Alberta's carbon tax – Bill 20: the *Climate Leadership Implementation Act*

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Introduction

On May 24, 2016, Alberta's Environment and Parks Minister Shannon Phillips introduced Bill 20: the *Climate Leadership Implementation Act*, which implements the carbon levy on Albertans and Alberta businesses that the government previously announced under its Climate Change Leadership Plan.

Bill 20 includes two new acts, the *Climate Leadership Implementation Act* (the Act) and the *Energy Efficiency Alberta Act*, as well as amendments to the *Alberta Corporate Tax Act*, the *Alberta Personal Income Tax Act* and the *Climate Change and Emissions Management Act*. Though Bill 20 has passed its first reading, the provisions of the new acts and amendments are subject to debate and revision before they are finalized and come into force.

The purpose of the Act is to impose a carbon levy on consumers of all carbon-emitting fuels throughout the fuel supply chain. Under the Act, revenues generated through the carbon levy may only be used for

1. initiatives related to reducing greenhouse gas emissions;
2. supporting Alberta's ability to adapt to climate change; and
3. providing rebates or adjustments related to the carbon levy to consumers, businesses and communities.

This restriction on the uses of the revenue generated from the carbon levy is consistent with Premier Notley's prior commitment that the proceeds of the carbon tax would remain in and be put to work within Alberta. In the November 2015 announcement of the Climate Change Leadership Plan, Premier Notley did not rule out using the revenue to pay down public debt in the future; however, the Act does not currently allow for revenue from the carbon levy to be used for debt repayment or general expenditures. That being said, the use for "initiatives related to reducing emissions of greenhouse gases or supporting Alberta's ability to adapt to climate change" is fairly broad and could permit a wide range of spending initiatives, including compensation payments to affected communities and spending on green infrastructure and other applications of funds which were announced together with the Climate Change Leadership Plan.

Carbon levy

The Act applies a carbon levy to all sales and imports of fuel, subject to certain exemptions. The specific rates depend on the type of fuel, but all are set on the basis of $20 per tonne of

CO_2 in 2017, rising to $30 per tonne in 2018.

Type of Fuel	January 1, 2017 Rate ($20/tonne)	January 1, 2018 Rate ($30/tonne)
Diesel	5.35 ¢/L	8.03 ¢/L
Gasoline	4.49 ¢/L	6.73 ¢/L
Natural Gas	1.011 $/GJ	1.517 $/GJ
Propane	3.08 ¢/L	4.62 ¢/L

Source: Alberta Treasury Board and Finance

The carbon levy will apply throughout the fuel supply chain, including at the following points: at the point of purchase; when fuel is being imported; and at the point of removal of fuel from a refinery, terminal, plant, or oil or gas battery. Additionally, the carbon levy will also apply when the recipient flares or vents the fuel, or engages in a prescribed activity.

The Act contains several exemptions from the carbon levy, including

1. fuel purchased under a carbon levy exemption certificate or a licence for exemption issued by the Minister;
2. fuel used by the consumer in the operation of a specified gas emitter as set out in the regulations;
3. fuel used by the consumer before 2023 as set out in the regulations;
4. fuel used for farming operations; and
5. fuel that is not put into a fuel system that produces heat or energy (i.e., fuel products not used as a fuel, such as when used in an industrial process or as a solvent or diluent).

Pursuant to section 79 of the Act, the Lieutenant Governor in Council is authorized to make regulations for the purposes of these exempt transactions. Until such regulations are released, the scope or application of these exemptions remains to be seen.

Registration requirement

Section 27 of the Act creates a registration requirement, which prohibits activities including producing and processing fuel, selling and importing fuel, and removing fuel from a refinery or plant, without registration. The process for the application for registration will be provided in the regulations, and the Minister has the power to refuse, cancel, or suspend a person's registration. This is a new regulatory requirement for those in the oil and gas industry, including producers, oil refiners and gas stations.

Payments by third parties and directors

The Act allows the Minister to seek payment of amounts owed under the Act from third parties or directors of a corporation. If the Minister knows that a third party will make a payment to a person that owes money pursuant to the Act (the Debtor), it can require the first person to pay the amount to the Minister on account of the amount owed by the Debtor. This can apply to loan transactions that the Minister knows of, in which case the Minister can direct that the lender pay all or a portion of the principal amount to the Minister in respect of an amount owed under the Act.

Similarly, directors of a corporation may be liable for amounts owed under the Act in certain situations, including when the corporation enters bankruptcy or insolvency proceedings. The Minister may only seek payment from directors if all reasonable efforts to collect the amount from the corporation have been made and notice has been given to the directors. As is common under these regimes, directors have a due diligence defence available, where the director will not be liable if he or she has exercised due diligence in attempting to ensure that the corporation has properly paid or remitted the carbon levy.

Amendments to tax acts

In order to effect the rebates promised by Premier Notley in her November 2015 announcement, Bill 20 amends the *Alberta Personal Income Tax Act* to provide for rebates to consumers in respect of amounts paid under the Act. Individuals with no dependents earning up to $47,500 will receive $200 annually and couples with no dependents earning up to $95,000 will receive $300 annually. Parents will receive an additional $30 per child to a maximum of four children. There is no rebate for individuals with no dependents earning more than $55,000 and for couples with no dependents earning more than $102,500. If rebates offset the increased cost of heating, transportation fuels and other consumer goods for 60% of Albertan households, it is not clear that the carbon levy will incent Albertans to reduce their greenhouse gas emissions. Whether the rebates are sufficient to cover increased consumer costs for low-income Albertans is also not clear.

Bill 20 also amends the *Alberta Corporate Tax Act* to reduce the small business tax rate from 3% to 2%. This is consistent with the government's announcement in the provincial budget that it would reduce corporate tax rates to offset the anticipated increased costs of doing business in the province for small businesses in Alberta.

Energy Efficiency Alberta

Bill 20 also establishes a new Crown corporation, Energy Efficiency Alberta, under the *Energy Efficiency Alberta Act* scheduled to Bill 20. The broad mandate of Energy Efficiency Alberta is to

1. raise awareness among energy consumers of energy use and associated consequences;
2. promote, design and deliver programs related to energy efficiency, energy conservation and development of small-scale energy systems and microgeneration; and
3. promote the development of an energy efficiency services industry.

Alberta is currently the only province without an agency specifically dedicated to promoting energy efficiency. Energy Efficiency Alberta, once established, will fulfill this role in the province.

Amendments to the *Climate Change and Emissions Management Act*

Bill 20 also amends the Climate *Change and Emissions Management Act* (CCEMA). CCEMA remains in force and is a regulatory regime which continues to apply to all large industrial carbon emitters with more than 100,000 tonnes/year of carbon or equivalent emissions. With Bill 20, the government has broadened the scope of the uses of funds in section 10(3) of the CCEMA to include education initiatives, and paying government and Independent System Operator salaries and costs incurred in relation to supporting Alberta's climate change programs.

On May 26, 2016, Premier Notley and Ontario Premier Wynne announced a new Memorandum of Understanding (MOU) between Alberta's Climate Change and Emissions Management Corporation (CCEMC) and the Ontario Centres of Excellence (OCE), to partner on energy and climate change initiatives focused on the reduction of greenhouse gas emissions and shift to a lower-carbon economy through technology development and demonstration projects. This MOU builds on the $8-million Alberta-Ontario Innovation Program, which is jointly managed by Alberta Innovates–Technology Futures and the OCE, and brings industry leaders and academia from Ontario and Alberta together to collaborate on solutions to key industry challenges.

Outstanding items from the Climate Change Leadership Plan

As previously outlined in the Osler Update "Alberta's New Climate Change Leadership Plan," there are four cornerstones to the Climate Change Leadership Plan: (1) an accelerated phase-out of coal; (2) an economy-wide carbon levy; (3) an absolute cap on oil sands emissions; and (4) a methane gas emissions reduction plan. Bill 20 only implements the economy-wide carbon levy, and does not include legislation to address the other three elements of the government's plan. We are still waiting for the Alberta Electric System Operator to release details of the competitive auction process for renewable energy credits and the Alberta government to release further details regarding the phase-out of coal and expansion of renewable power and other incentive programs for renewable power projects.