

1985, chapter 26
**AN ACT TO AMEND THE
ACT TO PRESERVE
AGRICULTURAL LAND**

Bill 44

Introduced by Mr Jean Garon, Minister of Agriculture, Fisheries and Food

Introduced 15 May 1985

Passage in principle 6 June 1985

Passage 20 June 1985

Assented to 20 June 1985

**Coming into force: 20 June 1985, except sections 11, 12 and 17, which will come into force
by proclamation of the Government**

Act amended:

Act to preserve agricultural land (R.S.Q., chapter P-41.1)





CHAPTER 26

An Act to amend the Act to preserve agricultural land

[Assented to 20 June 1985]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. P-41.1, s.
1, am.

1. Section 1 of the Act to preserve agricultural land (R.S.Q., chapter P-41.1) is amended

(1) by inserting, at the end of paragraph 6, the words “, except a regional county municipality where it does not perform the functions of a municipal corporation in an unorganized territory”;

(2) by replacing paragraph 10 by the following paragraph:

“subdivi-
sion”

“(10) “subdivision” means the parcelling out of a lot by means of the deposit of a plan and book of reference pursuant in particular to article 2174*b* or 2175 of the Civil Code or by means of a deed of alienation of part of that lot;”.

c. P-41.1, s.
4, am.

2. Section 4 of the said Act is amended

(1) by replacing the word “twelve” in the first line of the first paragraph by the word “sixteen”;

(2) by replacing the word “three” in the second line of the first paragraph by the word “five”.

c. P-41.1, s.
6, am.

3. Section 6 of the said Act is amended by replacing the second paragraph by the following paragraph:

Replace-
ment

“If the president is absent or unable to act, he is replaced by the vice-president designated therefor by the Government.”

c. P-41.1, s. 7, replaced **4.** Section 7 of the said Act is replaced by the following section:

Divisions **“7.** The commission may sit in divisions composed of two members, one of whom is required by the president to preside over the sittings.

Competence A division may hear and decide any matter within the competence of the commission except in the case of an application for review provided for in section 18 or where the commission must provide a notice.

Subsequent hearing Where a unanimous decision is not reached, the matter shall be heard by not fewer than three members. A member of the division having not reached a unanimous decision may sit again at that hearing.”

c. P-41.1, s. 14.1, added **5.** The said Act is amended by inserting, after section 14, the following section:

Written representations **“14.1** Except in the case of an act performed in contravention of section 27 or 70, the commission is not authorized to make any order unless it has given the interested persons an opportunity to make written representations to it; at the request of any interested person, the commission shall hold a public hearing.”

c. P-41.1, s. 17, am. **6.** Section 17 of the said Act is amended by replacing the first paragraph by the following paragraphs:

Immunity **“17.** Except in respect of a question of jurisdiction, no extraordinary recourse provided for in articles 834 to 850 of the Code of Civil Procedure (R.S.Q., chapter C-25) may be exercised and no injunction may be granted against the commission or any of its members acting in their official capacity.

Inapplicable provision Except in respect of a question of jurisdiction, article 33 of the said Code does not apply to the commission or to any of its members acting in their official capacity.”

c. P-41.1, s. 18, replaced **7.** Section 18 of the said Act is replaced by the following sections:

Review **“18.** Any interested party may apply to the commission for the review of any decision or order.

Powers of commission Where it reviews a decision or order, the commission may confirm, overturn or alter it.

Decision The decision of the commission on an application for review is final and without appeal except to the extent provided in Division II.1.

Division of
three mem-
bers

“18.1 To decide an application for review, the commission shall sit in a division composed of not fewer than three members, including the president and one vice-president or two vice-presidents, excluding any member having ruled on the application regarding which there is an application for review.

Time limit

“18.2 The application for review must be filed in the record office of the commission within sixty days of the date of the decision or order regarding which the application is made.

Extension

The commission may, for cause, extend the time limit provided that not more than six months have elapsed since the date of the decision or order.

Suspended
decision

“18.3 The application for review suspends the execution of the decision except in the case of an order enjoining a person to cease an activity performed in contravention of this Act and in the case where the commission authorizes immediate execution.

Written
representa-
tions

“18.4 Before ruling on an application for review, the commission shall give interested persons an opportunity to make written representations to it; at the request of any interested person, the commission shall hold a public hearing.

Errors in
decision or
order

“18.5 Any decision or order in which there are errors in writing or calculation or any other error of form may be corrected at any time by the commission of its own initiative or upon request; the same applies to any decision which, through obvious inadvertence, grants more than was applied for or fails to rule on a part of the application.”

c. P-41.1,
ss. 19.1-
19.3, added

8. The said Act is amended by inserting, after section 19, the following sections:

Adoption of
rules

“19.1 At a meeting called by the president, a majority of the members of the commission may adopt, by by-law,

(1) rules of evidence, procedure and practice applicable to the conduct of the matters submitted to the commission;

(2) rules relating to the presentation and processing of an application made under this Act and of the documents or information required for the application;

(3) the forms to be used for the administration of any provision of this Act.

Publication Every by-law of the commission shall be transmitted to the Minister, who shall cause it to be published in the *Gazette officielle du Québec* with a notice indicating that it will be submitted to the Government for approval at the expiry of a period of thirty days after its publication. The Government may amend any by-law submitted to it for approval.

Coming into force “**19.2** A by-law of the commission comes into force after it is approved with or without amendment by the Government, fifteen days after its publication in the *Gazette officielle du Québec*, or on any later date fixed in the notice or in the final text.

Publication of decisions “**19.3** The commission shall periodically publish a compilation of its decisions.”

c. P-41.1,
heading
and ss.
21.1-21.9,
added
9. The said Act is amended by inserting, after section 21, the following heading and sections:

“DIVISION II.1

“APPEAL

Appeal “**21.1** Any interested person may bring an appeal from a final decision of the commission before three judges of the Provincial Court on any question of law or jurisdiction.

Leave No appeal shall be brought except with leave of a judge of the Provincial Court. The judge shall grant leave to appeal if he is of the opinion that the question should be examined in appeal.

Designated judges “**21.2** The jurisdiction conferred by this division on one or several judges of the Provincial Court shall be exercised by only those judges of that Court who are designated by the chief judge or the senior associate chief judge, each within the limits of his territorial jurisdiction.

Application for leave “**21.3** The application for leave to appeal shall be filed in the office of the Provincial Court of the judicial district of Montréal or Québec, within thirty days of the decision, after notice to the parties and to the commission.

Costs The costs in respect of the application shall be at the judge’s discretion.

Institution of appeal “**21.4** The appeal is brought by depositing with the commission a notice to that effect served on the parties, within ten days of the date of the decision granting leave to appeal.

Service The deposit of the notice constitutes service on the commission.

Transmis-
sion to of-
fice of court

“21.5 The commission shall immediately forward the notice of appeal to the office of the Provincial Court in Montréal or Québec, as the appellant elects.

Joint record

The commission shall transmit to the office four copies of the contested decision as well as of any other relevant document, to constitute a joint record.

Applicable
provisions

“21.6 The appeal is governed by articles 491 to 524 of the Code of Civil Procedure, adapted as required. The parties are required to deposit only four copies of their factum.

Commission

The commission is a party to the appeal.

Order

“21.7 Where the Provincial Court accedes to the appeal, it shall order the commission, where such is the case, to rule on the merits of the matter brought before it.

Rules of
practice

“21.8 The Provincial Court may, in the manner provided in article 47 of the Code of Civil Procedure, make the rules of practice judged necessary for the proper carrying out of this division.

Decision

“21.9 The decision of the three judges of the Provincial Court is final.”

c. P-41.1, s.
28, am.

10. Section 28 of the said Act is amended by adding the following paragraph:

Exception

“Notwithstanding the first paragraph, a person may, without the authorization of the commission, identify a residual part of a lot as a separate lot by depositing a plan and book of reference or alienate it if he does not retain a right of alienation on another residual part of the same lot that is contiguous or would be contiguous if it were not separated from the former residual part by a public road, a railway, a public utility right of way or the surface of a lot in respect of which there exists a right recognized under Division IX.”

c. P-41.1, s.
29.1, added

11. The said Act is amended by inserting, after section 29, the following section:

Required
statement

“29.1 Every deed of alienation of a lot to which this Act applies in a designated agricultural region shall contain a statement of the effect of the relevant provisions of this Act on the alienation and subdivision of the lot, its use for purposes other than agriculture and on removal of the topsoil, the use of a sugar bush for other purposes and the cutting of maples.”

c. P-41.1, s. 30, am. **12.** Section 30 of the said Act is amended by replacing the words “28 or 29” in the first and second lines of the first paragraph by the words “28, 29 or 29.1”.

c. P-41.1, s. 30, am. **13.** Section 30 of the said Act is amended

(1) by inserting, at the end of the first paragraph, the words “unless the subdivision or alienation was subsequently authorized by the commission.”;

(2) by inserting the words “by motion” after the word “apply” in the third line of the second paragraph.

c. P-41.1, s. 33, am. **14.** Section 33 of the said Act is amended by inserting, after the word “article” in the second line of the first paragraph, the word and figure “2174b or”.

c. P-41.1, s. 40, am. **15.** Section 40 of the said Act is amended

(1) by replacing the words “his lot” in the third line of the first paragraph by the words “a lot which he owns and where he carries on his principal occupation”;

(2) by replacing the second paragraph by the following paragraph:

Residence “An agricultural operations corporation or partnership may also erect a residence for a shareholder or member whose principal occupation is agriculture on a lot which it owns and where that shareholder or member carries on his principal occupation.”

c. P-41.1, s. 41, am. **16.** Section 41 of the said Act is amended

(1) by inserting, after the word “community” in the first line of the first paragraph, the words “, a department”;

(2) by adding the following paragraph:

Subdivision or alienation “A lot described in the first paragraph may also, on the conditions determined by regulation, be subdivided or alienated without the authorization of the commission for the purposes of repairing or widening public roads, improving or installing sewer and water systems or providing public utility services, in the following cases:

(1) where the work results in enlarging the existing right of way of a public road to a maximum width of 20 metres, including the present right of way, and where the additional area required for the work is contiguous to the present right of way;

(2) where the repair or installation of public services or public utility services is carried out in a right of way having a maximum width of 20 metres, as described in subparagraph 1.”

c. P-41.1, s. 55, am. **17.** Section 55 of the said Act is amended by replacing the figure “29” in the third line by the figure “29.1”.

c. P-41.1, s. 59, am. **18.** Section 59 of the said Act is amended by adding, after the second paragraph, the following paragraphs:

Inclusion or exclusion of lot “Where the application deals with the inclusion or exclusion of a lot, the commission shall obtain the advice of the regional county municipality or of the community, which shall transmit its advice to the commission within sixty days after the application. Failing that, the applicant may apply to the commission.

Substantiated recommendation The recommendation provided for in the second paragraph or the advice provided for in the third paragraph shall be substantiated, taking into account the criteria described in sections 12 and 62.”

c. P-41.1, s. 60, replaced **19.** Section 60 of the said Act is replaced by the following section:

Written representations “**60.** The commission must give to the applicant and to any interested person the opportunity to make written representations to it; it must hold a public hearing at the request of any party; it may hold a public hearing if it deems it appropriate.

Information The commission may also require from the applicant or any person such information and documents as it considers relevant.”

c. P-41.1, ss. 60.1, 60.2, added **20.** The said Act is amended by inserting, after section 60, the following sections:

Analysis of file “**60.1** At least thirty days before the date fixed for the hearing, the commission shall send to the applicant and to any interested person involved in a matter referred to the commission, copy of the analysis of the file made for the commission.

List of documents The commission shall send to the applicant at the same time the list of the other documents forming part of the file and a notice setting out the conditions of the third paragraph of section 15 and of section 60.2.

Photocopy of document “**60.2** The applicant or any intervening party in a matter referred to the commission may cause the commission to send him by mail, before the date fixed for the hearing, a photocopy of any document indicated by him among the documents forming part of the record, on payment

of the duties prescribed by regulation, provided that he applies therefor not less than ten days before the date fixed for the hearing.”

c. P-41.1, s.
62, am.

21. Section 62 of the said Act is amended by replacing the second paragraph by the following paragraphs:

Examina-
tion of ap-
plication

“In considering the application, the commission may examine the compatibility of the application with the possibilities of agricultural use of the neighbouring lots, the availability of other sites and the consequences a refusal would have for the applicant, taking into account the criteria mentioned in section 12.

Conse-
quences of
refusal

When considering the consequences of a refusal for the applicant, the commission is not required to take into account acts performed in contravention of this Act.

Viability of
community

The commission may examine the socioeconomic conditions necessary for the viability of a rural community where that is justified by the low density of occupancy of the territory and the isolation of the region.

Neighbour-
ing lots and
environ-
ment

The commission shall also examine the consequences of an authorization with respect to the possibilities of agricultural use of the neighbouring lots; it shall take into account the restrictions and effects resulting from the application of the Acts and the regulations, particularly those relating to the environment.”

c. P-41.1, s.
65, am.

22. Section 65 of the said Act is amended

(1) by inserting, after the words “application of a” in the first line of the first paragraph, the words “regional county municipality, a”;

(2) by inserting, after the first paragraph, the following paragraph:

Advice of
supramunic-
ipal body

“The commission shall obtain the advice of the regional county municipality or of the community where the application is not made by the latter. The regional county municipality or the community shall transmit its advice to the commission within sixty days after the application.”;

(3) by inserting, after the word “that” in the second line of the third paragraph, the words “the development plan and”;

(4) by replacing the word “six” in the third line of the third paragraph by the word “eighteen”.

c. P-41.1,
heading and
ss. 69.1-
69.4, added

23. The said Act is amended by inserting, after section 69, the following:

“DIVISION IV.1

“REVIEW OF THE AGRICULTURAL ZONE

Application
for review

“**69.1** A regional county municipality or a community that undertakes to elaborate a development plan may apply for the review of the agricultural zone.

Notice

The commission, within 30 days from the receipt of the motion, shall send a notice to the regional county municipality or the community concerned, stating its intention to reach an agreement with such municipality or community upon its revised agricultural zone plan, within 180 days from the sending of the notice.

Notice

The commission may, where it is authorized to do so by the Government, send to a regional county municipality or a community the notice provided for in the second paragraph if the latter has not applied for a review of the agricultural zone to the commission at the expiry of a six-month period from the date of adoption of the plan or from the date of expiry of the time limit prescribed by law for the adoption of the plan if it has not been adopted.

Transmis-
sion of no-
tice

The commission shall send a copy of the notice to the municipal corporations forming part of the regional county municipality or the community and to the Confédération de l'Union des producteurs agricoles.

Agreement

“**69.2** If there is agreement between the regional county municipality or the community and the commission, the latter shall prepare a revised agricultural zone plan of the municipality together with a memorandum of agreement.

Revised
plan

Failing agreement, the commission shall prepare the revised plan, where such is the case, taking into account the representations made to it.

Applicable
provisions

“**69.3** Sections 49 to 54, adapted as required, apply to the revised plan.

Statement
of represen-
tations

The revised plan sent by the commission to the Government for approval shall, in all cases, be accompanied with a statement of the representations made by the intervening parties.

Coinciding
of limits

“69.4 The regional county municipality or the community shall, when an agricultural zone is reviewed pursuant to this division, take the necessary measures to make the limits of the agricultural zones provided in the development plan coincide with the limits of the zones reviewed pursuant to this division and also to prevent the urbanization perimeters from encroaching on agricultural zones.”

c. P-41.1, s.
70, am.

24. Section 70 of the said Act is amended

(1) by striking out the words “for the purpose of sale” in the third line;

(2) by adding at the end the words “and in the case of the exercise of a conferred right recognized by this Act.”

c. P-41.1, s.
80, am.

25. Section 80 of the said Act is amended by repealing paragraphs 1, 5 and 10.

c. P-41.1, s.
85, am.

26. Section 85 of the said Act is amended

(1) by adding, after the word “may” in the third line, the words “provided that not more than two years have elapsed since service of the order”;

(2) by adding the following paragraph:

Contraven-
tion

“The commission may also, by motion, obtain from a judge of the Superior Court an order enjoining a person to cease contravening this Act, even if no order has been issued under section 14.”

c. P-41.1, s.
100.1,
added

27. The said Act is amended by inserting, after section 100, the following section:

Presump-
tion

“100.1 A subdivision by means of the deposit of a plan and book of reference or a construction in respect of which the commission has, after 20 June 1985, received a declaration provided for in section 32 or section 33 is deemed to have been made in accordance with this Act where over three months have elapsed since the commission received the declaration.

Presump-
tion

In the case of a declaration received between 1 January 1983 and 20 June 1985, the subdivision or construction is deemed to have been made in accordance with this Act where over one year has elapsed since 20 June 1985.

Presump-
tion

In the case of a declaration received before 1 January 1983, the subdivision by means of the deposit of a plan and book of reference or the construction is deemed to have been made in accordance with this Act from 20 June 1985.

Presump-
tion

In the case of alienation, subdivision, construction or use for any other purpose than agriculture in respect of which this Act does not prescribe the obligation to file a declaration, the presumption provided in the first paragraph exists when over five years have elapsed from the date of registration of the deed of alienation, subdivision or, in the case of a construction, from the date of the first municipal tax account sent in respect of that construction.

Application

This section does not apply in the case of fraud. Nor does it apply to a subdivision, construction or alienation where the commission advised the person who made it that it was not in accordance with this Act before the expiry of the required time to be deemed in accordance therewith."

c. P-41.1, s.
102,
replaced

28. Section 102 of the said Act is replaced by the following section:

Interruption
or abandon-
ment

"102. The right recognized by section 101 subsists notwithstanding the interruption or abandonment of the use other than agriculture. It is extinguished, however, by the fact that that part of the surface in respect of which the right exists is left uncropped for over one year from the time when the provisions of this Act requiring the authorization of the commission were made applicable to that surface. It is also extinguished on the same conditions governing the part of the surface that has been the subject of a deed of alienation; the same applies as regards the surface reserved by the seller at the time of a subdivision or alienation made after 20 June 1985."

c. P-41.1, s.
103, am.

29. Section 103 of the said Act is amended

(1) by replacing the first paragraph by the following paragraph:

Enlarge-
ment

"103. A person may, without the authorization of the commission enlarge that part of the surface in respect of which there exists a right recognized by section 101.";

(2) by adding, after the second paragraph, the following paragraph:

Contiguous
lots

"The enlargement provided for in the preceding paragraph may be made on more than one lot where a person was the owner of several contiguous lots on the date on which the provisions of this Act requiring the authorization of the commission were made applicable to the lots."

c. P-41.1,
expression
replaced

30. The said Act is amended by replacing the expression “municipal county corporation”, wherever it appears, by the expression “regional county municipality”.

Prescrip-
tions still in
force

31. Every prescription of a regulation made by the Government pursuant to paragraph 1, 5 or 10 of section 80 remains in force until it is amended, replaced or repealed by by-law of the commission made pursuant to section 19.1 of the Act to preserve agricultural land, enacted by section 8 of this Act.

Exception

32. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (Schedule B of the Canada Act, chapter 11 in the 1982 volume of the Acts of the Parliament of the United Kingdom).

Coming into
force

33. This Act comes into force on 20 June 1985 except sections 11, 12 and 17, which will come into force on any later date fixed by proclamation of the Government.