

**BILL S-3: AN ACT TO AMEND
THE ENERGY EFFICIENCY ACT**

Sam N.K. Banks
Industry, Infrastructure and Resources Division

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LEGISLATIVE HISTORY OF BILL S-3

HOUSE OF COMMONS

Bill Stage	Date
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First Reading: 24 March 2009
Second Reading: 2 April 2009
Committee Report: 29 April 2009
Report Stage: 6 May 2009
Third Reading: 7 May 2009

SENATE

Bill Stage	Date
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Report Stage:
Third Reading: 12 March 2009

Royal Assent: 14 May 2009

Statutes of Canada 2009, c. 8

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

Legislative history by Michel Bédard

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BACKGROUND

The *Energy Efficiency Act*, which was proclaimed in 1992, regulates the energy use standards of many imported and interprovincially traded energy-using products. The Act also provides for the labelling of energy-using products and the collection of data on energy use.

Under the Act, energy-use labels must be attached to certain energy-using products, such as clothes dryers, clothes washers, integrated over/under washer-dryers, dishwashers, electric ranges, freezers, refrigerators and combination refrigerator-freezers, and room air conditioners before they can be sold.

Bill S-3 was introduced in the Senate and given first reading on 29 January 2009. It is identical to Bill S-4, which was introduced in the 2nd Session of the 39th Parliament. That bill died on the *Order Paper* with the dissolution of the 39th Parliament, and it was not re-introduced in the 1st session of the 40th Parliament.

This bill seeks to amend the *Energy Efficiency Act* to establish the power to regulate energy efficiency standards for classes of products that affect energy consumption and to enhance labelling requirements for consumer and commercial products. Under the current Act, the government must regulate product by product; the amendments in Bill S-3 provide the ability to regulate “classes of products,” which would allow the government to address in one regulation all products that use energy or affect power consumption. This is an expansion of the Act’s original regulatory reach.

* 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.

This Legislative Summary presents, with a few exceptions, material that appeared in a summary prepared for an earlier iteration of this bill by Lynne Myers, formerly of the Library of Parliament, and Sam N.K. Banks.

Also notable among the energy efficiency measures provided for in the bill are standards to regulate the amount of standby power consumed by products when they are not in use. When the Act was proclaimed in 1992, “standby mode” had not been generally recognized as a function that often consumes large amounts of energy, and it was not dealt with in the legislation. The amendments in Bill S-3 seek to address changes in products and energy efficiency standards since that time.

Bill S-3 contains substantially the same provisions included in Part II of Bill C-30, An Act to amend the Canadian Environmental Protection Act, 1999, the Energy Efficiency Act and the Motor Vehicle Fuel Consumption Standards Act (Canada’s Clean Air Act), introduced in the 1st Session of the 39th Parliament. That bill was amended and passed by a Legislative Committee and was at report stage and second reading in the House of Commons when it died on the *Order Paper* as a result of the prorogation of Parliament on 14 September 2007.

According to a government press release, this bill will allow the government to “prescribe standards not only for more products that use energy, but also products, such as thermostats, that affect energy use.”⁽¹⁾ Other amendments to the Act will require the Minister of Natural Resources to submit energy efficiency progress reports to Parliament every three years, comparing “the stringency and comprehensiveness of energy-efficiency standards in Canada with those in other North American jurisdictions.”⁽²⁾

DESCRIPTION AND ANALYSIS

A. Preamble

Bill S-3 creates a preamble to the *Energy Efficiency Act*, stating that “the Government of Canada is committed to ensuring sustained improvement in the efficient use of energy in all sectors of the Canadian economy.”

(1) Natural Resources Canada, News release, “Using Less, Living Better: Government of Canada Modernizes *Energy Efficiency Act*,” 3 June 2008, <http://www.nrcan-rncan.gc.ca/media/newcom/2008/200839-eng.php>. Note that this news release refers to the bill in its earlier iteration as Bill S-4. The current Bill S-3 is identical to the previous Bill S-4; an updated news release on the current bill was unavailable at the time of publication of this Legislative Summary.

(2) Ibid.

B. Clause 1 – Interpretation

Clause 1 adds a new section 2.1 to the interpretation part of the Act. This clause is intended to provide “greater certainty” by adding a precise definition of the word “class” as that word is used in the Act. A “class” of energy-using products may be defined by common energy-consuming characteristics, the intended use of the products, or the conditions under which the products are normally used.

C. Clause 2 – Interprovincial Trade and Importation

In the current *Energy Efficiency Act*, section 4(1)(a) prohibits dealers from selling, leasing or shipping an energy-using product “from the province in which it was manufactured to another province” without meeting certain conditions. Clause 2 amends that section by replacing the quoted phrase with “from one province to another province.” In addition, section 4(1)(b) of the current Act, which requires products or their packages to be labelled “in the prescribed form and manner” is amended to require labelling “in accordance with the regulations.”

D. Clause 3 – Information Provided by Dealers

Clause 3 amends section 5 of the Act, which sets out the information that must be provided by dealers who ship or import energy-using products. Under the current subsection 5(1), dealers must “file” information with the Minister in “a report setting out prescribed information respecting the energy efficiency of those products.” Bill S-3 amends this wording to require that a dealer “provide” the Minister with the information, and adds a requirement for information on the energy efficiency, shipment and importation of products.

Similar technical changes (from “file a report” to “provide prescribed information”) are proposed for subsections 5(2)(a) and (b), which provide exceptions to the information set out in subsection 5(1). In addition, this clause allows in certain circumstances for an exemption from the requirement to provide information related to the energy efficiency of energy-using products, while leaving in place the requirement for shipment and importation information. Clause 3 states that information does not have to be provided if the Minister is satisfied that it has been provided previously, or that information has been provided on comparable products that differ from the products in question “only in a manner that does not *relate to* energy efficiency.” The existing Act uses the phrase “does not *affect their* energy efficiency” (emphasis added).

E. Clause 4 – Retention of Documents and Records

Clause 4 makes several technical wording changes dealing with the records and documents that dealers must keep. In the current section 7, the documents and records must “enable” the Minister to verify the accuracy and completeness of the information. Under this bill, they must be “sufficient” for the Minister to do the verification.

F. Clause 5 – Regulations

Clause 5 replaces section 20(1)(a) of the Act, which sets out the regulatory powers under the Act. Currently, the Governor in Council may make regulations to prescribe as an energy-using product any manufactured product designed to operate using electricity, oil, natural gas or any other form or source of energy, or to be used as a door or window system. Clause 5 extends that regulatory authority to cover any class of manufactured products. It also removes the reference to door and window systems and replaces those words with “or that affects or controls energy consumption.” These changes broaden the range of products that may be regulated under the Act.

Subsection 20(1)(b) of the English version of the Act is amended by removing the word “prescribed” before “classes of energy-using products” to bring it into accordance with the wording in the French version of the Act.

Clause 5 also simplifies the language, while broadening the regulatory authority of the Governor in Council, by amending subsection 20(1)(c). At present, this subsection permits the making of regulations governing the form and manner of labelling energy-using products or prescribed classes of products, or their packages, with respect to their energy efficiency. Clause 5 states simply that regulations may be made “respecting the labelling of energy-using products or their packages, or classes of energy-using products or their packages.” The restriction that the labelling is “with respect to their energy efficiency” is removed.

G. Clause 6 – Reporting Requirements

A new clause 6 requires that the Minister compare Canadian energy efficiency standards with those of the United States and Mexico every three years. This is in addition to the annual report to Parliament the Minister must make under the existing section 36 of the Act. The purpose of the comparison is to demonstrate the extent to which the stringency of Canadian standards matches that of the other jurisdictions.

H. Clause 7 – Comparison Requirements

Clause 7 replaces the existing section 37 with a new section 37. Within four years of the day on which this section comes into force, the Minister must, in the report referred to in the previous sections, demonstrate the extent to which energy efficiency standards have been prescribed under the Act “for all energy-using products whose use has a significant impact on energy consumption in Canada.”

I. Coming into Force

Clause 8 states that the Act will come into force on a day to be fixed by order of the Governor in Council.

COMMENTARY

According to government information, the amendments proposed in this bill are part of the government’s overall strategy to address climate change: a government backgrounder states that improvements to energy efficiency can help control energy costs as well as reduce “emissions of greenhouse gases directly as less fuel is burned by products such as furnaces.”⁽³⁾

This strategy began in October 2006, when the government published a notice of intent to regulate air emissions.⁽⁴⁾ Among the provisions in the notice are certain commitments to make amendments to energy efficiency regulations under the *Energy Efficiency Act*. The intent of these amendments is to broaden the scope of the Act to cover additional products and applications and “provide a sounder basis for enforcement and labelling provisions.”⁽⁵⁾

(3) Natural Resources Canada, Backgrounder 2008/39(a), “Amending Canada’s *Energy Efficiency Act*,” Ottawa, 3 June 2008, <http://www.nrcan-rncan.gc.ca/media/newcom/2008/200839a-eng.php>. Note that this backgrounder refers to the bill in its earlier iteration as Bill S-4. The current Bill S-3 is identical to the previous Bill S-4; an updated backgrounder on the current bill was unavailable at the time of publication of this Legislative Summary.

(4) *The Canada Gazette*, Part I, Vol. 140, No. 1, 21 October 2006, “Notice of intent to develop and implement regulations and other measures to reduce air emissions,” p. 3351, <http://canadagazette.gc.ca/partI/2006/20061021/pdf/g1-14042.pdf>.

(5) *Ibid.*, p. 3357.

The notice of intent was followed in April 2007 by the Regulatory Framework for Air Emissions,⁽⁶⁾ which stated that work had commenced on a series of amendments to the Energy Efficiency Regulations. The Framework also set out a proposed timeframe for the pre-publication of these amendments. Among the industrial and consumer products and provisions for which new or additional standards are to be regulated are the following:

- commercial clothes washers
- dishwashers
- incandescent and fluorescent lamps
- standby power requirements for consumer electronics
- battery chargers
- satellite set top boxes

Notable among these is the proposal to regulate standards for standby power.

Many electrical devices – from televisions, DVD players and stereos to microwave ovens – cannot be switched off completely without being unplugged. Unplugging these, in turn, may not be desirable because doing so could affect the product's memory or any programming that has been entered into the device. Therefore, when plugged in and operating on standby mode, these products continue to draw power 24 hours a day.

This so-called “phantom load” can be significant. For example, a television set that is energy efficient can use 1 watt or less of power in standby mode. An older standard television uses an average of 12 watts.⁽⁷⁾ While this may not seem like much when viewed in terms of individual units, multiplied by the many electrical devices found in Canadian households, the power consumed by appliances supposedly turned off is amplified:

The Office of Energy Efficiency at Natural Resources Canada estimates that if all these products consumed a minimal amount of power in standby mode, a typical household could cut its electricity cost by at least \$35 a year and, across the country, enough electricity would be saved to power more than 300,000 homes.⁽⁸⁾

(6) Environment Canada, *Regulatory Framework for Air Emissions*, Ottawa, 2007, http://www.ec.gc.ca/doc/media/m_124/report_eng.pdf.

(7) Natural Resources Canada, Office of Energy Efficiency, *ENERGY STAR Purchasing Guide*, 2005, <http://oee.nrcan.gc.ca/Publications/equipment/M27-01-2227E.cfm>.

(8) Natural Resources Canada (3 June 2008). Note that this backgrounder refers to the bill in its earlier iteration as Bill S-4. The current Bill S-3 is identical to the previous Bill S-4; an updated backgrounder on the current bill was unavailable at the time of publication of this Legislative Summary.

A. Reaction to Bill S-3

Bill S-3 has not attracted much media attention, and reported reaction to it has been somewhat muted. For example:

Industry greeted the proposed regulations with a shrug. A spokeswoman from Sony Canada said they would have little bearing on the company's line of consumer electronics. "All Sony televisions consume less than one watt of power in standby mode, and Sony is continually developing innovative technologies that improve the energy efficiency of our products," Candace Haymen said in an e-mail.

Environmental groups were likewise tepid in their response. The World Wildlife Fund's Julia Langer says Canada lags far behind most countries in the Organization for Economic Co-operation and Development in energy efficiency. She says the government needs to impose tougher restrictions on industry rather than "housekeeping measures" if it's serious about saving energy. "It's not that it's bad, it's just that we're getting impatient for actual regulatory initiatives that are going to ban inefficient products," she said.⁽⁹⁾

The broad nature of the regulatory powers sought in the bill have also been noted. The bill would amend the Act to allow for the regulation of products that use energy or *affect energy consumption* (emphasis added). This could eventually lead to regulations restricting water flowing through appliances and fixtures such as dishwashers, shower heads and toilets by mandating low-flow fixtures, since these affect energy use.⁽¹⁰⁾

(9) Steve Rennie, "Feds to limit power consumed by electronics in standby mode," *The Canadian Press*, 3 June 2008. Note that this article refers to the bill in its earlier iteration as Bill S-4. The current Bill S-3 is identical to the previous Bill S-4.

(10) Steve Rennie, "Ottawa mulls ways to plug water drain; Regulations considered on limiting flow through toilets, other fixtures," *Halifax Chronicle Herald*, 9 June 2008, p. A4.