



Legislative Summary

BILL S-243: AN ACT TO ENACT THE CLIMATE-ALIGNED FINANCE ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL S-243: AN ACT TO ENACT THE CLIMATE-ALIGNED FINANCE ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill S-243, An Act to enact the Climate-Aligned Finance Act and to make related amendments to other Acts (short title: Enacting Climate Commitments Act), was introduced in the Senate by Senator Rosa Galvez on 24 March 2022.¹ It passed second reading on 8 June 2023 and was referred to the Standing Senate Committee on Banking, Commerce and the Economy for study.

The bill consists of five parts:

- Part 1 enacts An Act to require certain financial and other federally regulated entities to mitigate and adapt to the impacts of climate change, with the short title Climate-Aligned Finance Act (CAFA).
- Part 2 introduces related amendments to the *Bank of Canada Act*,² the *Export Development Act*,³ the *Financial Administration Act*,⁴ the *Office of the Superintendent of Financial Institutions Act*,⁵ the *Public Sector Pension Investment Board Act*,⁶ the *Business Development Bank of Canada Act*,⁷ the *Canada Infrastructure Bank Act*⁸ and the *Canadian Net-Zero Emissions Accountability Act* (CNZEEA).⁹
- Part 3 proposes new review and reporting requirements in relation to CAFA for the Minister of Finance and other federal regulators.
- Part 4 provides amendments in relation to the Canada Pension Plan Investment Board.
- Part 5 sets out coming-into-force provisions.

The purpose of the bill is to align the activities of the financial sector with climate commitments through various measures. These measures include reporting requirements, the enforcement of targets with respect to climate commitments, additional capital adequacy requirements for banks, the appointment of persons with climate expertise to the boards of reporting entities and establishment of climate alignment as a superseding duty for directors, officers or administrators of reporting entities.

1.1 CANADA'S CLIMATE COMMITMENTS

Since the late 1980s, Canada has adopted several commitments, strategies and plans to reduce domestic greenhouse gas emissions to achieve global progress in mitigating climate change.¹⁰ Under the CNZEAA, Canada has set a goal of reducing emissions by 40% from 2005 levels by 2030 and to net zero by 2050. The CNZEAA states that net-zero emissions “means that anthropogenic emissions of greenhouse gases into the atmosphere are balanced by anthropogenic removals of greenhouse gases from the atmosphere over a specified period.”¹¹

Canada’s net-zero emissions by 2050 target was informed by the “global carbon budget” – a level of emissions that aligns with a given probability of limiting global temperature rise to 1.5°C or 2°C above the pre-industrial global average this century. These temperature goals were established under the 2015 *Paris Agreement*,¹² which Canada ratified in 2016.

Regarding carbon budgets, the Intergovernmental Panel on Climate Change explains that between 1850 and 2019, historical cumulative net carbon dioxide (CO₂) emissions were about 2,400 gigatonnes (1 gigatonne = 1,000,000,000 metric tons).¹³ Emissions continued to rise during the 2010–2019 period, with global net anthropogenic emissions of 59 gigatonnes of CO₂.¹⁴ Therefore, the “current central estimate of the remaining carbon budget from 2020 onwards for limiting warming to 1.5°C with a probability of 50% has been assessed as 500 [gigatonnes of CO₂], and as 1150 [gigatonnes of CO₂] for a probability of 67% for limiting warming to 2°C.”¹⁵

2 DESCRIPTION AND ANALYSIS

Bill S-243 consists of five parts and 22 clauses. Key provisions are described below.

2.1 PART 1: ENACTMENT OF THE CLIMATE-ALIGNED FINANCE ACT (CLAUSE 2)

Clause 2 of the bill enacts CAFA, which consists of six parts and 18 sections:

- Part 1 describes how an entity would be in alignment with climate commitments.
- Part 2 introduces reporting requirements with respect to climate commitments.
- Part 3 provides capital adequacy requirements for banks for climate-related risks.
- Part 4 sets out appointment requirements for selected boards of directors and the duties of directors, officers and administrators in relation to climate commitments.
- Part 5 includes enforcement provisions for the Superintendent of Financial Institutions (the Superintendent).

- Part 6 requires the Minister of Finance to prepare a financial products alignment action plan.

Section 2 of CAFA introduces definitions for relevant terms. Key definitions are as follows:

- “Climate commitments” for reporting entities means obligations set out in the *United Nations Framework Convention on Climate Change*,¹⁶ the *Paris Agreement* and the CNZEAA, among a number of other specific climate-related commitments. These other specific climate-related commitments include:
 - reducing greenhouse gas emissions in a manner that “respects the global carbon budget” and is consistent with limiting global temperature increase to 1.5°C over pre-industrial levels, with “no or low overshoot”;
 - avoiding new fossil fuel supply infrastructure and planning for a “fossil fuel-free future”;
 - improving “natural carbon sinks” like forest and peatland; and
 - improving climate adaptation capacity and resilience.
- “Global carbon budget” means an amount calculated based on the best available science and precaution and equal to the maximum cumulative emissions into the atmosphere above which there is no longer a high probability of limiting global temperature increase to 1.5°C above pre-industrial levels.
- “Federal financial institution” means a federally regulated financial institution, a federally regulated employee-sponsored pension plan, a federal public sector pension plan or a government entity such as the Bank of Canada, the Business Development Bank of Canada, the Canada Infrastructure Bank, the Canada Deposit Insurance Corporation, the Canada Mortgage and Housing Corporation, the Canadian Commercial Corporation, Export Development Canada (EDC), Farm Credit Canada, the Canada Development Investment Corporation, the Canada Pension Plan or the Canada Pension Plan Investment Board.
- “Reporting entity” means:
 - a federal financial institution listed above;
 - a corporation regulated under the *Canada Business Corporations Act*;¹⁷
 - a federal work, undertaking or business as defined in section 2 of the *Canada Labour Code*;¹⁸ or
 - an entity named in Schedule III of the *Financial Administration Act*, which lists federal parent Crown corporations.

Section 3(1) indicates that the purpose of CAFA is:

- to align the activities of reporting entities with the public interest objectives of achieving climate commitments; and
- to address systemic risks related to climate change.

Section 3(2) states that CAFA will achieve this purpose by limiting the risks that financial institutions pose to the climate and by limiting the financial risks that climate change poses to the Canadian financial system. It intends to do so by:

- setting baseline requirements to meet climate commitments;
- ensuring greater certainty and transparency with respect to entities' responsibilities;
- ensuring appropriate oversight and capital adequacy requirements;
- requiring directors, officers and administrators to align entities with climate commitments;
- promoting progress towards stabilizing the financial sector and the climate with respect to systemic risks associated with emissions-intensive activities; and
- ensuring climate expertise on certain boards and prohibiting certain conflicts of interest, and requiring the development of action plans, targets and progress reports for entities.

2.1.1 Part 1 of the Climate-Aligned Finance Act:
Alignment with Climate Commitments
(Section 4)

Section 4(1) indicates that an entity is considered to be in alignment with climate commitments if it:

- substantially contributes to realizing climate commitments;
- does not facilitate, further or financially facilitate another person or entity in a way that is inconsistent with climate commitments;
- does not cause, exacerbate or prolong vulnerabilities to the effects of climate change;
- refrains from land disturbance, including destruction or degradation of forests and peatland, that affects carbon sinks unless the project's or activity's end state will result in a positive climate change impact;
- produces overall positive or neutral climate change impacts; and
- does not undermine legal and other remedies available to redress climate harm or negative climate change impacts.

Section 4(2) further provides that an entity that is in alignment with climate commitments respects the rights of Indigenous peoples, does not cause significant harm to social and environmental obligations recognized by Canada and, in the context of its climate-related actions:

- takes into consideration vulnerable groups, communities and ecosystems, including ecosystem biodiversity;
- makes decisions based on equity and the best available science; and
- does not promote, foster or exacerbate food insecurity or inequalities in society.

2.1.2 Part 2 of the Climate-Aligned Finance Act: Reporting (Sections 5 to 8)

Part 2 describes the reporting requirements for entities under CAFA.

Section 5 provides relevant definitions, while section 6 sets out how a reporting entity should develop its plans and emission targets with the goal of aligning its actions with climate commitments. Section 6(6) provides additional information on emissions, targets and plans for federal financial institutions.

Section 7 states that no later than 60 days after the end of its financial year, a reporting entity must make available to the public a climate commitments alignment report, unless it can demonstrate it had no or negligible emissions in the preceding financial year.

Section 8 indicates that the Minister of Environment and Climate Change may develop and provide tools, forms or guidance for reporting entities to assist them in preparing their climate commitment alignment reports, plans or targets and may provide a definition of “negligible emissions” for the purposes of section 7.

2.1.3 Part 3 of the Climate-Aligned Finance Act: Capital Adequacy (Sections 9 and 10)

Section 9 requires the Superintendent to:

- develop guidelines for capital adequacy for banks that account for exposures and contributions to climate-related risks and include increased capital-risk weights for financing exposed to certain types of risk, such as fossil fuel activity, as well as a systemic climate risk-contribution capital surcharge and any other microprudential and macroprudential measures aimed at ensuring financial institutions are in alignment with climate commitments;¹⁹

- develop guidelines for funding requirements in respect of climate commitments for federally regulated financial institutions and employer-sponsored pension plans; and
- publish, no later than one year after the bill comes into force, the guidelines related to capital adequacy and, no later than six months after those guidelines are published, the guidelines for funding requirements.

Section 10 requires:

- the Minister of Finance and the President of the Treasury Board to study the guidelines; and
- the Minister of Finance to table a report, in both houses of Parliament and no later than six months after the guidelines are published by the Superintendent, that contains:
 - guidelines for adequate capital, budgets or funding in respect of climate commitments for any entity that is subject to the *Financial Administration Act* but does not report to the Superintendent; and
 - an action plan for making the guidelines legally binding, including a list of proposed legislative amendments.

2.1.4 Part 4 of the Climate-Aligned Finance Act:
Appointments, Conflicts of Interest and Duties
(Sections 11 to 16)

Section 12 requires that at least one member of the board of selected federal entities and parent Crown corporations be a person with climate expertise. With respect to the boards of reporting entities, section 13 states that no person may be appointed to a board of a reporting entity if that person:

- has control over or has ownership rights in an entity that is not in alignment with climate commitments;
- has a position in an organization that is not in alignment with climate commitments – unless that position is to assist in meeting climate commitments;
- has engaged in the past five years in lobbying activities for an organization that is not aligned with climate commitments; or
- provides any services to an organization that is not aligned with climate commitments – unless those services are to assist the organization in meeting those climate commitments.

These requirements are applicable to appointments made after the third anniversary of the day on which the bill comes into force, and any appointments made in contravention of section 13 are void.

As well, section 15 states that no person appointed under section 12 can accept a gift, benefit or contribution of any value or kind from an organization that is not in alignment with climate commitments.

Of note, section 16 prescribes that the directors, officers and administrators of reporting entities have a duty to exercise their powers and functions to enable the entity to be in alignment with climate commitments. Furthermore, they are required to give precedence to this duty over all other duties and obligations to ensure the entity is in alignment with climate commitments, except for requirements set out under the *Income Tax Act*.²⁰

2.1.5 Part 5 of the Climate-Aligned Finance Act:
Enforcement and Orders
(Section 17)

Section 17 provides that the Superintendent may issue any order that person considers appropriate to any federally regulated financial institution or pension plan to help the entity ensure it is in alignment with climate commitments.

2.1.6 Part 6 of the Climate-Aligned Finance Act:
Financial Products Alignment Action Plan
(Section 18)

Section 18 states that, in consultation with other ministers, the responsible minister must prepare an action plan to incentivize financial products that support climate commitments and disincentivize those that are inconsistent with climate commitments, with a view to identifying legislative amendments to legislation governing taxation, pension plan investments, the priority of creditors during bankruptcy and appropriate enforcement mechanisms. The responsible minister is also required to:

- collaborate with the provinces, including in relation to securities disclosure for provincially or territorially regulated entities and for the purposes of consumer and whistleblower protection;
- consult with the Superintendent of Bankruptcy, the Superintendent, the Bank of Canada and persons with climate expertise;
- include in the action plan:
 - criteria for identifying financial products whose purposes are aligned with climate commitments;
 - mechanisms to prevent the use of proceeds of financial products that are aligned with climate commitments for activities inconsistent with climate commitments; and
 - relevant legislative amendments to the *Income Tax Act*, *Bankruptcy and Insolvency Act*,²¹ *Companies' Creditors Arrangement Act*²² and Schedule III to the *Pension Benefits Standards Regulations, 1985*;²³

- prepare a report containing the action plan no later than one year after the bill comes into force; and
- table the report in both houses of Parliament along with a detailed analysis of the legislative amendments proposed in the action plan and a proposal with a timeline for introducing those amendments, no later than 20 sitting days after the report is completed.

2.2 PART 2: RELATED AMENDMENTS
(CLAUSES 3 TO 14)

Part 2 of the bill introduces related amendments to a number of statutes.

2.2.1 Amendments to the *Bank of Canada Act*
(Clauses 3 and 4)

Clause 3 amends the preamble to the *Bank of Canada Act*, and clause 4 adds section 18.01 to that Act requiring the Bank of Canada to exercise its powers in a manner consistent with the climate commitments described in CAFA.

2.2.2 Amendments to the *Export Development Act*
(Clauses 5 and 6)

Section 10.1(1) of the *Export Development Act* currently requires EDC, in accordance with a board directive, to determine before entering into a transaction whether a project of interest would have adverse environmental effects and whether EDC would be justified in entering into the transaction. Clause 5 modifies section 10.1 to include additional requirements in relation to climate commitments.

Clause 5(1) adds section 10.1(1)(a.1) to introduce additional criteria, such as whether a project is likely to have adverse environmental effects or a “negative climate change impact” as described in CAFA.

Clause 5(2) adds section 10.1(2.1) to indicate that a directive may be issued by the board only if it enables entities involved in a project to be in alignment with climate commitments as described in CAFA.

Clause 5(2) also adds section 10.1(2.2) to require EDC to revise any existing directives to try to mitigate any negative climate change impacts as described in CAFA.

As well, clause 6 adds section 10.2 to require EDC to exercise its powers in a way that enables it to be in alignment with climate commitments.

2.2.3 Amendments to the *Financial Administration Act*
(Clause 7)

Clause 7 adds section 89(3) to the *Financial Administration Act*, which governs directives issued by the Governor in Council to parent Crown corporations, to state that the Governor in Council is deemed to have given every parent Crown corporation listed in Schedule III of the Act a directive to be an entity that is in alignment with climate commitments as set out in CAFA.

2.2.4 Amendments to the *Office of the Superintendent of Financial Institutions Act*
(Clauses 8 to 10)

Clause 8 adds section 4(3.1) to the *Office of the Superintendent of Financial Institutions Act* to require the office to pursue its objects in a way that enables the entities it regulates or supervises to be in alignment with climate commitments as set out under CAFA. As well, clause 9 modifies section 6 of the *Office of the Superintendent of Financial Institutions Act* to include CAFA as one of the statutes that sets out the Superintendent's powers, duties and functions and to require that the Superintendent's powers be exercised in a way that is in alignment with climate commitments. Lastly, clause 10 adds section 38(a.1) to the *Office of the Superintendent of Financial Institutions Act* to allow the Governor in Council to make regulations for the purpose of ensuring financial institutions are in alignment with climate commitments.

2.2.5 Amendments to the *Public Sector Pension Investment Board Act*
(Clause 11)

Clause 11 adds section 5.1 to the *Public Sector Pension Investment Board Act* to indicate that the Public Sector Pension Investment Board may only exercise its powers so that it and the pension plans for which the board invests are in alignment with climate commitments as set out in CAFA.

2.2.6 Amendments to the *Business Development Bank of Canada Act*
(Clause 12)

Clause 12 adds section 22.1 to the *Business Development Bank of Canada Act* to require the Business Development Bank of Canada to exercise its powers in a way that enables it to be in alignment with climate commitments as set out in CAFA.

2.2.7 Amendments to the *Canada Infrastructure Bank Act*
(Clause 13)

Clause 13 adds section 7(3) to the *Canada Infrastructure Bank Act* to require the bank's board to exercise its powers in a way that enables it and the bank to be in alignment with climate commitments as set out in CAFA.

2.2.8 Amendments to the *Canadian Net-Zero Emissions Accountability Act* (Clause 14)

Clause 14 amends section 29 of the CNZEAA, which is a coming-into-force provision for section 23 of that Act. Section 23 provides that the Minister of Finance must prepare an annual report with respect to key measures that the federal public administration has taken to manage its financial risks and opportunities related to climate change. Clause 14 prescribes that section 23 comes into force on the day on which Bill S-243 receives Royal Assent rather than on 31 March 2023.

2.3 PART 3: REVIEWS AND REPORTS (CLAUSES 15 TO 19)

Part 3 of the bill provides various review and reporting requirements for the federal government.

Clause 16(1) states that within two years after the bill receives Royal Assent, the Minister of Finance must table in each house of Parliament:

- a report regarding Indigenous peoples' perspectives on the activities of the Office of the Superintendent of Financial Institutions and the Bank of Canada with respect to long-term investments, adaptation and resilience of the office and the bank within the financial system and stewardship of the financial system by these entities for future entities, which is co-developed by the office, the bank and representatives of Indigenous peoples and based on consultations with Indigenous peoples; and
- a report by the Bank of Canada and developed in consultation with persons with climate expertise that evaluates whether the bank's monetary policy aligns with climate commitments as described in CAFA and makes recommendations to entities' being in alignment with CAFA.

Clause 17 states that the Governor in Council may designate any federal minister to be the minister responsible for Bill S-243 and that this minister must conduct an independent review of the provisions enacted by the bill every three years, beginning on the day when the bill comes into force. The report on the independent review must be tabled before each house of Parliament within 15 sitting days after the review is completed and no later than nine months after the review was started.

Clause 18 requires a comprehensive review of the bill by a parliamentary committee every three years after the bill comes into force.

Clause 19 requires an annual report on the implementation of the provisions enacted by the bill to be completed by the Superintendent with respect to entities over which it has oversight and by the Minister of Finance with respect to parent Crown corporations as defined in the *Financial Administration Act*. The Minister

of Finance must table the reports before both houses of Parliament no later than 10 sitting days after the reports are completed.

2.4 PART 4: CANADA PENSION PLAN INVESTMENT BOARD (CLAUSES 20 AND 21)

Part 4 of the bill introduces amendments with respect to the Canada Pension Plan Investment Board.

Clause 20 adds paragraph (b.1) to section 12 of CAFA, which governs the appointment of persons with climate expertise to various boards, to include the Canada Pension Plan Investment Board.

Clause 21 modifies section 5 of the *Canada Pension Plan Investment Board Act*,²⁴ which sets out the objects of the board, to require the board to carry out its objects in a way that ensures both it and the Canada Pension Plan are aligned with climate commitments as described under CAFA.

2.5 PART 5: COMING INTO FORCE (CLAUSE 22)

Clause 22(1) states that parts 1 to 3 of the bill come into force on the first anniversary of the day on which the bill receives Royal Assent.

Clause 22(2) states that Part 4 comes into force on a day or days fixed by an order of the Governor in Council but that the order does not have any effect unless the lieutenant governors in council of at least two-thirds of the included provinces, as described under the *Canada Pension Plan*, accounting in total for at least two-thirds of the population of all the included provinces, have given the consent of their respective province for the order. This requirement is set out in section 114 of the *Canada Pension Plan* statute.²⁵

NOTES

1. [Bill S-243, An Act to enact the Climate-Aligned Finance Act and to make related amendments to other Acts](#), 44th Parliament, 1st Session.
2. [Bank of Canada Act](#), R.S.C. 1985, c. B-2.
3. [Export Development Act](#), R.S.C. 1985, c. E-20.
4. [Financial Administration Act](#), R.S.C. 1985, c. F-11.
5. [Office of the Superintendent of Financial Institutions Act](#), R.S.C. 1985, c. 18 (3rd Supp.), Part I.
6. [Public Sector Pension Investment Board Act](#), S.C. 1999, c. 34.
7. [Business Development Bank of Canada Act](#), S.C. 1995, c. 28.
8. [Canada Infrastructure Bank Act](#), S.C. 2017, c. 20, s. 403.

9. [Canadian Net-Zero Emissions Accountability Act](#), S.C. 2021, c. 22.
10. Office of the Auditor General of Canada, [Lessons Learned from Canada's Record on Climate Change](#), Report 5 in *2021 Reports 3 to 7 of the Commissioner of the Environment and Sustainable Development*.
11. [Canadian Net-Zero Emissions Accountability Act](#), S.C. 2021, c. 22, s. 2.
12. United Nations (UN), [Paris Agreement](#), 12 December 2015.
13. Priyadarshi R. Shukla et al., eds., "[Summary for Policymakers](#)," *Climate Change 2022: Mitigation of Climate Change. Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Intergovernmental Panel on Climate Change, 2022, p. 10.
14. Ibid.
15. Ibid.
16. UN, [United Nations Framework Convention on Climate Change](#), 1992.
17. [Canada Business Corporations Act](#), R.S.C. 1985, c. C-44.
18. [Canada Labour Code](#), R.S.C. 1985, c. L-2.
19. Microprudential policy focuses on the health of individual financial institutions, while macroprudential policy addresses risks to the financial system as a whole. See Jacek Osiński, Katharine Seal and Lex Hoogduin, [Macroprudential and Microprudential Policies: Toward Cohabitation](#), IMF Staff Discussion Note [International Monetary Fund], International Monetary Fund, June 2013.
20. [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.).
21. [Bankruptcy and Insolvency Act](#), R.S.C. 1985, c. B-3.
22. [Companies' Creditors Arrangement Act](#), R.S.C. 1985, c. C-36.
23. [Pension Benefits Standards Regulations, 1985](#), SOR/87-19.
24. [Canada Pension Plan Investment Board Act](#), S.C. 1997, c. 40.
25. [Canada Pension Plan](#), R.S.C. 1985, c. C-8, s. 114.