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Bill C-14: ***An Act to amend the Electricity and*** ***Gas Inspection Act and the Weights and Measures Act***

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Sam N. K. Banks
Daniel J. Shaw

Industry, Infrastructure and Resources Division
Parliamentary Information and Research Service

Legislative Summary of Bill C-14

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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.

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

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LEGISLATIVE SUMMARY OF BILL C-14: AN ACT TO AMEND THE ELECTRICITY AND GAS INSPECTION ACT AND THE WEIGHTS AND MEASURES ACT

1 BACKGROUND

Bill C-14, An Act to amend the Electricity and Gas Inspection Act and the Weights and Measures Act (short title: Fairness at the Pumps Act) was tabled in the House of Commons by the Minister of Industry, the Honourable Tony Clement. The bill received first reading on 15 April 2010. **Second reading occurred on 13 May 2010, after which the bill was referred to the House of Commons Standing Committee on Industry, Science and Technology. The committee completed its review of the bill, which it amended, on 19 October 2010. The bill received third reading and was referred to the Senate on 26 October 2010.**

The aim of the bill is to amend certain provisions of the *Electricity and Gas Inspection Act* and the *Weights and Measures Act* to provide greater protection for consumers from inaccurate measurements at gas pumps and other measuring devices. The bill seeks to achieve this objective by:

- introducing administrative monetary penalties (AMPs) for contraventions under the Acts;
- increasing maximum fines for offences;
- introducing a new fine for repeated offences;
- introducing mandatory inspection frequencies for measuring devices; and
- proposing the appointment of non-government inspectors, to be trained and certified by Measurement Canada to conduct mandatory measuring device inspections.¹

Most notable among these amendments is the introduction of AMPs into the enforcement schemes for both Acts. AMPs are an additional means of ensuring compliance with Acts. They allow for a more flexible and proportionate response to particular instances of non-compliance. Violations subject to AMPs will be classified by regulations as “minor,” “serious” or “very serious,” with specified maximum penalties for each level.

Bill C-14 proposes to increase the accountability of retailers for the accuracy of their measuring devices by requiring them to have their devices inspected at regular intervals. Mandatory inspection frequencies, which are common in the majority of industrialized nations (for example, France, Germany and most US states), are proposed for measuring devices used in eight trade sectors: (1) retail petroleum, (2) downstream (or wholesale) petroleum, (3) dairy, (4) retail food, (5) fishing, (6) logging, (7) grain and field crops and (8) mining. Other sectors could be added to this list in the future, depending on the results of stakeholder consultations.

1.1 THE ACTS BEING AMENDED

1.1.1 THE *ELECTRICITY AND GAS INSPECTION ACT*

The *Electricity and Gas Inspection Act* and regulations govern the purchase and sale of electricity and natural gas, and define units for energy measurement. The Act requires that only approved and verified meters may be used to measure the amount of electricity or natural gas consumed, and that the accuracy of electricity and natural gas meters must be verified in accordance with the time periods set out in the Act's regulations. The Act allows the accreditation of independent "meter verifiers" to verify the accuracy of electricity and natural gas meters on behalf of Measurement Canada. Measurement Canada is the agency responsible for ensuring devices used in trade measurement are accurate.²

1.1.2 THE *WEIGHTS AND MEASURES ACT*

The *Weights and Measures Act* and regulations govern the use of measured products and services for trade. This Act requires that only approved and certified measuring devices may be used in measurement-based financial transactions; that owners and operators ensure their measuring devices function accurately and are not used in a fraudulent manner; and that the quantities declared for products bought and sold on the basis of measurement be accurate within prescribed limits. The regulations specify the accuracy requirements for measuring devices, commodities, services and measurement standards, as well as the requirements for measuring device installation and use, and the fees and charges associated with measuring device approval and certification.³

As it is anticipated that the Act, as amended, will require an increase in the number of mandatory inspections of measuring devices, Bill C-14 proposes to give the Minister of Industry the power to appoint non-government inspectors. These inspectors will be trained and certified by Measurement Canada to conduct mandatory measuring device inspections.

2 DESCRIPTION AND ANALYSIS

2.1 AMENDMENTS TO THE *ELECTRICITY AND GAS INSPECTION ACT* (CLAUSES 2 TO 10)

Clauses 2 through 10 of the bill address amendments to the *Electricity and Gas Inspection Act*.

Clause 2 amends the long title of the Act from "An Act relating to the inspection of electric and gas meters and supplies" to "An Act relating to the inspection of electricity and gas meters and supplies." Similarly, the definition of "meter" is amended by clause 3 to reflect a change from "electric" to "electricity."

Clause 4 amends section 16(1) of the Act concerning the liability of an owner of a verified meter. In addition to ensuring meters are kept in good repair, owners are responsible for paying any fees required by the Act, such as those that may be charged for mandatory inspections.

2.1.1 ADMINISTRATIVE MONETARY PENALTIES (CLAUSE 6)

Clause 6 of the bill proposes a new section of the Act dealing with compliance matters. Under the heading “Administrative Monetary Penalties,” the clause proposes a new power in section 29.1 for the Governor in Council to make regulations designating that violations of specified provisions of the Act may be treated as contraventions which will be subject to administrative monetary penalties.

Among other things, the Governor in Council will be given the power to make regulations establishing a range of penalties for violations, to establish criteria to be considered in determining the amount of the penalty to be paid, and to classify each violation as “minor,” “serious” or “very serious.”

The maximum penalty for a violation under these provisions will be \$2,000. Notably, the Act provides for a lower penalty amount if that penalty is paid within a specified time.

Proposed new section 29.11 states that the purpose of a penalty is to promote compliance with the Act and not to punish. This point is further emphasized in section 29.19, which advises that a violation is not an offence and, accordingly, that section 126 of the *Criminal Code* does not apply. (The *Criminal Code* provides that it is an indictable offence, punishable by up to two years’ imprisonment, to disobey an Act of Parliament.)

Section 29.12 sets out the requirements for a notice of violation. These requirements include the name of the person believed to have committed the violation, the acts or omissions that constitute the violation, and the penalty the person is liable to pay. The notice also sets out a lesser penalty amount that could be paid in complete satisfaction of the penalty if it is paid within a time specified in the notice. It also states that the notice must summarize, in plain language, the rights and obligations of the person receiving the notice. These rights include requesting a review of the acts or omissions that comprise the alleged violation, and the procedure for requesting a review.

Details concerning penalties are set out in section 29.13. In paying a penalty, a person named in a notice is deemed to have committed the violation, and further proceedings are ended. Alternatively, a person can request a review by the Minister of Industry (“the Minister”) of the acts or omissions that constitute the alleged violation, or of the amount of the penalty. Further, if the penalty is \$1,000 or more, a person may request to enter into a compliance agreement with the Minister.

2.1.2 COMPLIANCE AGREEMENTS (CLAUSE 6)

Compliance agreements are addressed in section 29.14. The Minister may enter into a compliance agreement with a person upon that person's request, under conditions the Minister considers satisfactory. These conditions may include a requirement that the person provide security to ensure he or she complies with the agreement; as well, they may reduce the penalty amount in part or in whole. If the person complies with the agreement, the Minister shall provide him or her with a notice confirming the compliance, and return any security the person had provided. If the person fails to comply with the agreement, he or she is to be given a notice of default, and will be liable to pay twice the amount of the penalty set out in the notice of violation, or will forfeit any security given under the compliance agreement. Paying the amount set out in the notice of default satisfies the money owing and will terminate the compliance agreement.

The Minister may decline to enter into a compliance agreement with a person. In that case, the person is liable to pay the amount set out in the notice. If the person pays the amount, he or she is deemed to have committed the violation and proceedings against him or her are ended. If the amount is not paid, the person is deemed to have committed the violation.

2.1.3 REVIEW BY THE MINISTER (CLAUSE 6)

As an alternative to paying a penalty amount or entering into a compliance agreement, a person may request a review by the Minister. In this case, the Minister will review the acts or omissions to see whether they constitute the alleged violation and may also make a determination as to whether the penalty amount was made in accordance with the regulations. In determining whether a person has committed a violation, the Minister shall do so on a balance of probabilities. Where a violation is found to have been committed, the Minister may correct the amount of the penalty and so notify the person named in the notice of violation. The person named in the notice is then liable to pay the amount set out in the Minister's decision (section 29.16).

All monies owed through notices of violation, compliance agreements, notices of default, amounts set by the Minister's review, and reasonable expenses incurred in recovering amounts owed are debts to the Crown. These debts may be recovered in Federal Court, subject to a five-year limitation period (section 29.17).

Sections 29.19 through 29.24 address rules of law about violations. These sections provide that:

- a person cannot be found liable for a violation if that person can establish that he or she exercised due diligence to prevent the commission of the violation;
- the Minister shall determine whether a violation has been committed on a balance of probabilities;
- corporate officers who direct, authorize, assent to, or acquiesce or participate in the commission of a violation are parties to and liable for the violation, regardless of whether or not they personally committed it;

- an employer is vicariously liable for a violation committed by an employee acting in the course of his or her employment; and
- a violation that is continued on more than one day constitutes a separate violation for each day it is continued.

Bill C-14 therefore makes an employer liable for a violation committed by an employee acting in the course of his or her employment. It is unclear, however, whether this or any other provision in Bill C-14 would capture a lessor – that is, make him or her liable – when the lessee has committed a violation. Although the *Weights and Measures Act*, in section 2, defines a dealer as “any person who in the course of that person’s business sells, consigns, imports, leases or lends devices,” it would appear that neither the *Electricity and Gas Inspection Act* nor Bill C-14 addresses leases (and, hence, a lessor or lessee).

2.1.4 OTHER PROVISIONS (CLAUSES 6 TO 10)

Proceedings alleging a violation must be brought within six months after the day on which an inspector becomes aware of the acts or omissions that constitute the alleged violation (section 29.26).

The Minister may make public the names and business addresses of people who have committed violations or entered into compliance agreements, together with the penalty amount payable, if applicable (section 29.28).

Clause 7 amends section 32 of the Act, which addresses the offence of theft of a stamp, seal, label, tag or marker for meters. The amendment increases the maximum fine for violations of this section to \$10,000, up from \$1,000.

This clause also adds a new section addressing subsequent or repeat offences under this section. The maximum penalty upon summary conviction for theft of a stamp, seal, label, tag or marker for meters will be a \$20,000 fine, or six months’ imprisonment, or both; if convicted upon indictment, the maximum penalty will be two years’ imprisonment.

Section 33 is amended by clause 8. This clause increases the penalty for anyone convicted of an offence listed in that section. Such offences include obstructing or hindering the examination of a meter and verifying a meter that is not in compliance with the Act. If a person is convicted on summary conviction, the maximum fine will be \$10,000 (increased from \$1,000); if convicted upon indictment, the maximum fine will be \$25,000 (increased from \$5,000).

A new section establishes the penalty for subsequent offences under this section. Upon summary conviction for a second or subsequent offence, the maximum fine will be \$20,000; if convicted upon indictment, the maximum fine will be \$50,000.

Clause 9 amends section 34 of the Act and increases the penalty for general offences under the Act for which no liability for a punishment is specifically provided. This amendment raises the maximum fine from \$1,000 to \$10,000 for a first offence, as well as setting a maximum fine of \$20,000 for subsequent offences.

The defence of due diligence is maintained in clause 10. This defence holds that no one may be convicted of an offence under this Act, except for the contraventions set out in sections 30(b) to (e) or 32(1), if the person establishes that he or she had exercised due diligence to prevent the committing of the offence.

2.2 AMENDMENTS TO THE *WEIGHTS AND MEASURES ACT* (CLAUSES 11 TO 29)

Clauses 11 through 29 amend provisions of the *Weights and Measures Act*.

2.2.1 INSPECTORS (CLAUSES 11 AND 14 TO 18)

Clause 11 of the bill amends the definition of the term “inspector” (in section 2 of the Act) to include those designated under new section 16.1(1) to verify compliance with the Act.

A further amendment with respect to inspectors is found in clause 14, addressing regulations “respecting the manner in which inspectors shall carry out their functions under this Act.” The term “functions” replaces the term “duties.” A new section 10(1)(e.1) is also added, permitting the setting of prescribed periods in which measuring devices must be examined (clause 14(2)). Given that there is currently no fixed period within which measuring devices must be inspected or examined, this amendment would appear to make the timing of examinations less arbitrary.

Clause 15 builds on clause 14. It amends sections 15 and 16 of the Act by requiring the inspection of devices within the period prescribed by regulation. The Minister of Industry may, however, grant an extension of up to one year for such an inspection.

A new power is given to the Minister to designate non-government inspectors who will be trained and certified by Measurement Canada to conduct mandatory measuring device inspections (clause 16). However, clause 16 also limits the exercise of powers set out in sections 17 and 18, 19(3), 21 and 22.11(1) to employees in the federal public administration.

The House of Commons Standing Committee on Industry, Science and Technology amended clause 16 of the bill by adding new section 16.1(1.1) to the Act. It states:

The Minister shall ensure that, for each particular sector, all persons designated under subsection (1) are trained and qualified in the same manner and that all examinations made by these persons are conducted consistently.

This amendment resulted from a committee discussion about the importance of ensuring that inspectors in all relevant sectors have training and qualifications and use inspection methods appropriate for the sector. Various inspection methods apply to various types of instruments. Persons designated to inspect devices used to measure food are trained and qualified to conduct inspections in a consistent manner in that particular sector, and persons designated as fuel inspectors are trained and qualified to conduct inspections consistently in that sector.

Sections 17 and 18 of the Act, concerning the powers of inspectors, are replaced with new text as set out in clause 16. This text sets out, in general terms, the power to enter a premise or any other place that the inspector has reasonable grounds to believe houses a device, commodity used in trade, or labelling material, and to inspect those items. Inspectors are to be given a certificate of their designation as inspectors, and must provide it upon entering a place to anyone requesting it.

Unless the occupant consents, an inspector may not enter a dwelling place without a warrant issued under the Act. It is worth noting that this is not a new power but a restatement of an existing power under the Act. New section 17.1 sets out the circumstances under which a warrant may be issued.

Upon examination of a device, an inspector must give the person in possession of the device a certificate indicating whether the device meets the requirements of the Act. If the device does meet the requirements, the inspector must mark the device as prescribed, and attach the seals that are intended to indicate any adjustments to the device. If the seals are electronic, the inspector is to collect the information necessary to detect any adjustments to the device.

2.2.2 ADMINISTRATIVE MONETARY PENALTIES (CLAUSE 19)

Bill C-14 amends the *Weights and Measures Act* to introduce the same provisions with respect to AMPs as are made to the *Electricity and Gas Inspection Act*. The text of those provisions is identical except for the internal references to sections of the respective Acts. For example, where the proposed AMP provisions affect sections 30(b) to (e) and 32(1) of the *Electricity and Gas Inspection Act*, the same AMP provisions affect sections 29(b), 30(1), 31(2) and 32 of the *Weights and Measures Act*.

The introduction of AMPs for contraventions of the *Weights and Measures Act* will allow for a graduated enforcement strategy proportionate to particular instances of non-compliance. AMPs could be used for relatively minor offences, and prosecutions for more serious or repeat offences. Violations subject to AMPs will be classified by regulations as “minor,” “serious” or “very serious,” with specified maximum penalties for each level.

As with the amendments to the *Electricity and Gas Inspection Act*, the maximum penalty for a violation under provisions subject to AMPs will be \$2,000, with a lower penalty amount if the penalty is paid within a specified time.

As well, a person alleged to have committed a violation may enter into a compliance agreement with the Minister (new section 22.13).

A person may also request a review by the Minister of the acts or omissions that constitute the alleged offence or penalty (section 22.12). As with similar provisions in the *Electricity and Gas Inspection Act*, the Minister may review both whether a violation has been made, and the penalty for a violation. In determining whether a person has committed a violation, the Minister shall do so on a balance of probabilities (new section 22.2).

2.2.3 OFFENCES AND FINES (CLAUSES 22 TO 24)

Clause 22 replaces section 25 of the Act. This section currently states that it is an offence for an inspector to mark or certify a device as inspected without inspecting or certifying it. Under the proposed amendment, this section is replaced with new text stating that it is an offence for traders to fail to have devices examined within the prescribed time.

Clause 23 amends the Act to state that it is an offence to knowingly make a false or misleading statement “in connection with any matter under this Act” to an inspector carrying out his or her duties. This amendment appears to broaden the scope of section 31, as it currently states that it is an offence to make a false or misleading statement to an inspector engaged in carrying out his or her duties and functions.

Clause 24 increases the penalties for offences as set out in section 35 of the Act. For a first offence, if a person is convicted on summary conviction, the maximum fine is \$10,000 (increased from \$1,000); if convicted upon indictment, the maximum fine is \$25,000 (increased from \$5,000).

This clause also adds a new section 35(1.1) addressing subsequent or repeat offences. Upon summary conviction, the maximum penalty is a fine of \$20,000, or six months’ imprisonment, or both; if convicted upon indictment, the maximum penalty is a fine of \$50,000, or two years’ imprisonment, or both.

This clause also increases the penalties for general offences under the Act. These are offences under the Act or its regulations for which no liability for a punishment is otherwise provided. This amendment raises the maximum fine from \$1,000 to \$10,000 for a first offence, as well as setting a maximum fine of \$20,000 for subsequent offences.

2.2.4 DEFENCE (CLAUSE 25)

Clause 25 maintains the defence of due diligence under the Act. That is, no one may be convicted of an offence under this Act, except for those set out in sections 29(b), 30(1), 31(2) or 32, if the person establishes that he or she had exercised due diligence to prevent the committing of the offence. The excepted provisions address offences that appear to require a deliberate effort to commit, such as failing to report the alteration, adjustment or repair of devices, removing or breaking marks or seals, and making misleading statements.

2.2.5 SEIZURE, DETENTION AND FORFEITURE (CLAUSE 28)

Clause 28 amends the seizure, detention and forfeiture provisions of the *Weights and Measures Act* in sections 39 to 41. Currently, section 39(1) of the Act allows for the seizure, examination and detention of a device, commodity, or packaging or labelling material where an inspector believes, on reasonable grounds, that a provision of the Act has been contravened.

This section is replaced with text stating that if an inspector seizes and detains anything referred to in section 17(1)(c), such as books, documents, or information storage devices, the inspector must, at the request of the person whose item is being seized, allow the person to examine the seized item and, if possible, provide that person with a sample of it. These amendments also update some of the language in the section. For example, where the text formerly read “any device, commodity, or other thing seized,” it is amended to read “a seized thing.” Similarly, the term “proceedings” is amended to “prosecution,” and “pursuant to” is adjusted to “under.”

2.2.6 CONTRAVENTION VERSUS OFFENCE (CLAUSE 28)

It appears that clause 28 also makes substantive amendments to sections 39 and 40 of the Act.

Currently, the text in sections 39(3)(b)(ii) and 40(1) addresses proceedings or prosecutions instituted in respect of the “contravention” in relation to which the device has been seized. Bill C-14 amends not only the word “proceedings,” changing it to “prosecution,” but also the word “contravention,” which becomes “offence.”

This change appears to be significant since it may signal an intention to treat violations of the Act more punitively. There is a distinction between an offence and a contravention: a contravention is generally considered less severe than an offence. Moreover, under the *Contraventions Act*, a person convicted upon summary conviction of a contravention has not committed a criminal offence and does not have a criminal record; nor does a contravention constitute an offence for the purpose of section 63 of the *Criminal Records Act*. That said, the term “offence” appears throughout the *Weights and Measures Act* much more frequently than the term “contravention”; the altered text may therefore reflect an intent to bring greater consistency to the Act.

The committee amended the bill by adding clause 29.1. This clause provides for a review of the provisions and operations of the Act within five years of the legislation’s receiving Royal Assent. It also requires the Minister of Industry to table a report of the results of that review in Parliament. The purpose of this amendment is to provide a means to ascertain whether the objectives of the legislation are being met.

2.3 COMING INTO FORCE (CLAUSE 30)

The provisions of the bill will come into force on a day or days to be fixed by order of the Governor in Council.

3 COMMENTARY

Although the news release and background information provided by Industry Canada accompanying the tabling of the bill suggest it “proposes to improve consumer confidence in the accuracy of financial transactions that involve measurement,”⁴ it would appear the primary focus of this bill is on gas pumps. Indeed, its short title is the “Fairness at the Pumps Act.”

During committee review of the bill, concern was expressed that the bill's short title may not accurately reflect the entire reach and scope of the legislation, which applies across a wide range of measurement sectors. Moreover, officials from Measurement Canada advised the committee that compliance rates in most other sectors affected by the bill are lower than for the compliance rates at gas pumps.⁵ As a result, it was asserted that the title's emphasis on gasoline pumps incorrectly singles out the retail gasoline sector.

As a result of these committee discussions, an amendment was proposed to change the short title of the bill to the "Consumer Confidence in Measurements Act." A review of House of Commons practice and procedure reveals that a title "may be amended only if the bill has been so altered as to necessitate such an amendment."⁶ Upon consideration of procedure and the proposed amendment, the chair ruled that "there have been no amendments requiring a change to the bill's title and the amendment is therefore inadmissible."⁷

Bill C-14 has not attracted a great deal of media or stakeholder attention to date. Bruce Cran, President of the Consumers' Association of Canada, is supportive of the bill, referring to its announcement as "absolutely excellent."⁸ He further stated, "This has been going on for some years, this problem [of inaccurate measurements at gas pumps]. There was a reluctance on behalf of the [gas stations] ... they didn't care about this very much."⁹

Jane Savage, President and CEO of the Canadian Independent Petroleum Marketers Association, expressed support for efforts to enhance consumer confidence, but suggested the bill does not address a flawed pump-testing system that may be affected by cold temperatures.¹⁰

NOTES

1. Industry Canada, "[Government of Canada Takes Action to Ensure Fairness at the Gas Pumps](#)," News release, 15 April 2010.
2. Measurement Canada, "[About Us](#)," 10 November 2009.
3. Ibid.
4. Industry Canada (2010).
5. **House of Commons, Standing Committee on Industry, Science and Technology [INDU], *Minutes of Proceedings*, Meeting no. 24, 17 June 2010.**
6. **Audrey O'Brien and Marc Bosc, eds., *House of Commons Procedure and Practice*, 2nd ed., House of Commons, Ottawa, 2009, pp. 770–771.**
7. **INDU, *Minutes of Proceedings*, Meeting no. 38, 19 October 2010.**
8. Laura Stone, "Federal government boosts gas-pump fines," *Times Colonist* [Victoria], 16 April 2010, p. B2.
9. Ibid.
10. "Consumer group cheers, but others worry about flaws in system," *The Province* [Vancouver], 16 April 2010, p. A38.