

Clause by Clause Comparison: Bill S-8, *An Act respecting the safety of drinking water on First Nation lands* (February 29, 2012) and Bill S-11, *An Act respecting the safety of drinking water on first nation land* (May 26, 2010)

Changes, additions and deletions have been highlighted.

	Bill S-8	Bill S-11
Title	An Act respecting the safety of drinking water on First Nation lands	An Act respecting the safety of drinking water on first nation land
Preamble	<p>Whereas it is important for residents of First Nation lands to have access to safe drinking water;</p> <p>Whereas effective regulatory regimes are required to ensure such access;</p> <p>Whereas the Government of Canada is committed to improving the health and safety of residents of First Nation lands;</p> <p>And whereas the Minister of Indian Affairs and Northern Development and the Minister of Health have committed to working with First Nations to develop proposals for regulations to be made under this Act;</p> <p>Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:</p>	<p>Whereas it is important for residents of first nation lands to have access to safe drinking water</p> <p>Whereas effective regulatory regimes are required to ensure such access;</p> <p>And whereas existing laws do not provide sufficient authority for Canada or first nations to establish such regimes;</p> <p>Now therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:</p>
Short title	This Act may be cited as the <i>Safe Drinking Water for First Nations Act</i> .	This Act may be cited as the <i>Safe Drinking Water for First Nations Act</i> .
	INTERPRETATION	INTERPRETATION
Definitions	<p>2. (1) The following definitions apply in this Act.</p> <p>“drinking water” means water intended for use by humans for drinking, bathing or food preparation.</p> <p>“drinking water system” means a system for the collection, storage, treatment or distribution of drinking water, and includes a well.</p> <p>“First Nation” means</p> <p>(a) a band, as defined in subsection 2(1) of the</p>	<p>2. (1) The following definitions apply in this Act.</p> <p>“drinking water” means water intended for use by humans for drinking, bathing or food preparation.</p> <p>“drinking water system” means a system for the collection, storage, treatment or distribution of drinking water, and includes a well.</p> <p>“first nation” means</p> <p>(a) a band, as defined in subsection 2(1) of the</p>
“drinking water” « <i>eau potable</i> »		
“drinking water system” « <i>système d'alimentation en eau potable</i> »		
“First Nation” « <i>première nation</i> »		

<p>“First Nation lands” « terres »</p> <p>“Minister” « ministre »</p> <p>provincial body” « organisme provincial »</p> <p>“provincial official” « fonctionnaire provincial »</p> <p>“waste water system” « système de traitement des eaux usées »</p>	<p><i>Indian Act</i>, the disposition of whose lands is subject to that Act or the <i>First Nations Land Management Act</i>;</p> <p>(b) any other band, as defined in subsection 2(1) of the <i>Indian Act</i>, specified in regulations made under subsection (2); or</p> <p>(c) an Aboriginal body named in column 1 of the schedule.</p> <p>“</p> <p>First Nation lands” means</p> <p>(a) lands the disposition of which is subject to the <i>Indian Act</i> or the <i>First Nations Land Management Act</i>;</p> <p>(b) in relation to a band specified in regulations made under subsection (2), the lands described in those regulations; or</p> <p>(c) in relation to an Aboriginal body named in column 1 of the schedule, the lands described in column 2.</p> <p>“Minister” means the Minister of Indian Affairs and Northern Development.</p> <p>“provincial body” means a body established by a provincial Act.</p> <p>“provincial official” means a minister of the Crown in right of a province, a person employed by a province or a person appointed to or employed by a provincial body.</p> <p>“waste water system” means a system for the collection, treatment or disposal of waste water.</p>	<p><i>Indian Act</i>, the disposition of whose lands is subject to that Act or the <i>First Nations Land Management Act</i>;</p> <p>(b) any other band, as so defined, specified in regulations made under subsection (2); or</p> <p>(c) an aboriginal body named in column 1 of the schedule.</p> <p>“first nation lands” means</p> <p>(a) lands the disposition of which is subject to the <i>Indian Act</i> or the <i>First Nations Land Management Act</i>;</p> <p>(b) in relation to a band specified in regulations made under subsection (2), the lands described in those regulations; or</p> <p>(c) in relation to an aboriginal body named in column 1 of the schedule, the lands described in column 2.</p> <p>“Minister” means the Minister of Indian Affairs and Northern Development.</p> <p>“provincial body” means a body established by a provincial Act.</p> <p>“provincial official” means a minister of the Crown in right of a province, a person employed by a province or a person appointed to or employed by a provincial body.</p> <p>“waste water system” means a system for the collection, treatment or disposal of waste water.</p>
<p>Regulations</p>	<p>(2) The Governor in Council may make regulations providing, for the purposes of this Act, that a band, as defined in subsection 2(1) of the <i>Indian Act</i>, is a First Nation and that lands described in those regulations are First Nation lands</p>	<p>(2) The Governor in Council may make regulations providing, for the purposes of this Act, that a band, as defined in subsection 2(1) of the <i>Indian Act</i>, is a first nation and that lands relating to that first nation and described in the regulations are first nation lands</p>
<p>Aboriginal rights</p>	<p>3. For greater certainty, nothing in this Act or the regulations is to be construed so as to abrogate or derogate from any existing Aboriginal or treaty rights of the Aboriginal peoples of Canada under section 35 of the Constitution Act, 1982, except to the extent necessary to ensure the safety of drinking water on First Nation lands</p>	

	REGULATION	REGULATION
Recommendation of Minister	4. (1) Subject to subsections (2) and (3), the Governor in Council may, on the recommendation of the Minister, make regulations governing the provision of drinking water on First Nation lands and the disposal of waste water on First Nation lands, including regulations respecting	3. (1) Subject to subsections (2) and (3), the Governor in Council may, on the recommendation of the Minister, make regulations applicable on first nation lands governing the provision of drinking water and the disposal of waste water, including regulations respecting
	<p>(a) the training and certification of operators of drinking water systems and waste water systems;</p> <p>(b) the protection of sources of drinking water from contamination;</p> <p>(c) the location, design, construction, modification, maintenance, operation and decommissioning of drinking water systems;</p> <p>(d) the distribution of drinking water by truck;</p> <p>(e) the location, design, construction, modification, maintenance, operation and decommissioning of waste water systems;</p> <p>(f) the collection and treatment of waste water;</p> <p>(g) the monitoring, sampling and testing of waste water and the reporting of test results; and</p> <p>(h) the handling, use and disposal of products of waste water treatment.</p>	<p>(a) the training and certification of operators of drinking water systems and waste water systems;</p> <p>(b) the protection of sources of drinking water;</p> <p>(c) the location, design, construction, modification, maintenance, operation and decommissioning of drinking water systems;</p> <p>(d) the distribution of drinking water by truck;</p> <p>(e) the location, design, construction, modification, maintenance, operation and decommissioning of waste water systems;</p> <p>(f) the collection and treatment of waste water;</p> <p>(g) the monitoring, sampling and testing of waste water and the reporting of test results; and</p> <p>(h) the handling, use and disposal of products of waste water treatment.</p>
Recommendation of Minister of Health	(2) The Governor in Council may, on the recommendation of the Minister of Health, make regulations respecting standards for the quality of drinking water on First Nation lands.	(2) The Governor in Council may, on the recommendation of the Minister of Health, make regulations respecting standards for the quality of drinking water on first nation lands.
Recommendation of Minister and Minister of Health	<p>(3) The Governor in Council may, on the recommendation of the Minister and the Minister of Health, make regulations respecting</p> <p>(a) the monitoring, sampling and testing of drinking water on First Nation lands and the reporting of test results;</p> <p>(b) the making of remediation orders if standards established under subsection (2) have not been met; and</p> <p>(c) emergency measures in response to the contamination of drinking water on First Nation</p>	<p>(3) The Governor in Council may, on the recommendation of the Minister and the Minister of Health, make regulations respecting</p> <p>(a) the monitoring, sampling and testing of drinking water on first nation lands and the reporting of test results;</p> <p>(b) the making of remediation orders where standards established under subsection (2) have not been met; and</p> <p>(c) emergency measures in response to the contamination of water on first nation lands</p>

	lands	
Included powers	<p>5. (1) Regulations made under section 4 may</p> <p>(a) specify the classes of drinking water systems and waste water systems to which the regulations apply;</p> <p>(b) confer on any person or body any legislative, administrative, judicial or other power that the Governor in Council considers necessary to effectively regulate drinking water systems and waste water systems;</p> <p>(c) confer on any person or body the power, exercisable in specified circumstances and subject to specified conditions,</p> <p>(i) to make orders to cease any work, comply with any provision of the regulations or remedy the consequences of a failure to comply with the regulations,</p> <p>(ii) to do any work that the person or body considers necessary and to recover the costs of that work, or</p> <p>(iii) to appoint a manager independent of the First Nation to operate a drinking water system or waste water system on its First Nation lands;</p> <p>(d) fix, or prescribe the manner of calculating, the fees to be paid to any person or body for the use of a drinking water system or a waste water system;</p> <p>(e) fix the rate of interest to be charged on amounts owing under the regulations;</p> <p>(f) subject to subsection (2), establish offences punishable on summary conviction for contraventions of the regulations and set fines or terms of imprisonment or both for such offences;</p> <p>(g) establish a system of administrative monetary penalties applicable to contraventions of specified provisions of the regulations and set the amounts of those penalties;</p> <p>(h) confer on any person the power to verify compliance with the regulations, including the power to seize and detain things found in the exercise of that power;</p> <p>(i) confer on any person the power to apply for a warrant to conduct a search of a place;</p> <p>(j) confer on any person the power to audit the books, accounts and records of persons or bodies that exercise powers or perform duties under the</p>	<p>4. (1) The regulations may</p> <p>(a) specify the classes of drinking water systems and waste water systems to which the regulations apply;</p> <p>(b) confer any legislative, administrative, judicial or other power on any person or body;</p> <p>(c) confer on any person or body the power, exercisable in specified circumstances and subject to specified conditions,</p> <p>(i) to make orders to cease any work, comply with any provision of the regulations or remedy the consequences of a failure to comply with the regulations,</p> <p>(ii) to do any work that the person or body considers necessary and to recover the costs of that work,</p> <p>(iii) to require a first nation to enter into an agreement for the management of its drinking water system or waste water system in cooperation with a third party, or</p> <p>(iv) to appoint a manager independent of the first nation to operate a drinking water system or waste water system on its first nation lands;</p> <p>(d) fix, or prescribe the manner of calculating, the fees to be paid to any person or body for the use of drinking water or of a waste water system;</p> <p>(e) fix the rate of interest to be charged on amounts owing under the regulations;</p> <p>(f) subject to subsection (2), establish offences punishable on summary conviction for contraventions of the regulations and set fines or terms of imprisonment or both for such offences;</p> <p>(g) establish a system of administrative monetary penalties applicable to contraventions of specified provisions of the regulations and set the amounts of those penalties;</p> <p>(h) confer on any person the power to verify compliance with the regulations, including the power to seize and detain things found in the exercise of that power;</p> <p>(i) confer on any person the power to apply for a warrant to conduct a search of a place;</p> <p>(j) confer on any person the power to audit the books, accounts and records of persons to whom or bodies to which powers are conferred by the</p>

	<p>regulations;</p> <p>(k) require the collection, recording and reporting of information relating to the quality of drinking water or to waste water;</p> <p>(l) prescribe rules respecting the confidentiality or disclosure of any information obtained under the regulations;</p> <p>(m) prescribe rules of procedure for hearings to be held in relation to a drinking water system or waste water system, including rules for the issuance of subpoenas to require the appearance of persons and the production of documents and rules requiring that evidence be given under oath;</p> <p>(n) prescribe the obligations of any person or body that exercises powers or performs duties under the regulations, and specify the penalties that apply in the event of the breach of those obligations;</p> <p>(o) subject to paragraphs 11(1)(a), (2)(a) and (3)(a) and section 12, set limits on the liability of any person or body exercising a power or performing a duty under the regulations, and establish defences and immunities for such a person or body;</p> <p>(p) require permits to be obtained as a condition of engaging in any activity on First Nation lands that could affect the quality of drinking water, or as a condition of engaging in any activity governed by the regulations, specify the terms and conditions of those permits and provide for their issuance, suspension and cancellation;</p> <p>(q) deem a First Nation or any person or body, for the purposes of this Act, to be the owner of a drinking water system or waste water system of a prescribed class, and prescribe classes of drinking water systems and waste water systems for that purpose; and</p> <p>(r) require that an assessment of the environmental effects of drinking water systems or waste water systems be undertaken in circumstances where the Canadian Environmental Assessment Act does not apply, and establish a procedure to be followed in such assessments</p>	<p>regulations;</p> <p>(k) require the collection, recording and reporting of information relating to the quality of drinking water or to waste water;</p> <p>(l) prescribe rules respecting the confidentiality, or the disclosure, of any information obtained under the regulations;</p> <p>(m) prescribe rules of procedure for hearings to be held in relation to a drinking water system or waste water system, including rules for the issuance of subpoenas to require the appearance of persons and the production of documents and rules requiring that evidence be given under oath;</p> <p>(n) prescribe the obligations of any person or body that exercises powers or performs duties under the regulations, and specify the penalties that apply in the event of the breach of those obligations;</p> <p>(o) subject to paragraphs 10(1)(a), (2)(a) and (3)(a) and section 11, set limits on the liability of, and establish defences and immunities for, any person or body exercising a power or performing a duty under the regulations;</p> <p>(p) require permits to be obtained as a condition of engaging in any activity on first nation lands that could affect the quality of drinking water, or any activity governed by the regulations, and specify the terms and conditions of those permits and provide for their issuance, suspension and cancellation;</p> <p>(q) deem a first nation, for the purposes of this Act, to be the owner of a drinking water system or waste water system located on its first nation lands that have not been allotted under subsection 20(1) of the Indian Act or designated under subsection 38(2) of that Act;</p> <p>(r) provide for the relationship between the regulations and aboriginal and treaty rights referred to in section 35 of the Constitution Act, 1982, including the extent to which the regulations may abrogate or derogate from those aboriginal and treaty rights; and</p> <p>(s) require that an assessment of the environmental effects of drinking water systems or waste water systems be undertaken in circumstances where the Canadian Environmental Assessment Act does not apply, and establish a procedure to be followed in such assessments.</p>
Offences under provincial law	(2) If a contravention of the regulations that is an offence under paragraph (1)(f) would have been an offence under provincial law had the contravention	(2) Where a contravention of the regulations that is an offence under paragraph (1)(f) would be an offence under provincial law if it occurred outside

	occurred outside First Nation lands in the province in which it occurred, the fine or term of imprisonment imposed for the contravention by the regulations may not exceed that imposed by provincial law for such a contravention.	first nation lands in the province in which the contravention occurs, the fine or term of imprisonment imposed for the contravention by the regulations may not exceed that imposed by provincial law for such a contravention.
Incorporation by reference	(3) Regulations made under section 4 may incorporate by reference laws of a province, as amended from time to time, with any adaptations that the Governor in Council considers necessary	(3) The regulations may incorporate by reference laws of a province, as amended from time to time, with any adaptations that the Governor in Council considers necessary.
Provincial variations	(4) Regulations made under section 4 may vary from province to province and, within any province, may be restricted to the First Nations specified in the regulations or exempt specified First Nations from their application.	(4) The regulations may vary from province to province and, within any province, may be restricted to the first nations specified in the regulations or exempt specified first nations from their application.
Limitation	(5) Section 4 does not authorize the making of regulations respecting (a) the allocation of water supplies; or (b) the issuance of permits for the use of water for any purpose other than the provision of drinking water.	
Agreements — Minister	6. (1) The Minister may enter into an agreement for the administration and enforcement of regulations made under subsection 4(1) with any province, corporation or other body.	5. (1) The Minister may enter into an agreement for the administration and enforcement of regulations made under subsection 3(1) with any province, corporation or other body.
Agreements — Minister of Health	(2) The Minister of Health may enter into an agreement for the administration and enforcement of regulations made under subsection 4(2) with any province, corporation or other body.	(2) The Minister of Health may enter into an agreement for the administration and enforcement of regulations made under subsection 3(2) with any province, corporation or other body.
Agreements — both Ministers	(3) The Minister may, in consultation with the Minister of Health, enter into an agreement for the administration and enforcement of regulations made under subsection 4(3) with any province, corporation or other body.	(3) The Minister may, in consultation with the Minister of Health, enter into an agreement for the administration and enforcement of regulations made under subsection 3(3) with any province, corporation or other body.
Conflict with First Nation laws	7. Regulations made under this Act prevail over any laws or by-laws made by a First Nation to the extent of any conflict or inconsistency between	6. (1) Regulations made under this Act prevail over any laws or by-laws made by a first nation to the extent of any conflict or inconsistency between

	them, unless those regulations provide otherwise.	them, unless those regulations provide otherwise.
Conflict with agreement or Act		(2) In respect of an aboriginal body named in column 1 of the schedule, this Act and the regulations prevail over the land claims agreement or self government agreement to which the aboriginal body is a party, and over any Act of Parliament giving effect to it, in the event of a conflict or inconsistency between this Act and that agreement or Act.
	OTHER ACTS	OTHER ACTS
Statutory Instruments Act	8. The <i>Statutory Instruments Act</i> does not apply to an instrument made by a provincial official or body under the authority of a provincial law incorporated by reference in the regulations.	7. The Statutory Instruments Act does not apply to an instrument made by a provincial official or body under the authority of a provincial law incorporated by reference in the regulations.
Federal Courts Act	9. (1) A provincial official or body that exercises a power or performs a duty under the regulations is not a federal board, commission or other tribunal for the purposes of the Federal Courts Act.	8. (1) A provincial official or body that exercises a power or performs a duty under the regulations is not a federal board, commission or other tribunal for the purposes of the <i>Federal Courts Act</i> .
Review or appeal in provincial courts	(2) Unless otherwise provided by the regulations, if a power or duty conferred or imposed by provincial law is incorporated by reference in the regulations, its exercise or performance pursuant to the regulations is subject to review by or appeal to the courts of the province in the same manner and to the same extent as if the provincial law applied of its own force.	(2) Unless otherwise provided by the regulations, where a power or duty conferred or imposed by provincial law is incorporated by reference in the regulations, its exercise or performance pursuant to the regulations is subject to review by, or appeal to, the courts of the province in the same manner and to the same extent as if the provincial law applied of its own force.
Moneys collected provincially	10. Fees, charges, fines or other payments collected by a person or body pursuant to the regulations are not Indian moneys for the purposes of the Indian Act or public money for the purposes of the Financial Administration Act.	9. Fees, charges, fines or other payments collected by a person or body pursuant to the regulations are not Indian moneys for the purposes of the <i>Indian Act</i> or public money for the purposes of the <i>Financial Administration Act</i>
	LIMITS ON LIABILITY, DEFENCES AND IMMUNITIES	LIMITS ON LIABILITY, DEFENCES AND IMMUNITIES
Acts and omissions — federal minister or employee	11. (1) In respect of any act or omission that occurs in a given province in the exercise of a power or the performance of a duty under the regulations by a minister of the Crown in right of Canada or an employee in the federal public administration, Her Majesty in right of Canada and the minister or	10. (1) In respect of any act or omission that occurs in a given province in the exercise of a power or the performance of a duty under the regulations by a minister of the Crown in right of Canada or an employee in the federal public administration, Her Majesty in right of Canada and the minister or

	<p>employee are entitled, in addition to any limits on liability, defences and immunities under the Crown Liability and Proceedings Act, to</p> <p>(a) in the case of Her Majesty in right of Canada, the same limits on liability, defences and immunities as those that would apply to Her Majesty in right of the province in the exercise of such a power or the performance of such a duty under the laws of the province; and</p> <p>(b) in the case of the minister or employee, the same limits on liability, defences and immunities as those that would apply to a provincial official exercising such a power or performing such a duty under the laws of the province, unless otherwise provided by the regulations</p>	<p>employee are entitled, in addition to any limits on liability, defences and immunities under the Crown Liability and Proceedings Act, to</p> <p>(a) in the case of Her Majesty in right of Canada, the same limits on liability, defences and immunities as those that would apply to Her Majesty in right of the province in the exercise of such a power or the performance of such a duty under the laws of the province; and</p> <p>(b) in the case of the minister or employee, the same limits on liability, defences and immunities as those that would apply to a provincial official exercising such a power or performing such a duty under the laws of the province, unless otherwise provided by the regulations.</p>
<p>Acts and omissions — provincial official or body</p>	<p>(2) In respect of any act or omission that occurs in the exercise of a power or the performance of a duty under the regulations by a provincial official or body,</p> <p>(a) Her Majesty in right of Canada is entitled to the same limits on liability, defences and immunities as those that would apply to Her Majesty in right of the province in the exercise of such a power or the performance of such a duty under the laws of the province; and</p> <p>(b) the official or body is entitled to the same limits on liability, defences and immunities as those that would apply to a provincial official or body exercising such a power or performing such a duty under the laws of the province, unless otherwise provided by the regulations.</p>	<p>(2) In respect of any act or omission that occurs in the exercise of a power or the performance of a duty under the regulations by a provincial official or body,</p> <p>(a) Her Majesty in right of Canada is entitled to the same limits on liability, defences and immunities as those that would apply to Her Majesty in right of the province in the exercise of such a power or the performance of such a duty under the laws of the province; and</p> <p>(b) the official or body is entitled to the same limits on liability, defences and immunities as those that would apply to a provincial official or body exercising such a power or performing such a duty under the laws of the province, unless otherwise provided by the regulations.</p>
<p>Acts and omissions — other person or body</p>	<p>(3) In respect of any act or omission that occurs in a given province in the exercise of a power or the performance of a duty under the regulations by a person or body other than Her Majesty in right of Canada, a minister of the Crown in right of Canada, an employee in the federal public administration or a provincial official or body,</p> <p>(a) no person has a right to receive any compensation, damages, indemnity or other relief from Her Majesty in right of Canada; and</p> <p>(b) the person or body is entitled to the same limits on liability, defences and immunities as those that would apply to a person or body exercising such a power or performing such a duty under the laws of the province, unless otherwise provided by the regulations.</p>	<p>(3) In respect of any act or omission that occurs in a given province in the exercise of a power or the performance of a duty under the regulations by a person or body other than Her Majesty in right of Canada, a minister of the Crown in right of Canada, an employee in the federal public administration or a provincial official or body,</p> <p>(a) no person has a right to receive any compensation, damages, indemnity or other relief from Her Majesty in right of Canada; and</p> <p>(b) the person or body is entitled to the same limits on liability, defences and immunities as those that would apply to a person or body exercising such a power or performing such a duty under the laws of the province, unless otherwise provided by the regulations.</p>

Appropriations not subject to claims	12. No payment may be made under an appropriation authorized by an Act of Parliament in order to satisfy any claim arising out of an act or omission referred to in subsection 11(3).	11. No payment may be made under an appropriation authorized by an Act of Parliament in order to satisfy any claim arising out of an act or omission referred to in subsection 10(3).
Her Majesty saved	13. No civil proceeding may be brought, no order may be made and no fine or monetary penalty may be imposed against Her Majesty in right of Canada under the regulations.	12. No civil proceeding may be brought, no order may be made and no fine or monetary penalty may be imposed against Her Majesty in right of Canada under the regulations.
	SCHEDULE	SCHEDULE
Addition of Aboriginal bodies	14. (1) At the request of an Aboriginal body that is a party to a land claims agreement or self-government agreement with Canada given effect by an Act of Parliament and the disposition of whose lands is not subject to the Indian Act or the First Nations Land Management Act, the Governor in Council may make regulations (a) adding the name of the Aboriginal body to, or deleting it from, column 1 of the schedule; and (b) adding to or deleting from column 2 of the schedule a description of the lands that are subject to the Aboriginal body's jurisdiction.	13. At the request of an aboriginal body that is a party to a land claims agreement or self-government agreement with Canada given effect by an Act of Parliament and the disposition of whose lands is not subject to the Indian Act or the First Nations Land Management Act, the Governor in Council may make regulations (a) adding the name of the aboriginal body to, or deleting it from, column 1 of the schedule; and (b) adding to or deleting from column 2 of the schedule a description of the lands that are subject to the aboriginal body's jurisdiction.
Conflict with agreement or Act	(2) If an Aboriginal body is named in column 1 of the schedule, this Act and the regulations prevail over the land claims agreement or self-government agreement to which the Aboriginal body is a party, and over any Act of Parliament giving effect to that agreement, to the extent of any conflict or inconsistency between them.	
	COMING INTO FORCE	COMING INTO FORCE
Order in council	15. The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.	14. The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council.