

# Turning off the tap – Alberta’s Bill 12 could give Minister of Energy discretion to restrict oil and gas exports

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On April 16, 2018, the Legislative Assembly of Alberta introduced Bill 12 – *Preserving Canada’s Economic Prosperity Act* (the *PCEPA*)<sup>[1]</sup>, marking the latest response by the Province of Alberta to confront the Province of British Columbia on its opposition to the Trans Mountain Expansion Project. The *PCEPA* would give the Alberta Minister of Energy (the Minister) the discretion to restrict exports of natural gas, crude oil, or refined fuels from Alberta if it determines it to be in the public interest of the province. Bill 12 passed first reading on April 16, 2018, but has yet to come into force.

## Background

On April 8, 2018, Kinder Morgan Canada Limited announced that it was suspending all non-essential activities and spending on the Trans Mountain Expansion Project, and referred to the continued actions in opposition by the Province of British Columbia as a major reason in its decision.<sup>[2]</sup> This announcement prompted reactions from federal and provincial governments, which culminated in a meeting between Prime Minister Justin Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier John Horgan on Sunday, April 15, 2018. After the meeting, Prime Minister Trudeau announced that the federal government would be introducing legislation to “reassert and reinforce” the federal government’s jurisdiction.<sup>[3]</sup>

The next day, Alberta tabled Bill 12. During her introduction, Alberta Minister of Energy, Margaret McCuaig-Boyd, stated that the legislation represented the next step in Alberta’s fight to gain better market access and value for its oil and gas resources, and is a crucial part of the province’s plan to defend Alberta’s workers, economy and progress on climate action.<sup>[4]</sup> In concrete terms, Minister McCuaig-Boyd said that delays to the Trans Mountain Expansion Project will cost the Canadian economy \$40 million a day.<sup>[5]</sup>

Shortly after the Alberta government’s announcement, Saskatchewan Premier Scott Moe stated that his government would introduce similar legislation to complement Alberta’s proposed scheme.<sup>[6]</sup>

On the same day that Bill 12 was introduced, British Columbia Attorney General David Eby stated that B.C. was prepared to sue the Alberta government for what it perceived as an unconstitutional piece of legislation. And on Tuesday, April 17, 2018, in the morning sitting of the B.C. Legislative Assembly, Premier John Horgan referred to Bill 12 as “provocative legislation with the sole, express purpose of hurting another jurisdiction.”<sup>[7]</sup>

Premier Horgan also cited a statement by Chris Bloomer, President and CEO of the Canadian Energy Pipeline Association, who voiced concerns that the measures in Bill 12 “could have longer-term, unintended consequences for industry and the public at-large.”<sup>[8]</sup>

Alberta Premier Rachel Notley stated that the legislation won't be used immediately, and hopes that it won't have to be used at all.<sup>[9]</sup> At present, British Columbia has not yet taken any formal steps regarding Bill 12, but has stated that it is examining Alberta's legislation closely.

## The proposed export licensing scheme under the *PCEPA*

Under the *PCEPA*, the Minister can require an oil and gas exporter to obtain a licence before shipping oil, gas, or refined fuels outside of the province, whether by truck, rail, or pipeline. For each exporter, the Minister must determine whether it is in the public interest of Alberta to impose a licensing requirement, having regard to (a) whether adequate pipeline capacity exists to maximize the return on Alberta's oil and bitumen, (b) whether adequate supplies of oil, gas, and refined fuels will be available for Alberta's needs, and (c) any other matter considered relevant by the Minister. Even after issuing an export licence, the Minister may suspend, revoke, or amend the licence based on the same public interest factors.

The Minister may also impose any terms and conditions on a licence that it considers to be in the public interest, such as at what point the licensee may export from, the method of export, the maximum quantity or daily quantities of exports, the term of the licence, and the conditions under which exports may be diverted, reduced, or interrupted.

The *PCEPA* sets steep penalties for exporters who fail to comply with the licensing scheme or the conditions of their licence. Corporations could be subject to a fine of up to \$10,000,000 per day for each day that their offence continues, while for individuals that amount is \$1,000,000 per day. Notably, the *PCEPA* also creates personal liability for a corporation's officers, directors or agents who authorized or participated in the commission of an offence.

Additionally, the Minister may order the operator of a pipeline, railway or commercial vehicle to cease transporting oil, gas or refined fuels on behalf of an offending exporter.

## Potential economic impacts of shutting off oil and gas exports

The potential economic impact of a shutdown in oil and gas exports from Alberta to British Columbia is not immediately clear. Gas price forecasters have estimated that closing off all crude oil and refined product flows through the existing Trans Mountain Pipeline could result in a temporary price spike of between 20 to 50 cents per litre in B.C.'s Lower Mainland.<sup>[10]</sup> However, other forecasters have cautioned that Alberta's shipments could largely be substituted by international imports, as the Lower Mainland has access to both a port and a refining complex.<sup>[11]</sup> Further, forecasters have warned that Alberta itself could face significant economic consequences by restricting shipments to one of its largest customers.

## Conclusion

As Bill 12 has only passed a first reading, it is not clear when, or if, it will come into force. Further, upon passage, the Government of Alberta may be hesitant to exercise its powers under the *PCEPA* given the potential economic and political consequences in doing so, along with potential constitutional challenges from B.C.

However, as the *PCEPA* represents a high-publicity and high-leverage way to coerce B.C. to withdraw its opposition to the Trans Mountain Expansion Project, it will be important to follow developments in the Bill over the coming days as the impasse continues.

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[1] 2018 Bill 12, 4<sup>th</sup> Session, 29<sup>th</sup> Legislature, 67 Elizabeth II [PDF]

[2] Kinder Morgan Canada Limited (2018), "Kinder Morgan Canada Limited Suspends Non-Essential Spending on Trans Mountain Expansion Project", online

[3] The Canadian Press, Published on The National Post, "Trudeau promises money, legislation to 'remove the uncertainty' and make Trans Mountain happen", Apr 15, 2018, online

[4] Alberta Hansard, Legislative Assembly of Alberta, Afternoon Sitting, April 16, 2018, Fourth Session, 29th Legislature at 547 [PDF]

[5] CBC News, "Bill 12 a necessary tool to get Trans Mountain built, says Alberta energy minister", Apr 17, 2018, online

[6] Adam Hunter, CBC News, "Legislation limiting Sask. energy exports to B.C. coming within days, says Premier Scott Moe", Apr 16, 2018, online

[7] Kendra Mangione, CTV Vancouver, "B.C. threatens to sue Alberta over bill that could drive up gas prices", Apr 16, 2018, online

BC Hansard, Debates of the Legislative Assembly, April 17, 2018, Morning Sitting, Third Session, 41st Parliament (2018)

[8] Holding Statement by Chris Bloomer, Canadian Energy Pipeline Association, Apr 16, 2018 [PDF]

[9] Lucie Edwardson, CBC News, "Notley's Bill 12 'shows bold leadership,' say Alberta oil and gas producers", Apr 17, 2018, online

[10] Geoffrey Morgan, Financial Post, "Filling up a car in B.C. could cost \$120 if Alberta cuts off oil supplies amid Trans Mountain fallout", Apr 12, 2018, online

[11] Nelson Bennett, Mining.com, "The big squeeze: pain ahead if Alberta cuts oil flow to BC", Mar 20, 2018, online