C-20 is entitled the Canada Airports Act (clause 1). Clause 2 sets out the relevant definitions that apply in the bill, including definitions for an “airport authority” and an “airport operator.”

An “airport authority” is defined to mean a corporation set out in the schedule to the bill. Airport authorities operate federally owned airports that are leased to them. Those airports are referred to as the “principal airports” and are set out in column 2 of the schedule. Airport authorities may also operate other airports, which are set out in column 3 of the schedule.

An “airport operator” is defined in clause 2 to mean:

(a) an airport authority;

(b) the Government of Yukon, in respect of the airport it owns in Whitehorse, the Government of the Northwest Territories, in respect of the airport it owns in Yellowknife, and the Government of Nunavut, in respect of the airport it owns in Iqaluit; or

(c) anyone who is not referred to in paragraph (a) or (b) and who operates an airport in Canada.

For the purposes of the bill, an airport is considered to have met a particular passenger threshold if, for each of three consecutive calendar years, the total number of enplaned and deplaned passengers at that airport is equal to or greater than the threshold (clause 3(1)). If an airport authority operates more than one principal airport (as defined in clause 2), each of those airports is deemed to meet the threshold of the principal airport that meets the highest threshold (clause 3(2)).

Clause 4(1) defines which persons are considered to be “related” for the purposes of the bill. This requires an interpretation of “close relatives,” as defined in clause 4(2).

Clause 5(2) sets out, for purposes of the bill, the circumstances in which a corporation is considered to be a subsidiary of another corporation. This requires an interpretation of when “a corporation is controlled by a person,” as explained in clause 5(1). For the purposes of the bill, an ownership interest of a subsidiary of an airport authority in a corporation is deemed to be an ownership interest of the airport authority in that corporation (clause 5(3)).

2. Application of Proposed Act (Clauses 6-7)

The bill is binding on both the federal and provincial Crowns (clause 6). The bill does not apply to airports operated under the authority of the Minister of National Defence (clause 7).

3. Canadian Airport Policy (Clause 8)

A new Canadian airport policy declaration is set out in clause 8, building on the 1994 National Airports Policy, which focused on the commercialization of federally owned airports. The 1994 policy did not address the ongoing economic behaviour of airports. Bill C-20 establishes a framework for that behaviour. The declaration expresses in broad terms how the national network of airports and individual airports is expected to contribute to the public interest.

B. Part 1 – Airports (Clauses 9-24)

1. Powers, Duties and Functions of Minister and Governor in Council (Clauses 9-16)

According to clause 9, the Minister is responsible for the protection of the public interest in respect of all airports in the national network. The Minister's responsibility extends to hundreds of small airports in respect of which the bill imposes no specific obligations on their operators. The Minister must monitor the operation and performance of airports and the national network of airports (clause 10). The Minister may audit or review, or cause to be audited or reviewed, the business and affairs and the records and procedures of airport authorities (clause 11(1)). The person conducting the audit or review has all the powers of an inspector, whose powers are set out in Part 4 of the bill (clause 11(2)). These powers are required to ensure that the Minister has the necessary powers to fulfil this duty.

The Minister may impose any terms and conditions that the Minister considers appropriate on any direction that the Minister is empowered to make under the bill and may specify in the direction the period of time for compliance (clause 12(1)). The direction must be sent by registered mail to the individual or entity to which it is directed or must be served on that individual or entity (clause 12(2)). The *Statutory Instruments Act* does not apply to the direction (clause 12(3)). Departmental sources point out that a Ministerial direction is made only in specified circumstances and, in those exceptional cases where the Minister has need to issue a direction, compliance with the direction must be timely, if not immediate.

Similarly, the Minister may impose any terms and conditions that the Minister considers appropriate on any approval that the Minister is empowered to make under the bill and the *Statutory Instruments Act* does not apply to the approval (clause 13).

Clause 14 specifies that the Minister must appoint one or more persons to conduct a comprehensive review of the operation of the bill and the performance of airport operators and airports for the five-year period after the day on which the clause comes into force. The review must address, among other things, any matters specified by the Minister. A report of the review must be submitted to the Minister within 18 months after the end of that five-year period.

Only the Minister may exercise the powers conferred on the Minister under specified clauses of the bill; for example, all approvals given and directions made under the bill can only be given or made by the Minister (clause 15).

Clause 16(1) provides the Governor in Council with the authority to, by order, take steps (or direct an airport operator or any other person to take steps) that it considers necessary for the effective continued operation of the national network of airports or of any airport if it is of the opinion that: a) an extraordinary disruption to the effective continued operation of the network or airport exists or is imminent (other than a labour disruption); b) a failure to act would be contrary to the interests of users or to the public interest; and c) no other provision of the bill or another federal Act is sufficient to remedy the situation. The order has effect for no more than 90 days after it is made (clause 16(2)), but it may be renewed by the Governor in Council for one further period of up to 90 days (clause 16(3)). The Minister must cause such an order to be laid before each House of Parliament within the first seven days on which that House is sitting after the order is made (clause 16(4)). The order so laid before a House of Parliament stands referred to the committee of that House that the House considers appropriate (clause 16(5)). A resolution that the order be repealed may be adopted by each House of Parliament within the first 30 days on which that House is sitting after the order is laid before it, in which case the order ceases to have effect a) on the later of the days the resolutions are adopted; b) if one resolution specifies that the order will cease to have effect on a later day, on that specified day; or c) if both resolutions specify that the order will cease to have effect on a later day, on the later of those specified days (clause 16(6)).

2. Slots (Clauses 17-24)

A “slot” is defined in clause 2 for purposes of the bill to mean a period of time that is allocated to any person during which an aircraft operated by that person is authorized to land at or take off from an airport. Slots are the property of the federal Crown (clause 17). Departmental sources point out that slot availability and time can be an important factor affecting the level of air services competition in Canada. Therefore, affirmation of federal Crown ownership ensures that the means are available to provide the proper management of slots.

The air carriers operating at an airport and the airport operator may, in accordance with the regulations or, if there are none, by agreement, select a slot coordinator if a) the air carriers, after consultation with the operator, decide that slot allocation is desirable; or b) the Minister designates the airport, under clause 19, as an airport requiring slot allocation (clause 18(1)). The air carriers and the airport operator may agree on the terms for engaging a slot coordinator, including the slot coordinator's remuneration and their responsibilities for paying it (clause 18(2)). In cases where the air carriers and the airport operator do not agree on the selection of a slot coordinator or the terms of the engagement, the Minister may select the coordinator or decide the terms, as the case may be (clause 18(3)). Slot coordinators are not agents of the federal Crown (clause 18(4)).

If, in the Minister's opinion, the demand for slots at an airport exceeds the supply, the Minister may, by order, designate the airport as one requiring slot allocation (clause 19(1)). The Minister may specify in the order, after consultation with the airport operator and NAV CANADA, the periods for which the order applies and the maximum number of slots that may be allocated over a specified period (clause 19(2)).

Clause 20 requires the slot coordinator to allocate, renew and withdraw slots in accordance with the regulations or, if there are none, in a manner consistent with the slot allocation procedures applied by the international air transport industry (clause 20(1)). The slot coordinator for an airport may allocate or renew slots at the airport only if the necessary facilities and services are available at the airport's air terminal building (clause 20(2)).

Clause 21(1) requires the air carriers operating at an airport and the airport operator to provide the slot coordinator with any information in their possession that, in the slot coordinator's opinion, is required to carry out his or her functions. Unless required by clause 21(3) or otherwise required by law, a slot coordinator must not disclose any confidential information supplied to him or her by an air carrier or airport operator that is consistently treated as confidential by the carrier or operator except if the disclosure is made in a way that does not identify or permit the identification of the source of the information (clause 21(2)). Clause 21(3) requires the slot coordinator to provide to the Minister, in the form and manner and within the time that the Minister specifies, any information that the Minister considers necessary to exercise his or her powers, duties and functions.

Clause 22(1) permits the Minister to, by order, require a slot coordinator for an airport or, if there is none, the person who is responsible for slot allocations at the airport, to allocate, renew or withdraw any slot at the airport if, in the Minister's opinion, doing so is necessary for ensuring equitable access to slots by air carriers that provide domestic air services. Clause 22(2) allows the Minister, by order, and with the concurrence of the Minister of Foreign Affairs, to require a slot coordinator for an airport or, if there is none, the person who is responsible for the allocation of slots at an airport, to withdraw any slot at the airport from a foreign air carrier. The Minister's order prevails over any regulations respecting slots made under clause 24 to the extent of any inconsistency (clause 22(3)). The order is not a regulation for purposes of the *Statutory Instruments Act* (clause 22(4)).

Clause 23(1) prohibits a person to whom a slot has been allocated from transferring it. However, notwithstanding that prohibition, a person to whom a slot has been allocated may, as long as he or she does not receive any consideration, lend the slot or exchange it for another slot in accordance with the regulations or, if there are none, by agreement (clause 23(2)). The loan or exchange may be made only after notice is given to the slot coordinator or, if there is no slot coordinator, the person who is responsible for the allocation of slots at an airport (clause 23(2)).

Clause 24 empowers the Governor in Council to make regulations regarding slots, including regulations respecting the selection of slot coordinators; the allocation, renewal and withdrawal of slots; and the loan or exchange of slots.

C. Part 2 – Provisions Applicable to Certain Airport Operators (Clauses 25-39)

1. Overview

The bill establishes specific obligations on only a small number of airport operators as follows:

- airport authorities;
- the Governments of Yukon, the Northwest Territories and Nunavut in respect of the airports their own in their respective capital cities; and
- any other operator of an airport that meets a passenger threshold of 300,000 (currently Abbotsford, Kelowna, and Hamilton).

Bill C-27 applied to more airport operators, as the passenger threshold for the third category of airport operator noted above was 200,000.

Transport Canada officials note that the earlier bill, C-27, was criticized by the airports community for having failed to recognize the differences in resources between larger and smaller airport authorities and operators of other non-federal airports (other than the territorial capital airports), thereby creating a costly administrative burden for smaller operators. Bill C-20 therefore addresses this concern through the tiering of obligations. Bill C-20 recognizes differences among airports in terms of their:

- ownership status – obligations are greater in respect of federally owned airports (i.e., those operated by airport authorities) than for non-federal airports;
- passenger levels – obligations for airport authorities increase with passenger levels, in recognition of the more significant role of larger airports in the national network; and
- resources to fulfil specific obligations – smaller airports do not have the financial base and administrative capacity of larger airports.

As a reflection of this tiering, the bill establishes only a limited number of core obligations on airport operators covered by the bill that are not airport authorities. These core obligations are set out in clauses 25 to 39.

2. General (Clauses 25-30)

The obligations in clauses 26-30 apply to all airport operators on whom the bill imposes specific obligations, including airport authorities (clause 25).

Clause 26 requires airport operators to take any measures that are necessary to permit Canada to meet its international obligations under bilateral and multilateral agreements in respect of aeronautics and trade.

Clause 27 requires airport operators of airports serving international traffic to display the Canadian flag and erect signs welcoming passengers to Canada, in prominent places. As well, clause 28 requires airport operators (at their airports) to assist the federal government in welcoming and facilitating state visits to Canada by foreign dignitaries.

Clause 29 requires airport operators to provide to the Minister, in the form and manner and within the time specified by the Minister, any information and documents that the Minister considers necessary to exercise his or her powers, duties and functions under the bill.

Clause 30 specifies that unless required under clause 29 or otherwise required by law, an airport operator must not disclose confidential information supplied to it by an air carrier that is consistently treated in a confidential manner by the carrier except if the disclosure is made in a way that does not identify or permit the identification of the source of the information.

3. Equitable Access (Clauses 31-33)

Clause 31 stipulates that clauses 32 and 33 apply to all airport operators on whom the bill imposes specific obligations, including airport authorities.

Clause 32(1) requires airport operators to give air carriers who operate or wish to operate aircraft at the operator's airport equitable access to the air terminal buildings and facilities for the landing, taking off, movement or parking of aircraft. However, according to clause 32(2), no airport operator is required to construct or expand an air terminal building or facilities for the landing, taking off, movement or parking of aircraft in order to comply with clause 32(1). Clause 32(3) specifies a couple of exceptions to clause 32(1).

Clause 33 empowers the Minister to direct an airport operator to take any measures that, in the Minister's opinion, are necessary in order for the operator to meet its obligations under clause 32.

Bill C-20, unlike its predecessor, Bill C-27, does not require airport operators to publish a declaration describing how they plan to meet their equitable access obligation.

4. Fees (Clauses 34-36)

Clause 2 defines a "fee" for purposes of the bill to mean an "aeronautical fee" or a "passenger fee," both of which are also defined in the same clause.

The bill sets out the framework for the establishment and revision of aeronautical fees imposed on air carriers and other aircraft operators (for example, landing fees, terminal fees) and passenger fees (for example, airport improvement fees) imposed directly on the travelling public. The framework is founded on the principles of transparency, disclosure and consultation. All airport operators subject to the bill have obligations in these respects, but the specifics of the obligations differ between two tiers of airports to recognize significant differences among airports (for example, role in the national network of airports, complexity of fee structure and resources to implement specific obligations).

The two tiers into which the bill divides airports for fee purposes are as follows:

- the first tier applies to all airport operators subject to the bill, with the exception of airport authorities operating airports that meet a passenger threshold of 2 million. The first tier therefore includes the territorial capital airports, other non-federal airports that meet a passenger threshold of 300,000, and federally owned airports operated by airport authorities that do not meet a passenger threshold of 2 million. The latter comprise airports operated by airport authorities in Victoria, Prince George, Saskatoon, Regina, Thunder Bay, London, Quebec City, Moncton, Fredericton, St. John, Charlottetown, St. Johns, and Gander; and

- the second tier applies only to those airport authorities operating airports that meet a passenger threshold of two million, i.e., currently the top eight airport authorities operating airports in Vancouver, Calgary, Edmonton, Winnipeg, Toronto, Ottawa, Montréal (two airports) and Halifax.

Airport operators in the first tier are subject to a light framework based on requirements, expressed in general terms, for transparency in the establishment of fees, including consultation. Fees must respect certain basic internationally accepted charging principles, but there is no requirement to establish a formal charging methodology and there is no appeal mechanism (clauses 34-36, 137-138). This is a notable difference from Bill C-20's predecessor, Bill C-27 under which a lighter regime respecting fees applied only to the airports in the territorial capitals.

Clause 34 specifies that clauses 35 and 36 regarding fees apply to the following airport operators (in the first tier): a) the governments of the three territories in respect of the airports they each own in their respective capitals, and, b) any other operator of a non-federal airport in Canada that maintains a passenger threshold of 300,000. Airport authorities that do not meet a passenger threshold of 2 million also fall within the first tier and, as will be seen subsequently, by virtue of clauses 137-138, they have the same obligations respecting fees that are imposed on other airport operators that fall within the first tier.

Clause 35(1) imposes a number of specified requirements (for example, notice, consultations, respect for basic charging principles) on those airport operators to which it applies in respect of any fees that they propose to establish or increase. Clause 35(2) requires those same airport operators to inform aircraft operators and the public in the region served by the airport of any reduction or elimination of a fee.

Clause 36 requires those airport operators to which it applies to make available to anyone on request, and to post on the operator's website (if it has one) the following: the amount of each fee; the conditions under which persons become subject to each fee; the method used to collect each fee; and the use of revenues generated by each passenger fee.

5. Disclosure (Clauses 37-39)

All airport operators on whom the bill imposes specific obligations are subject to disclosure obligations, but those obligations differ among tiers of airports.

Clause 37 stipulates that clauses 38 and 39 apply to all airport operators covered by the bill, except airport authorities.

Clause 38 stipulates that the airport operators in respect of which it applies must prepare an annual report on the operation of their airports in respect of each of the operator's fiscal years and the clause also spells out what must be included in the report.

Clause 39 requires those airport operators to which it applies to hold an annual meeting, open to the public, in respect of the operation of their airports in each of the operator's fiscal years. It requires each operator to which it applies to present its annual report at the annual meeting and to give members of the public an opportunity to express their views and ask questions.

As will be seen subsequently, airport authorities have much more extensive disclosure requirements. Their obligations in this regard are set out in clauses 174-199.

The disclosure obligations for territorial capital airports are similar to those in Bill C-27, under which they were already subject to a lighter regime. The disclosure obligations for other non-federal airports that meet a passenger threshold of 300,000 are lighter than they were under Bill C-27.

D. Part 3 – Airport Authorities (Clauses 40-214)

1. Power of the Governor in Council to Amend the Schedule (Clause 40)

The Governor in Council may, by order, amend the schedule to the bill (comprising a list of airport authorities and the airports they operate) by adding, amending or deleting the name of a corporation or an airport or by adding or deleting a transfer date (clause 40).

2. Continuance (Clauses 41-43)

Column 1 of Part 1 of the schedule to the bill comprises a list of 18 airport authorities that are incorporated under the *Canada Corporations Act*, Part II, and that currently operate federally owned airports. According to clause 41, those corporations are, on the day that clause comes into force, continued as not-for-profit corporations without share capital under the bill.

Column 1 of Part 2 of the schedule comprises a list of three airport authorities that are incorporated under provincial laws (Alberta and New Brunswick) and that currently operate federally owned airports. Those corporations are continued as not-for-profit corporations under the bill, under the names set out in that column, on the day on which the corporation's name is deleted from Part 2 of the schedule and added to column 1 of Part 1 of the schedule (clause 42). According to departmental officials, discussions are ongoing with the appropriate provincial officials on what action will be required to accomplish the continuance in an efficient manner.

On the day on which the name of a corporation, other than a corporation set out in the schedule on the day on which clause 42 comes into force, is added to column 1 of Part 1 of the schedule, the corporation is continued as a not-for-profit corporation without share capital under the bill, under the name set out in that column (clause 43).

Transport Canada officials point out that because the 21 airport authorities are currently incorporated under three different Acts, there are inconsistencies. They note that the *Canada Corporations Act* is a very old Act and not particularly suitable to the airports commercialization model. They point out that even if that Act were to be modernized, the unique structure of airport authorities will not fit readily into generic not-for-profit legislation.

3. Application (Clause 44)

Clauses 45-135 of the bill apply only to airport authorities set out in Part 1 of the schedule (clause 44); in other words, those provisions apply only to airport authorities that are continued without share capital under the bill under the names set out in column 1 of Part 1 of the schedule. Airport authorities set out in Part 2 of the schedule will become subject to those same provisions once they are continued without share capital under the bill.

As was previously noted, the bill divides airport authorities into two tiers: those airport authorities operating airports which do not meet a passenger threshold of 2 million, and those operating airports which meet a passenger threshold of 2 million. They both have all of the core obligations (pointed out earlier) which all airport operators covered by the Act must meet, but in addition, all airport authorities have a number of other obligations, which are pointed out below. As will be seen subsequently, airport authorities that operate airports that meet a passenger threshold of 2 million have additional obligations over and above those of the other authorities.

4. Effect of Continuance (Clauses 45-47)

On continuance of a corporation under any of clauses 41-43, the corporation's constating documents[(1)] cease to have effect because they are replaced by the provisions of the bill. However, the corporation's by-laws remain in effect until the day on which the corporation files with the Minister by-laws replacing them (clause 45).

According to clause 46, when a corporation is continued under any of clauses 41-43, its property becomes the property of the continued corporation and the latter becomes liable for its obligations. In addition, any existing cause of action, claim or liability to prosecution is unaffected. As well, any civil, criminal or administrative action or proceeding pending by or against the corporation may be continued by or against the continued corporation and a conviction against the corporation, or a ruling, order or judgment in favour of or against it, may be enforced by or against the continued corporation.

Unless authorized by the Governor in Council, no airport authority shall be continued as a body corporate under any other federal statute or under any provincial or foreign statute (clause 47(1)). It is the duty of directors of an airport authority to ensure that the airport authority complies with clause 47 (clause 47(2)).

5. By-laws (Clauses 48-52)

Airport authorities whose names are set out in Part 1 of the schedule on the day clause 48 comes into force must, within 90 days after that day, adopt by-laws that comply with the bill and file them with the Minister. Any subsequent amendment to those by-laws must be filed with the Minister within 30 days after the day on which the amendment is made (clause 48(1)).

Similarly, in the case of a corporation whose name is added to Part 1 of the schedule, it must, within 90 days after the day on which its name is added to Part 1, adopt by-laws that comply with the bill and file them with the Minister. Any subsequent amendment to those by-laws must be filed with the Minister within 30 days after the day on which the amendment is made (clause 48(2)).

Clause 49 provides that the by-laws must provide for the regulation of the business and affairs of the airport authority and stipulates a number of provisions that must be included; for example, provisions stating the board's duties and responsibilities, and provisions establishing a code of conduct for directors and officers.

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(1) The constating documents are the legal documents that create and define a corporate entity (i.e., articles of incorporation, letters patent) and establish the rules for the operation of the entity (by-laws).

If the Minister is of the view that the by-laws of an airport authority do not comply with the bill, the Minister may, within 90 days after the day on which the by-laws or any amendments to them are filed, direct the authority to amend them to ensure that they are in compliance (clause 50).

A by-law or an amendment to a by-law that is not filed with the Minister in accordance with clause 48 or that is not amended as directed by the Minister under clause 50 ceases to be in force (clause 51).

An airport authority must send without delay a copy of its by-laws and any amendments to them to all nominating bodies (clause 52).

6. Office and Records (Clauses 53-56)

An airport authority must have an office at or near its principal airport at which documents may be served on or delivered to the authority (clause 53).

Clause 54(1) requires an airport authority to prepare and maintain, at its office, adequate accounting records and adequate records of its business and affairs. It spells out the matters which must be included within the records of its business and affairs. Clause 54(2) stipulates that, subject to any other federal statute or any provincial statute that provides for a longer retention period, an airport authority must retain its accounting records for at least 12 years. The airport authority must also retain records of its business and affairs for the term of the lease of the principal airport from the federal Crown to the airport authority (clause 54(2)). The records referred to in clause 54(2) include similar records that the airport authority was retaining before its continuance (clause 54(3)).

The records must be open to inspection by the directors at all reasonable times. An airport authority must provide to a director, on request, and free of charge, any extract of the records (clause 55).

An airport authority and its agents and mandataries must take reasonable precautions to prevent the loss or destruction of the records required under the bill, to prevent the falsification of entries in those records, and to facilitate the detection and correction of inaccuracies in them (clause 56).

7. Powers, Capacity and Activities (Clauses 57-74)

Clause 57(1) provides that the objects of an airport authority are to operate, manage, maintain and develop its principal airport in accordance with the bill and, in particular, in accordance with the Canadian Airport Policy set out in paragraphs (a)-(h) of clause 8. Without restricting the meaning of clause 57(1), clause 57(2) specifies a number of matters that are included in the objects. Clause 57(3) sets out a number of additional activities that an airport authority may engage in that go beyond the operation, management, maintenance and development of its principal airport.

The scope of an airport authority's activities is expressed in Bill C-20 in much less prescriptive terms than they were under its predecessor, Bill C-27. The latter bill contained definitions for, and lists of, essential and complementary activities, which have been eliminated in Bill C-20.

An airport authority is not permitted to carry on business as an air carrier (clause 58). As well, an airport authority is not permitted to carry on any business or engage in any activity unless it is permitted by the bill (clause 59). An airport authority is not permitted to carry out its objects or do any of the additional activities that it may engage in and that are listed in clause 57(3) in a partnership or joint venture (clause 60).

An airport authority is not an agent of the federal Crown (clause 61). Subject to the bill, an airport authority has the capacity of a natural person (clause 62).

According to clause 63, an airport authority may apply its revenues only for carrying out its objects, for doing any of the activities described in clause 57(3) or as otherwise permitted under the bill. It must not distribute any surplus.

Subject to the by-laws, an airport authority may issue bonds, debentures or other debt obligations for consideration consisting of money, other property or past services (clause 64(1)). The monetary value of the property or services must not be less than the fair equivalent of the monetary amount that the airport authority would have received if the debt obligation had been issued for money (clause 64(2)). For the purposes of clause 64, "property" does not include a promissory note or a promise to pay (clause 64(3)).

Clause 65 empowers the Governor in Council to make regulations that make applicable, to airport authorities, any provision, if it concerns debt obligations or trust indentures, of a federal statute allowing for the creation of corporations or of any regulation made under such an Act and that make any adaptations to that provision, only for the purpose of applying that provision to airport authorities, that the Governor in Council considers appropriate.

Clause 66 permits an airport authority to invest any money that it has in its reserves, or any money that it does not require in the short term, only in bonds, debentures or other debt obligations of or guaranteed by a bank set out in Schedule 1 to the *Bank Act* or by a government or corporation whose credit rating is in one of the three highest rating categories as established by an internationally recognized credit rating agency.

An airport authority may loan money only to a subsidiary, and may guarantee a loan only on behalf of a subsidiary (clause 67).

Clause 68 prohibits an airport authority from indemnifying a corporation in which the authority has an ownership interest for any amount unless the corporation is a subsidiary and the subsidiary is liable to pay that amount.

An airport authority may acquire an interest in land only if the acquisition: a) is necessary for the operation or development, on its principal airport, of an air terminal building, parking facilities abutting an air terminal building or facilities for the landing, taking off, movement or parking of aircraft; or b) is approved by the Minister (clause 69).

Clause 70 limits the total amount payable by an airport authority in a calendar year to any one supplier of goods and services, other than any amount payable for a capital project, to a maximum of 25% of the authority's operating expenses for the previous calendar year.

An airport authority may distribute airport traffic among airports or air terminal buildings that it operates (clause 71).

Airport authorities may donate to charitable or educational organizations but they may not make a political contribution (clause 72).

Clause 73 prohibits an airport authority and the guarantor of an obligation of an airport authority from asserting certain specified matters enumerated therein against a person dealing with the authority or acquiring rights from the authority.

Except as otherwise permitted by the bill, an airport authority may not have an interest or a right in any entity (clause 74).

8. Ownership Interests in Corporations (Clauses 75-81)

Departmental officials point out that, in general, fewer conditions are attached to airport authorities' investments in subsidiaries and other corporations than under Bill C-20's predecessor, Bill C-27.

An airport authority may have an ownership interest in a corporation other than an air carrier if it meets the requirements spelled out in clause 75(1). An airport authority may, on a short-term basis, have an ownership interest in an air carrier that is undergoing a financial reorganization, solely for the purpose of recovering amounts owed to the authority by the air carrier (clause 75(2)).

An airport authority must ensure that its subsidiaries do not have an ownership interest in any entity except a corporation (clause 76).

If the Minister is of the view that an airport authority is in contravention of any of clauses 74-76, 79-80 or 179 or in contravention of an approval made or given under clause 81, the Minister may direct the authority to take such measures as the Minister considers necessary to bring the authority into compliance with the provision or approval, including requiring the authority to divest itself of any ownership interest in an entity (clause 77).

Clause 78(1) prohibits an airport authority from entering into a transaction or agreement with a corporation in which it has an ownership interest unless the transaction or agreement is on commercial terms. As well, an airport authority may not procure goods or services from such a corporation unless it does so by way of a competitive bidding process (clause 78(2)).

Clause 79 concerns an airport authority's maximum financial exposure in a corporation in which it has an ownership interest. Departmental officials point out that it is expressed in a more meaningful way under Bill C-20 than it was under its predecessor, Bill C-27. Clause 79(1) prohibits an airport authority from acquiring an ownership interest in a corporation or increasing its financial exposure in a corporation in which it has an ownership interest if: a) without taking the acquisition or increase into account, the total financial exposure of the authority in corporations in which it has an ownership interest exceeds 10% of the authority's net assets at the end of the previous calendar year; or b) the acquisition or increase would cause the authority's total financial exposure in corporations in which it has an ownership interest to exceed 10% of the authority's net assets at the end of the previous calendar year (clause 79(1)). Clause 79(2) defines the airport authority's "financial exposure in a corporation" for purposes of the above provision as the sum of the amounts specified in the provision. In an additional provision not contained in its predecessor bill, C-27, Bill C-20 provides that the calculation of an airport authority's total financial exposure does not include the authority's financial exposure in a corporation whose sole purpose is to develop lands on the authority's principal airport (clause 79(4)).

Clause 80 prohibits an airport authority from having an ownership interest in a corporation unless an agreement to indemnify the authority for any amounts that it is required to pay in respect of that corporation, other than specified amounts referred to in clause 79(2), is signed by: a) the corporation; or b) any other corporation in which the airport authority has an ownership interest, if that corporation itself has an ownership interest in the corporation.

There is an exception to clause 79(1) in that it does not apply in respect of the acquisition of an ownership interest in a corporation, or an increase in an airport authority's financial exposure in a corporation in which it has an ownership interest, that is approved by the Minister (clause 81(1)). The terms and conditions to which an approval may be subject include limits on the airport authority's financial exposure in the corporation (clause 81(2)). Bill C-20's predecessor, Bill C-27 empowered the Minister to permit an airport authority's financial exposure to exceed the specified maximum under only one specific set of circumstances.

As well, the requirement under Bill C-20's predecessor, Bill C-27, for a corporation in which an airport authority holds an ownership interest to pay an annual dividend to its shareholders has been eliminated in Bill C-20.

9. Corporate Governance and Accountability (Clauses 82-135)

a. Board (Clauses 82-85)

The directors of the board of an airport authority must collectively have the skills, knowledge and experience, including knowledge and experience in the aviation industry, that are necessary to carry out the duties of the board (clause 82).

Clause 83(1) stipulates that the board of an airport authority is responsible for establishing the authority's strategic direction, for making major decisions for the authority and for overseeing the management of the authority's business and affairs. Clause 83(2) specifies a number of duties of the board that may not be delegated to a committee of the board or otherwise. That list is shorter than it was under Bill C-20's predecessor, Bill C-27. There is an exception in that if an airport authority defaults under a trust indenture that was in effect on 15 June 2006, clause 83(2) does not prevent a trustee from exercising the duties that have been expressly delegated to the trustee by the airport authority under the trust indenture as it read on that day (clause 83(3)).

The board of an airport authority consists of not less than 9 or more than 15 directors, the number of which is set by the authority's by-laws (clause 84). Under Bill C-20's predecessor, Bill C-27, the board consisted of not less than 11 or more than 15 directors. The board must elect a chairperson from among its members for a term not exceeding two years (clause 85(1)). The chairperson's term may be renewed more than once (clause 85(1)). A director who is also the airport authority's chief executive officer may not be the chairperson (clause 85(2)). As well, the chairperson may not be a director or chief executive officer of a corporation in which the airport authority has an ownership interest (clause 85(3)).

b. Appointment, Removal and Resignation of Directors (Clauses 86-104)

The directors are appointed to hold office during good behaviour for terms of not more than three years, which must be staggered so that the number of terms that expire in a year is, to the extent possible, the same from year to year (clause 86(1)). No person may hold office as a director of a particular airport authority for more than nine years in his or her lifetime; however, the period that a person held office before the "transfer date" (defined in clause 2) shall not be counted (clause 86(2)). Despite the above, one director of any given airport authority may hold office for more than 9 years but not for more than 12 years (clause 86(3)).

The Minister must appoint two directors (clause 87).

According to clause 88, the airport authority's by-laws must provide: a) that one director is to be appointed by the board from candidates nominated by the government of the province in which the authority's principal airport is located; b) for the number of candidates that the government of that province is required to nominate for that office; and c) for the process to be followed if that government, on being notified of a vacancy under clause 96(1), does not nominate candidates in accordance with the bill and by-laws. Under the previous bill, C-27, the government of the province in which the airport was located was entitled to appoint (as opposed to nominate) one director to the board.

Clause 89(1) requires the airport authority's by-laws to provide for not less than two and not more than five directors to be appointed by the board from candidates nominated by regional authorities or municipalities that are designated by the by-laws as nominating bodies. The nominating bodies (designated by the by-laws) must include the municipality in which the principal airport is located as well as the principal municipality served by the principal airport, if

it is not the municipality in which the airport is located. Clause 89(2) requires the board to appoint, from the candidates nominated, at least one director from persons who reside in the municipality in which the principal airport is located, and at least one director from persons who reside in the principal municipality served by the principal airport, if it is not the municipality in which the airport is located.

The airport authority's by-laws must provide for not less than two and not more than five directors to be appointed to the board from candidates nominated by non-governmental organizations that are designated by the by-laws as nominating bodies (clause 90(1)). The designated organizations must be chosen from at least two of the following: a) an economic organization; b) a community organization; c) a provincial association of lawyers, notaries, engineers or accountants; d) a labour organization, other than a bargaining agent for any employees of the airport authority or an air carrier; and e) the national association of domestic air carriers, in the case of an airport authority that does not operate a principal airport that meets a passenger threshold of 2 million (clause 90(2)). The directors must be appointed by the board from candidates nominated by designated organizations and associations referred to in a) to d) above or, in the case of an airport authority that does not meet a passenger threshold of 2 million, a) to e).

The number of entities designated as nominating bodies under clauses 89 or 90 may exceed the number of directors that are to be appointed under that clause (clause 91).

The by-laws of an airport authority that operates a principal airport that meets a passenger threshold of 2 million but less than 10 million must designate the national association of domestic air carriers (i.e., Air Transport Association of Canada) as a nominating body and provide for one director to be appointed by the board from the candidates nominated by the association (clause 92(1)). In the case of an airport authority that operates a principal airport that meets a passenger threshold of 10 million, its by-laws must designate the national association of domestic carriers as a nominating body and provide for two directors to be appointed by the board from the candidates nominated by that association (clause 92(2)). These provisions regarding nominations by the national association of air carriers were not included in the previous bill, C-27.

No more than three directors who have been nominated by the same nominating body may serve on a board at any time (clause 93).

An entity may become a nominating body under clauses 89 (municipalities and regional authorities), 90 (non-governmental organizations), or 92 (national association of domestic air carriers) only with its consent and may cease to be a nominating body by resigning (clause 94).

According to clause 95(1), the directors appointed under clauses 87-90 and clause 92 may appoint up to three other directors who have the particular skills, knowledge or experience needed by the board to carry out its duties. Clause 95(2) permits the chief executive officer to be appointed as a director only in accordance with clause 95(1). According to clause 95(3), the board must appoint the successors for any directors appointed under section 95(1).

Clause 96 concerns the procedure to be followed when there are upcoming or unexpected vacancies on the board.

According to clause 97, the airport authority's by-laws must: a) provide for the number of candidates that a nominating body designated under clauses 89, 90 or 92 is required to nominate for each office for which that body is authorized to nominate candidates; and b) provide a process to be followed to appoint a director if the nominating bodies authorized to nominate candidates for that office, on being notified of a vacancy under clause 96(1), do not nominate a candidate that, in the board's opinion, meets the qualifications, skills, knowledge and experience set out in the notification.

Clause 98(1) provides that a nominating body designated under clauses 89 or 90 that does not exercise its power to nominate in respect of two consecutive vacancies ceases to be a nominating body, if it has been notified of each of these vacancies under clause 96(1). Clause 98(2) creates an exception in that clause 98(1) does not apply to a nominating body that is a municipality in which the principal airport is located or that is the principal municipality served by the principal airport.

If the number of directors on a board is less than nine for a period of three months, the Minister may appoint directors to bring that number to nine. Those appointments are for a term of one year (clause 99).

Prior to taking office as a director, a person must attend an information session conducted by the airport authority on the authority's objects and obligations, the Minister's role and the director's powers, duties and functions, including duties imposed by any law and the authority's by-laws (clause 100).

The Minister is empowered to remove, for cause, any director that he or she has appointed (clause 101(1)). The board may remove, for cause, any director it has appointed, by means of a resolution approved by two thirds of the board, excluding the director in question. (clause 101(2)).

The Minister is obliged to remove any director he or she has appointed, if the board determines, by way of a resolution approved by two thirds of the board, excluding the director in question, that the director: ceases to be eligible under clause 105; has breached the conflict of interest rules contained in the by-laws; or has disclosed confidential information contrary to the by-laws (clause 102(1)). As well, the board must remove any director it has appointed if the board determines, by means of a resolution approved by two thirds of the board, excluding the director in question, that any of the matters set out in clause 102(1) apply in respect of the director (clause 102(2)).

A director may resign by sending a letter of resignation to the chairperson of the board (clause 103(1)). A director's resignation becomes effective on the day on which the letter is received by the chairperson or on the day specified in the letter, whichever is later (clause 103(2)). The director must also send a copy of the letter to the Minister, if the Minister made the appointment, or to his or her nominating body, if one was involved (clause 103(3)).

Clause 104(1) entitles a director of an airport authority to submit to the authority a written statement giving reasons for resigning or for opposing his or her removal. Clause 104(2) requires the airport authority to, without delay, send a copy of the statement to the Minister and all nominating bodies. Clause 104(3) provides that no airport authority or person acting on its behalf incurs any liability by reason only of complying with clause 104(2).

c. Ineligibility for Office of Director (Clauses 105-106)

According to clause 105(1), a person is ineligible to hold office as a director of an airport authority if the person falls within any of the numerous paragraphs listed therein, including when a person is not independent within the meaning of clauses 105(2)-(4).

An airport authority must ensure that a majority of the directors of the airport authority are not directors or officers of any of the corporations in which the authority has an ownership interest (clause 106).

d. Duties, Liabilities and Indemnification of Directors and Officers (Clauses 107-115)

Directors and officers of an airport authority must, in exercising their powers and carrying out their duties and functions, act honestly and in good faith with a view to the authority's best interests; and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances (clause 107(1)). Directors and officers of airport authorities have a duty to comply with the bill and the airport authority's by-laws (clause 107(2)). No provision in a contract, the by-laws or a resolution of the board or a committee of the board relieves a director or an officer from the duty to act in accordance with the bill or a direction, order or approval made or given under the bill, or relieves them from liability for a failure to comply with the bill or a direction, order or approval (clause 107(3)). In carrying out their duties and functions, directors appointed by the Minister have no duty toward, and do not represent the interests of, the Minister, just as directors nominated by a nominating body have no duty toward, and do not represent the interests of, the nominating body (clause 107(4)).

According to clause 108(1), a director is considered to have discharged his or her duty under clause 107(1) if he or she relied on good faith on either of the documents specified in clause 108(1). Clause 108(2) provides that a director is considered to have complied with clause 107(2) if he or she has exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on a document described in clause 108(1).

Clause 109(1) specifies that an officer is considered to have discharged his or her duty under clause 107(1) if the officer relied in good faith on a report by a person whose profession lends credibility to a statement made by that professional. Clause 109(2) stipulates that an officer is considered to have complied with clause 107(2) if the officer has exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances, including reliance in good faith on a report by a person whose profession lends credibility to a statement made by them.

The board or a director may, in accordance with the airport authority's by-laws and at the authority's expense, retain the services of a professional who is independent from the authority to enable the board or director to exercise their powers, duties and functions (clause 110).

An airport authority may purchase and maintain insurance for the benefit of present and former directors or officers against any liability incurred by them in their capacity as directors or officers of the authority (clause 111).

Clause 112 generally permits indemnification by an airport authority to present and former directors or officers, including advance of costs.

An airport authority or its present or former directors or officers may apply to a court for an order approving an indemnity under clause 112, and the court may so order and make any further order that it sees fit (clause 113(1)). On such an application, the court may order notice to be given to any interested person and the person is entitled to appear and be heard (clause 113(2)).

Clauses 114 and 115 specify circumstances where directors of an airport authority are liable for certain monetary amounts where they voted or consented to specified resolutions.

A due diligence defence for directors and officers is provided in clauses 224 and 242 set out in Part 4 of the bill.

e. Meetings (Clauses 116-123)

The board and each committee of the board must keep minutes of their meetings, which include all resolutions taken at the meetings (clause 116).

Clause 117 permits the chairperson to call a meeting of the board at any time. The board must meet if the chairperson receives a request from one third of the directors or if a meeting is requested under clause 187. The board must meet at least four times a year.

A majority of the numbers of the board's directors fixed by the by-laws constitutes a quorum of the board and a majority of the number of members of a committee of the board constitutes a quorum of the committee (clause 118).

If the airport authority's chief executive officer is not a director, he or she may attend meetings of the board and, at the request of the chairperson, must do so (clause 119).

The board may exclude the chief executive officer (regardless of whether the chief executive officer is a director) when the board is discussing his or her performance or compensation or when the board considers that it is necessary to preserve its independence from the chief executive officer (clause 120).

According to clause 121, participation in a meeting of the board may be by telephone or any other communication facilities that permit all participants to communicate adequately with each other during the meeting. The participants are deemed for purposes of the bill to be present at the meeting. Certain exceptions are specified in clause 121(2).

A director who is present at a meeting of the board or a committee of the board is deemed to have consented to any resolution passed and action taken at the meeting unless the director follows the dissent procedure set out in clause 123(1). A director who votes for or consents to a resolution is not entitled to dissent (clause 123(2)). A director who was not present at a meeting of the board or a committee of the board at which a resolution was passed or action taken is deemed to have consented to it unless within seven days after becoming aware of the resolution or action, the director follows the dissent procedure set out in clause 123(3). Notwithstanding clause 123(3), a director who is excluded from a meeting of the board or a committee of the board at which a resolution was passed or action taken is not deemed to have consented to it (clause 123(4)).

f. Committees (Clauses 124-128)

The board of an airport authority must establish a governance committee and an audit committee and may establish any other committees that it considers necessary to fulfil its duties (clause 124).

Clause 125(1) specifies that the governance committee consists of a number of directors that is less than a majority of the directors of the board fixed by the by-laws but is not less than three. Clause 125(2) stipulates that a director who is also the chief executive officer of the airport authority may not be a member of the governance committee. Clause 125(3) spells out the main duties of the above committee. The chairperson of the governance committee may call a meeting of the committee at any time, but must call a meeting at the request of a member of the committee (clause 125(4)). The committee must meet at least four times a year (clause 125(5)).

The audit committee consists of a number of directors that is less than a majority of the directors of the board fixed by the by-laws but not less than three (clause 126(1)). A director who is also the chief executive officer of the airport authority may not be a member of the audit committee (clause 126(2)). The members of the audit committee must be familiar with

basic accounting principles and be able to read and understand financial statements (clause 126(3)). The chairperson of the board may not be the chairperson of the audit committee (clause 126(4)). The duties of the audit committee are spelled out in clause 127. The chairperson of the audit committee may call a meeting of the committee at any time, but must call a meeting at the request of the auditor or a member of the committee (clause 128(1)). The committee must meet at least four times a year (clause 128(2)). The auditor must attend any meeting of the audit committee held during the auditor's term of office if so requested by a member of the committee (clause 128(3)). The auditor has the right to attend and to be heard at every meeting except when the audit committee is discussing the auditor's performance or compensation (clause 128(4)). If the committee adopts a resolution under clause 122, it must give the auditor a copy of it without delay (clause 128(5)).

g. Auditor (Clauses 129-131)

The board of an airport authority must appoint an individual or a firm of accountants as auditor for the authority to hold office for a renewable term of one year (clause 129(1)). The board must without delay fill a vacancy in the office of auditor (clause 129(2)).

Clause 130 specifies the required professional and independence qualifications for an auditor who is an individual and also for a firm of accountants acting as auditor.

An individual may not exercise the function of auditor for more than 5 consecutive years, whereas a firm of accountants may not exercise the function for more than 10 consecutive years (clause 131(1)). In the case of a firm of accountants, that firm designates an individual to conduct the audit. That individual may not exercise the function for more than five consecutive years (clause 131(1)). An individual may be reappointed as auditor or re-designated as the individual to conduct the audit for a firm of accountants three or more years after the day on which he or she ceases to exercise those functions. A firm of accountants may be reappointed as auditor five or more years after the day on which the firm ceases to exercise its functions as auditor (clause 131(2)).

h. Conflict of Interest (Clauses 132-135)

Directors and officers of an airport authority may not allow any interests they have or interests that, to the best of their knowledge after having made reasonable inquiries, a related person (within the meaning of clause 4) has, to conflict with or give rise to the appearance of a conflict with the authority's interests (clause 132).

Directors and officers of an airport authority must, without delay, disclose in writing to the authority the nature and extent of any interest that they have or any interests that, to the best of their knowledge after having made reasonable inquiries, that a related person has in a transaction that is proposed, ongoing, or completed with the authority (clause 133(1)). If the disclosure is made at a meeting of the board, it must be entered in the minutes of that meeting and if disclosure is not made at a meeting, it must be entered into the minutes of the next meeting (clause 133(1)). Directors appointed by the Minister must disclose to the Minister the nature and extent of any interest that they are required to disclose to the airport authority under clause 133(1) (clause 133(2)).

Clause 134 sets out certain requirements concerning conflict of interest rules contained in an airport authority's by-laws.

Directors and officers of airport authorities must, before they take office and at each of the specified times, provide a written declaration that they have read the conflict of interest rules contained in the airport authority's by-laws and that, to the best of their knowledge after having made reasonable inquiries, they are in compliance with them (clause 135).

10. Fees (Clauses 136-173)

a. Imposition of Fees (Clauses 136-138)

Only an airport authority may impose fees in respect of a principal airport (clause 136). Fees comprise aeronautical fees and passenger fees as defined in clause 2.

Earlier, it was pointed out that certain obligations regarding fees set out in clauses 35-36 apply only to the governments of the three territories in respect of the airports they each own in their respective capitals, and any other operator of an airport in Canada, other than an airport authority, that meets a passenger threshold of 300,000. The same obligations apply to the smaller airport authorities that operate airports that do not meet a passenger threshold of 2 million, by virtue of clauses 137 and 138. As was previously noted, the above airport operators all fall within the first tier regarding fees.

Under Bill C-20's predecessor, Bill C-27, smaller airport authorities were subject to the full fee regime (i.e., formal methodology, charging principles, prescribed process for notice, consultation and announcement, and appeal mechanism). As pointed out above, Bill C-20 only requires these airport authorities to meet the same general requirements in respect of

transparency and respect for basic charging principles as non-federal airports. Under Bill C-27, airport authorities with at least 400,000 passengers annually were subject to special requirements in terms of the use of passenger fee revenues and the reporting of these revenues and related expenses. In Bill C-20, these requirements do not apply until the airport meets a passenger threshold of 2 million.

According to clause 137, an airport authority must make available to anyone on request, and post on its website (if it has one), the amount of each fee; the conditions under which persons become subject to each fee; the method used to collect each fee; and the use of revenues generated by each passenger fee. This obligation is imposed on all airport authorities.

Clause 138(1) sets out the requirements that must be followed when an airport authority proposes to establish or increase a fee in respect of a principal airport (set out in column 2 of the schedule to the bill, opposite the name of the authority) that does not meet a passenger threshold of 2 million or in respect of any airport set out in column 3 of the schedule (opposite the name of the airport authority) that meets a passenger threshold of 300,000. Clause 138(2) requires an airport authority to inform aircraft operators and the public in the region served by the airport of any reduction in or elimination of a fee (clause 138(2)).

b. Application (Clause 139)

As was previously noted, the second tier regarding fees applies only to those airport authorities that operate principal airports in Canada that meet a passenger threshold of 2 million. According to clause 139, clauses 140-173 apply only to the above airport authorities. They are subject to a comprehensive framework regarding fees as set out below.

c. Charging Principles (Clause 140)

Clause 140(1) sets out the charging principles that must be observed by the top eight airport authorities when establishing or revising fees. A change in the unit of measurement of a fee is deemed to be an increase in a fee (clause 140(2)).

d. Methodology for Determining Fees (Clauses 141-143)

An airport authority that operates a principal airport that meets a passenger threshold of 2 million must establish a methodology for determining fees before the first anniversary of the day on which clause 141 becomes applicable to it. The authority may revise the methodology at any time (clause 141).

The methodology must explain how the airport authority will determine its financial requirements and the portion of financial requirements that will be met from each of the two kinds of fees (i.e., aeronautical and passenger fees) (clause 142(1)).

In the case of aeronautical fees, the methodology must do the following: list each fee; describe the unit of measurement to be used for each fee and the rationale; explain how each fee is to be set, including how it will relate, individually or in combination with other aeronautical fees, to the whole or any part of the portion of the financial requirements that is to be met from aeronautical fees; and describe the rationale for the use of different fees, or for any differences in a fee, in respect of particular facilities and services (clause 142(2)).

In the case of passenger fees, the methodology must explain how the fee relates to the funding of expenditures for purposes referred to in clause 157 (concerning the use of revenues from passenger fees for specified purposes) and provide the rationale for any differences in a fee (clause 142(3)).

An airport authority operating a principal airport that meets a passenger threshold of 2 million must also explain how it determines any charges, other than fees, that it imposes on air carriers (clause 143).

e. Notice of Proposals (Clauses 144-147)

An airport authority operating a principal airport that meets a passenger threshold of 2 million must give notice of any proposal to establish or revise its methodology for determining fees or to establish or increase a fee (clause 144).

According to clause 145, a proposal to establish or increase a fee by one of the above airport authorities may provide for the fee's adjustment once within six months after it is established or increased, by the application of a mathematical formula that is set out in the notice. For purposes of the Act, the adjustment is considered to be part of the establishment of, or increase in, the fee.

Clause 146 prescribes what must be included in the notice, and there are additional requirements in the case of a notice to establish or increase a passenger fee. Clause 147 specifies those to whom the notice must be sent and where it must be posted.

f. Consultations and Representations (Clauses 148-150)

An airport authority operating a principal airport that meets a passenger threshold of 2 million must provide to anyone, on request, any information that it is reasonable to believe would assist the person in understanding a proposal to establish or revise the authority's methodology for determining fees, or to establish or increase a fee, and in making representations on the proposal (clause 148).

The airport authority must invite (in writing) the air carriers operating at the principal airport to a meeting, to be held at least 30 days before a deadline for receiving representations on the proposal, to explain it, answer questions and obtain the air carriers' views on it (clause 149(1)). If the proposal is to establish or increase a passenger fee, the airport authority must also hold a public meeting, at least 30 days before the deadline for receiving representations, to explain the proposal, answer questions and obtain the views of persons who are present at the meeting (clause 149(2)).

Clause 150 requires representations on proposals to be made in writing and sets deadlines for the receipt of them.

g. Announcements (Clauses 151-155)

An airport authority operating a principal airport that meets a passenger threshold of 2 million must, after considering any representations received before the applicable deadline, announce its methodology for determining fees or announce the fee that is being established or increased (clause 151).

Clause 152 specifies what must be included in the announcement of the methodology for determining fees. Similarly, clause 153 stipulates what must be included in the announcement of a fee. Clause 154 sets out the persons and organizations to whom a copy of the announcement must be sent, and the places where the announcement must be posted and the obligation to publicize through local media.

Clause 155 requires an airport authority operating a principal airport that meets a passenger threshold of 2 million to inform aircraft operators and the public in the region served by the principal airport of any reduction in or elimination of a fee (clause 155).

h. Effective Date of Fees (Clause 156)

An airport authority operating a principal airport with a passenger threshold of 2 million may only establish or increase an aeronautical fee 10 or more days after the day on which the authority meets its obligation under clause 154 to publicize in daily newspapers the information relating to the announcement (clause 156(1)).

An airport authority operating a principal airport with a passenger threshold of 2 million must not establish or increase a passenger fee before the appeal period referred to in clause 163(1) expires or, in the case of an appeal, before the day on which it is dismissed by the Canadian Transportation Agency (clause 156(2)).

An airport authority operating a principal airport with a passenger threshold of 2 million may only establish or increase a fee after informing the persons and organizations referred to in clause 154 of the date on which the fee or increase in the fee takes place (clause 156(3)).

i. Additional Provisions – Passenger Fees (Clauses 157-159)

Clause 157(1) prescribes the permissible uses of revenues from a passenger fee by an airport authority operating a principal airport that meets a passenger threshold of 2 million. Clause 157(2) prescribes additional purposes for which the airport authority may use the revenues from a passenger fee, but only with the Minister's approval. Clause 157(3) clarifies that the use of revenues from a passenger fee to pay interest on debt incurred for a purpose referred to in clause 157 is considered to be use of the revenues for that purpose.

Bill C-27 imposed limitations on the use of passenger fee revenues on more airports. Under Bill C-27, the limitations applied to any airport operator (other than the territorial governments) that operated an airport with over 400,000 passengers annually. As opposed to its predecessor, Bill C-20 has increased the number of allowable uses of passenger fee revenues in the case of those airport operators subject to the limitations.

Clause 158 requires that, in respect of a passenger fee that is in existence on the day on which that clause becomes applicable to an airport authority operating a principal airport with a passenger threshold of 2 million, the authority must, within one year of that day, provide prescribed information to air carriers, the organizations representing them, and to the public in the region served by the principal airport.

According to clause 159, an airport authority operating a principal airport with a passenger threshold of 2 million must eliminate a passenger fee when the fee is no longer required for the purposes referred to in clauses 146(2)(a) or 158(a).

j. Appeals (Clauses 160-173)

Subject to the limitations set out in clause 160(3), clause 160(1) allows the establishment of, or increase in, a fee to be appealed to the Canadian Transportation Agency (CTA) on the ground that an airport authority operating a principal airport with a threshold of 2 million, in establishing or increasing the fee, did not have a methodology for determining fees or did not comply with a charging principle or requirement under clauses 144-156. Clause 160(2) allows any person to appeal in respect of a passenger fee, but only an aircraft operator who is subject to an aeronautical fee may appeal in respect of that fee on a ground referred to in clause 160(1). According to clause 160(3), an appeal pursuant to clause 160(1) may be made only as follows: if the appellant has made a representation to the authority to that effect; if the fee announced by the authority is higher than the fee described in the notice for the fee, or is based on a different unit of measurement; or if the airport authority does not meet the notice requirements set out in clause 147.

Subject to the conditions set out in clause 161(2), clause 161(1) provides for an additional limited ground for appeal in the case of aeronautical fees in that it allows an aircraft operator to appeal the establishment of, or increase in, an aeronautical fee, regardless of whether the aircraft operator is subject to the fee, on the ground that any aeronautical fee that took effect before the earlier of the date of the announcement of the methodology for determining fees and the expiry of the period for establishing the methodology does not comply with a charging principle. Clause 161(2) permits an appeal under clause 161 only if the appellant has made a representation to the authority in respect of that ground, or the airport authority does not meet the requirements set out in clause 147. Clause 161(3) provides for subsequent appeals in specified circumstances.

No appeal may be brought in respect of the establishment of, or increase in, a fee on a ground referred to in clause 160(1) or 161(1) if the fee or increase in the fee takes effect before the earlier of the date of the announcement of the methodology and the expiry of the period for establishing the methodology (clause 162).

The appeal may be filed no later than 30 days after the day on which the airport authority meets its obligation under clause 154(4) to publicize in daily newspapers the information relating to the announcement (clause 163(1)). The appeal must be in writing and set out the grounds for appeal (clause 163(2)). The appellant must file the appeal with the CTA and, on the same day, send a copy to the airport authority (clause 163(2)).

The CTA may require an airport authority to file specified information with respect to the fee being appealed (clause 164). The CTA may join two or more appeals (clause 165). In deciding an appeal, the CTA must accept the airport authority's methodology for determining fees and must accept the authority's projection of reserves that are necessary for future expenditures as being reasonable and prudent (clause 166). The CTA may not make an order that prevents an aeronautical fee from taking effect, or that suspends one, pending its decision on the appeal (clause 167).

Clause 168 sets out the orders that the CTA may make in the event that an appeal is successful.

If an airport authority is ordered by the CTA to refund an amount, it may do so by credit or payment to the aircraft operator (clause 169(1)). Payment of the amount, including the amount of any unused credit, must be made within 90 days after the date of the order (clause 169(2)).

The CTA must decide an appeal without delay, but no later than 60 days after the expiry of the appeal period, unless the Agency is of the opinion that there are special circumstances, in which case the Agency has a maximum of 30 more days to decide the appeal (clause 170). The CTA must without delay notify the airport authority and the appellant of its decision and provide written reasons for it (clause 171). Despite section 41(1) of the *Canada Transportation Act*, a decision of the CTA on appeal is final and may not be appealed to or reviewed by any court (clause 172).

Clause 173(1) stipulates that sections 24, 25.1-29, 32, 34 and 37 of the *Canada Transportation Act* do not apply to the CTA in respect of the powers, duties and functions assigned to it under the bill. As well, clause 173(2) provides that the powers of the Governor in Council under sections 40 and 43 of the *Canada Transportation Act* do not apply in respect of the powers, duties and functions of the CTA under the bill.

11. Disclosure (Clauses 174-199)

a. Business Plan (Clause 174)

Clause 174(1) requires every airport authority to, before the beginning of the calendar year, adopt a business plan for the following five calendar years that states the authority's strategic objectives for that period, for each of those calendar years, states its business objectives and financial projections and describes its major initiatives. An airport authority must make a summary of its business plan available to anyone on request and post it on the authority's website, if it has one. The authority may exclude any information the disclosure of which would be harmful to the authority's commercial interests (clause 174(2)).

b. Financial Statements (Clauses 175-181)

Every airport authority must prepare annual financial statements in accordance with generally accepted accounting principles (clause 175(1)). An airport authority that has a subsidiary must prepare annual consolidated and unconsolidated statements (clause 175(2)). The annual financial statements of an airport authority must disclose separately the major categories of revenues and expenses and the total amount for each category (clause 175(3)). The notes to the financial statements must include certain prescribed matters (clause 175(4)).

An airport authority that imposes a passenger fee at a principal airport that meets a passenger threshold of 2 million must disclose in the annual financial statements or in notes to those statements, for the calendar year and on a cumulative basis from the year in which the fee was established, additional specified information concerning gross revenues and related expenditures (clause 175(5)).

Clause 175(6) empowers the Governor in Council to make regulations respecting the annual financial statements and notes to those statements, including specifying additional information to be contained in those statements or notes.

Clause 175(7) concerns certification of an airport authority's financial statements by the chief executive officer and the chief financial officer of the authority and the provision of the statements to the auditor.

An airport authority must have its annual financial statements audited (clause 176(1)). The auditor must conduct the audit in accordance with generally accepted auditing standards for the audit of financial statements of corporations whose securities are publicly traded (clause 176(2)).

The present and former directors, officers, employees, agents and mandataries of an airport authority must provide the auditor, on request, with information and access to records, documents, etc. that they are reasonably able to provide and that the auditor considers necessary to enable the auditor to exercise his or her powers, duties and functions (clause 177(1)). At the request of the auditor, the directors of the airport authority must request from the present or former directors, officers, employees, etc. of any of the corporation's subsidiaries the information and explanations that they are reasonably able to provide and that the auditor considers necessary to enable him or her to exercise his or her powers, duties and functions. The directors must provide the auditor with the information and explanations so obtained (clause 177(2)).

An airport authority may not publish or circulate copies of it annual financial statements unless those statements are approved by its board and accompanied by the auditor's report (clause 178).

Clause 179 spells out a number of requirements concerning annual financial statements of subsidiaries of airport authorities (clause 179).

The Minister may direct an airport authority to send to the Minister the financial statements of any corporation in which the authority has an ownership interest. The Minister may also direct the authority to make those financial statements available to the public if the Minister believes that doing so is in the public interest (clause 180).

The Minister may direct an airport authority to cause an audit of the annual financial statements of any of its subsidiaries to be conducted and to send to the Minister a copy of the auditor's report and of any related documents that may be requested by the Minister. The Minister may also direct the authority to make the auditor's report available to the public if the Minister believes that doing so is in the public interest (clause 181).

c. Performance Indicators (Clause 182)

Clause 182(1) requires an airport authority that operates a principal airport that meets a passenger threshold of 2 million to use performance indicators to measure the authority's performance in relation to the objectives set out in the Canadian Airport Policy in paragraphs (a)-(h) of clause 8. Clause 182(2) empowers the Governor in Council to make regulations respecting performance indicators, including the establishment of those indicators.

Under Bill C-20's predecessor, Bill C-27, all airport authorities were required to establish performance indicators applicable to their activities. As well, Bill C-27 required each airport authority, every five years, to conduct a survey at the airport leased to it by the federal Crown, regarding the degree of satisfaction of passengers with the services provided by the authority. That requirement does not appear in Bill C-20.

d. Annual Report (Clauses 183-184)

Every airport authority must prepare an annual report for the calendar year (clause 183) comprising the components set out in clause 184(1). In the case of an airport authority that operates a principal airport that meets a passenger threshold of 2 million, the annual report must contain additional information spelled out in clause 184(2). In the case of any other airport authority, the annual report must also contain a statement of the revenues from aeronautical fees, the revenues from passenger fees, the revenues from other sources, and a comparison of the aggregate of those revenues with the authority's financial requirements (clause 184(3)). Clause 184(4) sets out additional matters to be included in the annual report of an airport authority that has an ownership interest in any corporation.

e. Annual Meeting (Clause185)

Every airport authority must hold an annual meeting that complies with the requirements set out in clause 185, including specified notice to the Minister and the nominating bodies and public notice. The public are entitled to attend the meeting, ask questions and express their views. An airport authority must ensure that the chief executive officer and at least two-thirds of the directors, including the chairperson, attend the annual meeting in person (clause 185(4)). The Minister and each nominating body must ensure that they are represented at the annual meeting (clause 185(5)).

12. Consultations (Clauses 186-190)

Every airport authority must invite, in writing, the Minister and the nominating bodies to meet collectively at least once a year with its board (clause 186(1)). The authority must ensure that the chief executive officer and at least two thirds of the directors, including the chairperson, attend in person (clause 186(1)). The Minister and each nominating body must ensure that they are represented at the meeting (clause 186(2)).

At the request of four nominating bodies or the Minister and three nominating bodies, if in either case at least one of the nominating bodies is a municipality or regional authority and at least one of them is a non-governmental organization or the national association of air carriers, the board must, without delay, hold a special meeting to discuss the issues described in the request and invite the Minister and nominating bodies to send representatives to that meeting (clause 187(1)). The airport authority must ensure that at least two thirds of the directors, including the chairperson, attend in person (clause 187(2)).

Every airport authority must invite, in writing, each air carrier operating at the authority's principal airport to meet collectively with the authority once a year (clause 188(1)). The authority must be represented by its chief executive officer, one other officer and one director (clause 188(1)). The purpose of the meeting is to discuss strategic issues related to the airport (clause 188(2)).

The by-laws of an airport authority must provide a mechanism for the airport authority to consult with the public in the region served by the authority's principal airport (clause 189). The mechanism must include a discussion forum at which, at least two times a year, the public in the region served by the principal airport may receive information and discuss matters related to that airport with the chief executive officer and one other officer of the airport authority (clause 190).

13. Public Access to Documents (Clause 191)

Every airport authority must make available at the office referred to in clause 53 the documents specified in clause 191(1), including financial statements, land use plans, etc. (clause 191(1)). In addition, an airport authority that meets a passenger threshold of 2 million must make available at that office a statement of its methodology for determining fees (clause 191(2)). There is an exception in that an airport authority is not required to make available documents that relate only to airports other than its principal airport (clause 191(3)). Clause 191(4) specifies certain financial statements of corporations in which the airport authority has an ownership interest that the authority must make available to anyone on request. Copies of documents referred to in clauses 191(1),(2) and (4) must be provided to anyone, upon payment of a reasonable fee (clause 191(5)). An airport authority that operates a principal airport that meets a passenger threshold of 2 million must have a website that includes the authority's annual reports for the previous five calendar years, and a description of the types of documents that are available to the public and how they may be obtained (clause 191(6)).

14. Performance Reviews (Clauses 192-198)

Clause 192 requires an airport authority that operates a principal airport that meets a passenger threshold of 2 million to cause a review of the authority's operation, management and financial performance to be undertaken in respect of each successive five-year period after the transfer date beginning with the five-year period that ends after the coming into force of the clause.

Airport authorities that do not meet the above threshold must cause the performance review to be undertaken (a) if no similar review has been undertaken before the coming into force of clause 193(1), for the five-year period beginning on the transfer date; or (b) in any other case, for the 10-year period following the period covered by the most recent similar review undertaken before the coming into force of clause 193(1). The airport authority must cause a review to be undertaken in respect of every 10-year period following the period covered by the most recent review (clause 193(2)). On or after the fifth anniversary of the end of the period covered by the most recent review, four nominating bodies, or the Minister and three nominating bodies, if in either case at least one of the nominating bodies is a regional authority or municipality and at least one of them is a non-governmental organization, may request that a review be undertaken earlier than the 10-year period. In that case, the airport authority must cause a review to be undertaken in respect of the period beginning at the end of the period covered by the most recent review (clause 193(3)).

Under Bill C-20's predecessor, Bill C-27, there was a requirement for all airport authorities to conduct a performance review every five years.

An airport authority must choose an individual or a firm to conduct its review through a competitive bidding process (clause 194(1)). The reviewer must be a qualified individual or firm who is not subject to any influence, interest or relationship that may impair, or be perceived to impair, the independence or objectivity of the reviewer in carrying out the review (clause 194(2)). Certain reviewers are disqualified in as follows: an individual or firm who is, at the time of the review, or was during the period covered by the review, the auditor of the airport authority; or an individual who participates in an audit of the authority at the time of the review, or participated in such an audit during the period covered by the review (clause 194(3)). A reviewer that is a firm may not designate an individual to carry out the review if the individual participates in an audit of the authority at the time of the review, or participated in such an audit during the period covered by the review (clause 194(4)).

The contents of the reviewer's report must include the items set out in clause 195. Clause 196 requires the report to be sent to the board within six months after the end of the period covered by the review. The board must, within 30 days after the report is received by the board, send a copy of the report to the Minister and each nominating body and make the report available to the public (clause 196).

Clause 197 requires an airport authority to send a copy of its response to the reviewer's report to the Minister and each nominating body and the reviewer within 120 days after the expiry of the six-month period referred to in clause 196. The authority must also make a copy of the response available to the public within that period (clause 197).

The airport authority must publicize through its website, if it has one, and the local media the fact that the reviewer's report and the authority's response are available from the authority on request (clause 198).

15. Contracts Without Competitive Bidding (Clause 199)

Clause 199(1) requires an airport authority to disclose any contracts involving expenditures in excess of $100,000 that were not awarded under a competitive bidding process, including the name of the contracting party, the purpose and values of the contract and the reasons why a competitive bidding process was not used. Clause 199(2) prohibits an airport authority from engaging in contract splitting in order to avoid the application of clause 199(1).

16. Other Obligations (Clauses 200-210)

a. Change of Name of Principal Airport (Clause 200)

No airport authority may change the name of its principal airport without the written consent of the Minister (clause 200).

b. Land Use Plan and Master Plan (Clauses 201-202)

Every airport authority must have a land use plan in respect of its principal airport that has been approved by the Minister (clause 201(1)). An airport authority must ensure that all activities carried out at its principal airport are in accordance with the land use plan (clause 201(2)).

As well, every airport authority must have a master plan setting out its strategy for the long-term operation and development of its principal airport. The master plan must be consistent with the land use plan (clause 202(1)). The Minister may direct an airport authority to change its master plan for the purpose of eliminating any inconsistencies that in the Minister's opinion exist between the master plan and the land use plan (clause 202(2)).

c. Environment (Clauses 203-204)

Every airport authority must have an environmental management plan for its principal airport (clause 203).

Every airport authority must, without delay, give written notice to the Minister of a spill or release of a substance into the environment, in a quantity or concentration or under conditions that: a) have or may have an immediate or long-term harmful effect on the environment or its biological diversity; b) constitute or may constitute a danger to an environment on which life depends; or c) constitute or may constitute a danger to human life or health (clause 204(1)). The normal operation of aircraft or motor vehicles at the airport does not, in itself, constitute the release of a substance within the meaning of the above provision (clause 204(2)). The airport authority must keep the Minister informed of the measures it is taking to stop the spill or release of the substance and to mitigate or remediate any damage to the environment (clause 204(3)). The airport authority must keep a record of the spill or release, the clean-up, any mitigation or remedial measures and any follow-up or monitoring undertaken (clause 204(4)). A copy of the record must be sent to the Minister on request (clause 204(4)).

d. Acquiring Land (Clauses 205-210)

If an airport authority acquires an interest in land (or, in Quebec, a right relating to an immovable) to be used for the operation, maintenance or development of its principal airport, the authority must acquire it in its own name or, with the Minister's approval, in the name of the federal Crown (clause 205(1)). If the airport authority acquires the interest or right in its own name, it may not transfer that right or interest without the approval of the Minister (clause 205(2)).

If the airport authority acquires the interest or right in its own name, the authority must, at the Minister's request, transfer that interest or right to the federal Crown, on such conditions and terms as the Minister may specify, free of all charges or security or other restrictions against the land (clause 206).

According to clause 207, if an airport authority acquires the interest or right in the name of the federal Crown or transfers an interest to the federal Crown, no compensation is payable by the Crown in respect of the acquisition or transfer. The airport authority must reimburse the Crown for any costs incurred in acquiring the interest or right or effecting the transfer. The Crown must be indemnified by the airport authority in respect of all claims resulting from the acquisition or transfer or from the fact that the Crown owns the interest or right.

Clause 208 stipulates that if an airport authority acquires an interest in land in the name of the federal Crown, or if an airport authority transfers an interest or right to the federal Crown, or if the interest or right is expropriated under clause 210, the land that is the subject of the interest or right is deemed to be part of the premises leased to the airport authority by the federal Crown for the principal airport, and is subject to the terms and conditions set out in the lease.

An airport authority may not acquire an interest or right referred to in clause 205(1) unless it has had an environmental assessment of the land and any improvements carried out by an independent, qualified person (clause 209(1)). The airport authority must send a copy of the assessment to the Minister before the authority acquires the interest or right (clause 209(2)). If the airport authority acquires the interest or right, it must undertake and pay for any remedial work identified in the assessment (clause 209(3)). The airport authority must reimburse the federal Crown for any remedial work that the Crown undertakes on the land and improvements, whether or not the work was identified in the assessment (clause 209(4)).

Under the circumstances and subject to the conditions set out in clause 210, the Minister may, at the request of an airport authority, request the appropriate Minister in relation to Part I of the *Expropriation Act* to expropriate an interest in land (or, in Quebec, a right relating to an immovable).

17. Leases in Respect of a Principal Airport (Clauses 211-212)

No compensation and no damages are payable by the federal Crown in respect of any change that is made under the bill to a right or obligation under a lease of the principal airport granted by the Crown to an airport authority (clause 211).

On the termination, resiliation or expiry of the lease of the principal airport granted by the Crown to an independent authority, the Governor in Council may take any of the following measures it deems necessary: a) measures for the continued operation, management, maintenance or development of the principal airport; and b) measures for the transfer of any property of the authority that is used for the operation, management, maintenance or development of that airport (clause 212(1)). No compensation is payable by the federal Crown in respect of the measures taken or property transferred (clause 212(2)).

18. Dissolution (Clause 213)

The Governor in Council may, by order, dissolve an airport authority by deleting its name from Part 1 of the schedule as follows: a) before the termination, resiliation or expiry of the lease of the principal airport granted by the Crown to the airport authority, if the latter requests it and the Governor in Council is satisfied that the authority has adequately provided for the payment or discharge of all of its obligations; or b) after the termination, resiliation or expiry of that lease (clause 213(1)). The order may provide for any measures that, in the opinion of the Governor in Council, are necessary for the continued operation, management, maintenance or development of the principal airport (clause 213(2)).

If an airport authority is dissolved, all of its property must be transferred to the Minister, in the name of the federal Crown, except to the extent that the Governor in Council, by order, provides that it is to be transferred to a particular entity (clause 213(3)). No compensation is payable by the federal Crown in respect of the dissolution of the airport authority, any measures taken or the property transferred (clause 213(4)).

19. Non-application of *Statutory Instruments Act* (Clause 214)

The *Statutory Instruments Act* does not apply to a by-law adopted by an airport authority or to any other instrument issued, made or established by an airport authority under Part 3 of the bill (clause 214).

E. Part 4 – Compliance and Enforcement (Clauses 215-245)

1. Inspection (Clauses 215-217)

The Minister may designate as an inspector for the administration of the bill any person or class of persons that the Minister considers qualified. The Minister must give each inspector a designation document specifying the terms and conditions of the designation (clause 215(1)). An inspector exercising powers under the bill must, on request, show his or her designation document (clause 215(2)).

Clause 216 sets out the powers of an inspector for purposes of administering the bill. The owner or person in charge of a place that is entered by an inspector and every person therein must provide the inspector all reasonable assistance to enable the inspector to exercise his or her powers and duties and provide the inspector with books, data, etc. relevant to the administration of the Act or any information that the inspector requires for purposes of the Act (clause 217).

2. Offences and Punishment (Clauses 218-226)

For the purposes of the bill, an entity is defined in clause 2 to include a corporation, a partnership, a trust, joint venture or an unincorporated association or organization.

Clause 218 prohibits an individual or an entity from knowingly making any false or misleading statements, or knowingly providing false or misleading information, to the Minister, to any individual or entity acting on behalf of the Minister (in connection with any matter under the bill), to an inspector or to a slot coordinator. Clause 219 prohibits an individual or entity from wilfully obstructing or hindering the Minister or any individual or entity acting on behalf of the Minister (in connection with any matter under the bill) or an inspector, while they are carrying out their duties under the bill. Clause 220 prohibits an individual or entity from making or assisting another individual or entity in making a document that is required to be made, or made public under the bill knowing that the document contains an untrue statement of a material fact or omits to state a material fact so that the document becomes misleading.

Contravention of an emergency order of the Governor in Council made pursuant to clause 16(1) constitutes a summary conviction offence for which the punishment is, in the case of an individual, a fine of not more than $20,000 and in the case of an entity, a fine of not more than $100,000 (clause 221).

According to clause 222(1), an individual or entity commits an offence if they contravene any of the following: an order of the Governor in Council under the bill other than an emergency order made pursuant to clause 16(1); a direction, order or approval of the Minister under the bill; any provision of the bill other than clauses 74-76, 79, 80, 140, 144-156 and 179, all of which are addressed in other ways; any provision of the regulations; or an order of the Agency under clause 168 (clause 222(1)). An individual or entity who commits an offence referred to in clause 222(1) is liable on summary conviction, in the case of an individual, to a fine not exceeding $5,000 and, in the case of an entity, to a fine not exceeding $25,000 (clause 222(2)). The fines are lower than they were in Bill C-27.

An offence under either of clauses 221 or 222(1) that is continued on more than one day constitutes a separate offence in respect of each day (clause 223).

No individual or entity will be found guilty of an offence under the bill, other than an offence for the contravention of any of clauses 218-220, if the individual or entity establishes that they exercised due diligence to prevent the commission of the offence (clause 224).

The directors and officers of a corporation that commits an offence under the bill (other than an offence for the contravention of any of clauses 218-220) are guilty of the same offence unless the act or omission constituting the offence took place without their knowledge or consent or they exercised due diligence to prevent the commission of the offence (clause 225).

In a prosecution for an offence under the bill, other than an offence for the contravention of any of clauses 218-220, it is sufficient proof of the offence to establish that it was committed by the accused's employee or agent or mandatary acting within the scope of his or her employment or authority, regardless of whether he or she is identified or prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused (clause 226).

3. Administrative Monetary Penalties (Clauses 227-242)

Bill C-20 establishes a second option for dealing with compliance. That option provides for an administrative monetary penalty (AMP) system as set out below. As previously noted, non-compliance with the Act may be prosecuted through the courts by way of summary conviction. The AMP system will only come into effect once the requisite regulations are promulgated.

Clause 228 empowers the Governor in Council to make regulations that establish an AMP scheme and to designate contraventions that may be proceeded with as violations subject to administrative monetary penalties. The maximum penalty if a contravention is proceeded with under the AMP system is $5,000 in the case of an individual and $25,000 in the case of an entity (under the previous bill, C-27, the maximum penalty in the case of a corporation was $50,000). Clause 229 sets out the criteria to be taken into account in each case in determining the amount of the penalty.

Clause 227 provides that every individual or entity who contravenes a provision, order, direction or approval designated under clause 228 commits a violation and is liable to an administrative monetary penalty not exceeding the maximum established by regulation pursuant to clause 228.

The maximum amount for individual violations will vary depending on the nature of the violation but in no case will it exceed the maximum amount specified in clause 228.

Clause 230 stipulates that if an inspector believes on reasonable grounds that an individual or entity has committed a violation, the inspector may issue, and must cause to be served on the individual or entity, a notice of violation. Clause 230(2) spells out what must be included in the notice of violation.

An individual or entity who has been served with a notice of violation must either pay the penalty set out in the notice or file with the Transportation Appeal Tribunal (established by section 2(1) of the *Transportation Appeal Tribunal of Canada Act*, and hereinafter referred to as the Tribunal) a written request for a review of the facts of the alleged violation or of the amount of the penalty (clause 231).

If the individual or entity pays the penalty in accordance with the particulars set out in the notice of violation, the individual or entity is deemed to have committed the violation and proceedings in respect of the violation are ended (clause 232).

A request for a review must be filed with the Tribunal on or before the date specified in the notice or within any further time that the Tribunal on application may allow (clause 233(1)). An individual or entity who files a request for review with the Tribunal must also without delay serve a copy of the request on the Minister (clause 233(2)). On receipt of the request, the Tribunal must appoint a time and place for the review and must notify, in writing, the Minister and the individual or entity who filed the request of the time and place

(clause 233(3)). The member of the Tribunal assigned to conduct the review must provide the Minister and the individual or entity who filed the request with an opportunity that is consistent with procedural fairness and natural justice to present evidence and make representations (clause 233(4)). The burden of establishing that a violation has been committed is on the Minister (clause 233(5)). An individual or entity who is alleged to have committed a violation is not required, and may not be compelled to give any evidence or testimony in the matter (clause 233(6)).

An individual or entity who neither pays the penalty nor files a request for a review in accordance with the particulars set out in the notice of violation is deemed to have committed the violation (clause 234).

At the conclusion of the review under clause 233, the member of the Tribunal who conducts the review must without delay inform the individual or entity and the Minister of the member's determination on the review (clause 235(1)). If the member determines that the individual or entity has not committed the alleged violation, then, subject to clause 236, no further proceedings may be taken against the individual or entity in respect of the alleged violation (clause 235(2)). If the member determines that the individual or entity has committed the alleged violation, then the member must also inform the individual or entity and the Minister of the administrative monetary penalty determined by the member to be payable by the individual or entity in respect of the violation (clause 235(3)).

The Minister or an individual or entity affected by a determination made under clause 235 may, within 30 days after the determination, appeal it to the Tribunal (clause 236(1)). A party that does not appear at a review hearing is not entitled to appeal a determination, unless the party establishes that there was sufficient reason to justify the absence (clause 236(2)). The appeal panel of the Tribunal may either dismiss the appeal or allow it, in which case it may substitute its decision for the determination appealed against (clause 236(3)). If the appeal panel finds that an individual or entity has committed the alleged violation, the panel must without delay inform the individual or entity of the finding and the amount to be paid (clause 236(4)).

Penalties set out in the notice of violation (unless a review is requested) and penalties determined by the Tribunal and reasonable expenses incurred in attempting to recover penalties are considered to be debts due to the federal Crown that may be recovered in a court of competent jurisdiction (clause 237).

All or part of a debt referred to in clause 237 in respect of which there is a default of payment may be certified by the Minister or the Tribunal, as the case may be (clause 238(1)). On production in any superior court, a certificate made under clause 238(1) is to be registered in that court and, when registered, has the same force and effect, and all proceedings may be taken on it, as if it were a judgment obtained in that court for a debt of the amount specified in it and all reasonable costs and charges attendant in its registration (clause 238(2)).

If a corporation commits a violation under the bill, every person who at the time of the commission of the violation was a director or officer of the corporation is a party to and liable for the violation unless the act or omission constituting the violation took place without the person's knowledge or consent or the person exercised due diligence to prevent the commission of the violation (clause 239).

An individual or entity is liable for a violation that is committed by the individual's or entity's employee acting within the scope of his or her employment or the individual's or entity's agent or mandatary acting within the scope of his or her authority, regardless of whether the employee, agent or mandatary who actually committed the violation is identified and proceeded against, unless the individual or entity establishes that the violation was committed without the individual's or entity's knowledge or consent (clause 240).

Clause 241 stipulates that a violation is not an offence. Accordingly, section 126 of the *Criminal Code* (concerning an offence for disobeying a statute) does not apply.

Due diligence is a defence in a proceeding in respect of a violation (clause 242).

4. General Provisions (Clauses 243-245)

If an act or omission can be proceeded with either as a violation or as an offence, proceeding in one manner precludes proceeding in the other (clause 243).

Clause 244 provides, among other things, that no proceedings in respect of a violation or a prosecution for an offence may be commenced later than one year after the subject matter became known to the Minister.

If an airport operator or a director, employee, trustee, agent, etc. of the airport operator contravenes any provision of the bill, or any direction, order, or approval made or given under the bill, or any provision of the operator's by-laws, the Minister may apply to a court of competent jurisdiction for an order directing the individual or entity to comply with it, or restraining any such individual or entity from acting in breach of it, and on the application the court may so order and make any further order that it thinks fit (clause 245).

F. Part 5 – Transitional Provisions, Related and Coordinating Amendments and Coming Into Force (Clauses 246-253)

Clauses 246-250 provide for a number of transitional provisions and clauses 251 and 252 provide for related amendments. Clause 253 provides for the coming into force of the provisions of the bill, other than a coordinating amendment referred to in clause 252, on a day or days to be fixed by order of the Governor in Council.

Unlike its predecessor, Bill C-27, Bill C-20 does not result in any change in the income tax status of airport authorities. Bill C-27 would have repealed section 8 of the *Airport Transfer (Miscellaneous Matters) Act*, which provides an exemption from income tax on income derived from what is defined in that section as "airport business." Because Bill C-20 does not repeal that provision, the exemption provided for in section 8 of the above Act continues to apply.

COMMENTARY

Transport Canada officials point out that there were extensive consultations with the airport and air carrier communities over several years (prior to Bill C-20 being introduced in the House of Commons), during which time the policy has evolved and been refined. There have also been discussions with provincial and territorial officials and organizations such as the Canadian Federation of Municipalities.

In October 2006, departmental officials met with stakeholders to discuss their views on the bill. As a result of those discussions, there may be a number of government-sponsored amendments clarifying certain clauses of the bill.

In a press release issued on 15 June 2006, the day Bill C-20 was introduced in the House of Commons, the Air Transport Association of Canada (ATAC) welcomed the proposed legislation. "This is a long overdue development, which recognizes the lack of oversight and effective controls at Canada's airports that has existed since their transfer to local authorities over 10 years ago," said ATAC Acting President and CEO Michael Skrobica. "This lack of oversight has resulted in extremely costly facilities, where the focus has sometimes shifted to the acquisition of expensive pieces of art rather than on an efficient transportation system." ATAC welcomed provisions to improve pricing transparency, mandate consultation with air service

providers, empower the Minister to audit and give direction to airports on key issues, as well as providing for carrier representation on the boards of the country's largest airports but called upon parliamentarians to go further to deliver true accountability to the passenger. "The only way to establish true accountability to passengers is to replace the proposed right of appeal on matters of process with a meaningful dispute resolution mechanism, which gives real weight to carrier and passenger concerns," concluded Mr. Skrobica. In addition to proposing a dispute resolution mechanism, the ATAC indicated that it plans to raise further ideas to strengthen accountability and service to the public, including introducing international best practices in airport management as a required performance benchmark.

On the same day the bill was introduced, the Canadian Airports Council (CAC) also issued a press release concerning the bill, reminding the government that Canada's airports already operate under a set of public accountability principles. The CAC cautioned the government to ensure that the bill does not impede on the commercial viability of Canada's airports. CAC President and CEO Jim Facette stated, "The impact of this piece of legislation has the potential to be far-reaching for our members. We will examine its impact over the coming months and will have more to say when this legislation is at the committee stage."