



ASSEMBLY OF FIRST NATIONS  
**45<sup>TH</sup> ANNUAL GENERAL ASSEMBLY:**  
*Strengthening our Relations*  
ASSEMBLÉE DES PREMIÈRES NATIONS  
**45<sup>E</sup> ASSEMBLÉE GÉNÉRALE ANNUELLE :**  
*Renforcer nos relations*



JULY 9-11, 2024 • IN-PERSON ONLY • PALAIS DES CONGRÈS, MONTRÉAL, QUÉBEC  
DU 9 AU 11 JUILLET 2024 • EN PERSONNE • PALAIS DES CONGRÈS, MONTRÉAL (QUÉBEC)

## Update – Bill C-61, *An Act respecting water, source water, drinking water, wastewater and related infrastructure on First Nation lands (First Nations Clean Water Act)*

### Background

Bill C-61, *An Act respecting water, source water, drinking water, wastewater, and related infrastructure on First Nation lands (First Nations Clean Water Act)*, introduced by the Honourable Patty Hajdu, Minister of Indigenous Services, on December 11, 2023, aims to establish a comprehensive framework for ensuring clean, safe drinking water, wastewater management, and related infrastructure on First Nation lands. This legislation represents a significant advancement in the efforts of First Nations across Canada to secure access to clean and safe drinking water as a fundamental human right and essential service.

Following the repeal of the 2013 *Safe Drinking Water for First Nations Act*, which had been imposed on First Nations, the Assembly of First Nations (AFN) and First Nations across Canada advocated for a stronger, more effective legislation. The First Nations-in-Assembly mandated the AFN by resolution to actively collaborate with the Canadian government to develop new legislation that meets the urgent needs of First Nations:

- **Resolution 47/2023**, *Proposed Federal First Nations Drinking Water and Wastewater Legislation*
- **Resolution 23/2022**, *Re-commitment to Co-Development of Replacement Legislation for Safe Drinking Water for First Nations*
- **Resolution 14/2019**, *Endorsement of the Refined Preliminary Concepts for Repeal and Replacement of the Safe Drinking Water for First Nations Act*

→ *The proposed legislation is the result of years of dedicated advocacy by First Nations and sets out a firm commitment to implementing the right to safe and clean drinking water.*

### Regulatory Void

Currently, there is no legislation in place that enforces standards or regulations relating to safe drinking water and wastewater in First Nations across Canada. There is also no recognition of First Nation rights to govern waters on their lands, nor a sustainable, long-term funding mechanism that ensures sustainable water and wastewater management. This lack of recognition creates systemic issues that jeopardizes the health and well-being of First Nations daily.

### Bill C-61

Bill C-61 is the first step to ensure legislation meets the needs of First Nations, including rights, funding, governance, liability, minimum standards, and source water protection.

The proposed legislation is a key mechanism to address the long-standing water crisis in First Nations across in Canada. The United Nations General Assembly (UNGA) recognizes the human right to water and sanitation through UNGA Resolution 64/292, and the right to a clean, healthy, and sustainable environment as a human right through UNGA Resolution 76/300.



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This legislation would acknowledge “the human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.”

The development and implementation of this legislation are critical to improving the quality of life and self-determination for First Nations, as directly referred to in Article 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which stipulates:

*“States shall consult and cooperate in good faith with the Indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.”*

### Content of Bill C-61

Bill C-61 includes many key areas that the AFN and First Nations across Canada have consistently advocated for. As a result of co-development, the proposed legislation now includes several critical requirements, such as:

- Recognition of rights over source waters.
- Minimum binding national standards.
- Commitment to a funding framework.
- Liability protection for water service employees of First Nations governments
- Water governance structures led by First Nations.
- Mechanisms to address management of transboundary source waters.

Specifically, the proposed legislation includes:

- **Inherent and Treaty Rights** – The proposed legislation recognizes inherent right to self-government and jurisdiction to water, source water, drinking water, wastewater, and related infrastructure, including the recognition of law-making power.
- **Protection Zones** – The proposed legislation provides for the protection of water and source water in protection zones off-reserve.
- **Free, Prior, and Informed Consent (FPIC)** – The proposed legislation includes that decision-making is to be guided by the principle of free, prior, informed consent, as affirmed in UNDRIP. This is in line with the requirements of the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDA), s. 5.
- **Funding Framework** – The proposed legislation outlines the obligations of Canada and the duties of the Minister to provide safe drinking water. It also outlines obligations to consult and cooperate with First Nations on the development of a funding framework and the allocation of funds.
- **First Nations Water Commission** – Since 2013, the AFN, as mandated by resolutions, has pushed for legislation to explicitly state that the Minister will support, through legislative and financial means, and in collaboration with First Nations, the establishment of the First Nation Water Commission that can support First Nations water management.



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- **Minimum Standards** – The proposed legislation sets minimum standards for the quality and quantity of drinking water, as well as for wastewater treatment. It covers water use for domestic purposes, as well as for fire and emergency situations. These standards are required to meet or exceed existing federal guidelines.
- **Private and Decentralized Systems** – As mandated by resolution, the AFN has successfully advocated for the inclusion of funding and support for all systems, including private and decentralized systems. The proposed legislation includes private collection in the definition of water services. These standards will ensure safe and clean water for all water systems on reserve, including wells, rainwater collection, cisterns, and private water systems serving one (1) to four (4) residences. This surpasses other jurisdictions, where regulations that protect public drinking water systems but exclude privately owned wells.

These issues will remain critically important as the proposed Act progresses through the parliamentary process and during its implementation.

### **Areas of Bill C-61 Requiring Further Discussion and Potential Amendment**

As Bill C-61 progresses through the parliamentary process, there are several areas that require further discussion and potential amendments to ensure that the legislation fully meets the needs of First Nations. These areas include:

- Lack of statutory funding commitments.
- Aspects of protection zones, including:
  - Protection zones do not need to be adjacent to reserve lands.
  - The feasibility of multi-jurisdictional agreements on source water protection off-reserve that require the participation of additional levels of government.
  - Arbitrary decision-making regarding the definition of 'protection zones'.
  - The role of First Nations in the development of regulations.
- Clarification that the quantity of water for all uses also includes economic development, industrial, and commercial purposes.
- Affirmation and inclusion of inherent, human, and Treaty-based water rights must be included in the binding legislation.





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## Moving Forward

Bill C-61 faces a significant journey ahead, which includes the co-development and implementation of funding frameworks, governance institutions, and the establishment and enforcement of standards. It is essential that First Nations remain key partners in the co-development process with the Government of Canada and lead the way in advancing water and wastewater sustainability.

Bill C-61 is a step forward to realize universal access by all First Nations to clean water and sanitation. However, our work is far from complete. The Government of Canada is obligated to ensure that all necessary budget allocations are made to meet its commitments to close the infrastructure gap by 2030. Additionally, the Government of Canada must address the human and collective rights and the inherent jurisdiction of First Nations regarding access to clean water, sanitation services, and infrastructure.

The AFN will continue to facilitate partnerships between Canada and First Nations to close gaps in essential services and protect First Nations rights, title, and jurisdiction.

