



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FOURTH LEGISLATURE

Bill 123

An Act to amend the Act to preserve agricultural land and other legislative provisions

Introduction

Introduced by
Mr Yvon Picotte
Minister of Agriculture, Fisheries and Food

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EXPLANATORY NOTES

This bill amends the Act to preserve agricultural land, introducing a new method of processing applications using two different rolls each with their own operating rules.

This bill proposes a revision of a number of decision-making criteria and the consideration of regional specificities and provides for explicit recognition of certified associations within the meaning of the Farm Producers Act as interested parties.

The bill abolishes a number of measures, in particular those concerning the establishment of exclusive sectors and the establishment of a special fund for the defence of producers prosecuted as a result of the dust, odors or noise caused by their farming activities.

Under the bill, the former commissioner for complaints becomes a mediator appointed among the personnel of the Commission de protection du territoire agricole du Québec and is assigned a modified role.

The bill abolishes the appeal tribunal in matters relating to the preservation of agricultural land and gives the Commission the power to revise or revoke a decision or order in certain cases.

It proposes the introduction of new regulatory powers to allow the Act to be implemented with more flexibility.

In addition, the bill includes concordance amendments to the Act respecting the acquisition of farm land by non-residents and amends the Act respecting land use planning and development to provide for the creation of agricultural advisory committees within regional county municipalities.

Finally, the bill contains a number of transitional provisions concerning, among other things, the processing of applications upon

the coming into force of the Act and the abolition of the appeal tribunal.

ACTS AMENDED BY THIS BILL:

- Act respecting the acquisition of farm land by non-residents (R.S.Q., chapter A-4.1);
- Act respecting land use planning and development (R.S.Q., chapter A-19.1);
- Act to preserve agricultural land (R.S.Q., chapter P-41.1);
- Act to amend the Act to preserve agricultural land (1989, chapter 7).

Bill 123

An Act to amend the Act to preserve agricultural land and other legislative provisions

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

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

(1) by inserting, after paragraph 3, the following paragraph:

“(3.1) “certified association” means a certified association within the meaning of the Farm Producers Act (R.S.Q., chapter P-28);”;

(2) by striking out the words “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” in the first, second and third lines of paragraph 10.

2. Section 7 of the said Act is amended by adding, at the end, the words “or where an application is entered on the municipal and public roll”.

3. Section 12 of the said Act is amended by inserting the words “and shall take regional specificities into consideration” after the word “activities” in the third line.

4. The said Act is amended by inserting, after section 13, the following section:

“**13.1** For the purposes of this Act, a certified association is considered to be an interested party.”

5. Section 14 of the said Act is amended by replacing the word “order” in the second line of the first paragraph by the word “authorization”.

6. Section 15 of the said Act is amended

(1) by inserting the words “applications for review or revocation,” after the word “authorization,” in the first line of the second paragraph;

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

“An attestation issued by a person authorized for that purpose by the commission is proof that a lot is subject to this Act, from the date indicated in the attestation.”

7. The said Act is amended by inserting, after section 18.5, the following sections:

“18.6 The commission, of its own initiative or upon application by an interested party and after giving the parties to the initial proceedings an opportunity to be heard, may review or revoke any decision or order made by it from which no appeal has been brought

(1) where a new fact is discovered which, had it been known in time, might have justified a different decision or order;

(2) where, for reasons considered to be sufficient, it has not been possible to hear one of the parties;

(3) where a substantive or procedural defect is likely to invalidate the decision or order.

The decision or order must be reviewed or revoked by one member if made by one member, or by three members if made by three members.

“18.7 The review or revocation proceedings must be instituted at the record office of the commission within sixty days from the date of the decision or order forming the object of the proceedings.

The commission may, for cause, extend that period provided that no more than six months have elapsed from the date of the decision or order.

“18.8 The review or revocation proceedings suspend the execution of the decision except in the case of an order enjoining a person to cease an activity carried on in contravention of this Act and where the commission allows immediate execution.”

8. Section 19.1 of the said Act is amended by striking out the second paragraph.

9. Section 19.2 of the said Act is repealed.

10. The heading of subdivision 1 of Division II.1 of the said Act is struck out.

11. Sections 21.0.1 to 21.0.3 of the said Act are repealed.

12. Sections 21.0.4 and 21.0.5 of the said Act are repealed.

13. Sections 21.0.6 to 21.0.11 of the said Act are repealed.

14. The heading of subdivision 2 of Division II.1 of the said Act is struck out.

15. Section 21.1 of the said Act is amended by replacing the words “appeal tribunal before three judges” in the second line of the first paragraph by the words “commission before one judge”.

16. Section 21.2 of the said Act is amended by replacing the words “one or several judges” in the first and second lines by the words “a judge”.

17. Section 21.3 of the said Act is amended by striking out the words “, to the appeal tribunal” in the third and fourth lines of the first paragraph.

18. Section 21.4 of the said Act is replaced by the following section:

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

The filing of the notice constitutes service on the commission.”

19. Section 21.5 of the said Act is amended

(1) by replacing the words “appeal tribunal” in the first line of the first paragraph by the word “commission”;

(2) by replacing the words “appeal tribunal” in the first line of the second paragraph by the word “commission”.

20. Section 21.7 of the said Act is amended by striking out the second paragraph.

21. Section 21.9 of the said Act is amended by replacing the words “three judges” in the first line by the word “judge”.

22. Section 26 of the said Act is amended by replacing the word “In” in the first line by the words “Except in the cases determined by regulation, in”.

23. Section 28 of the said Act is amended

(1) by inserting the words “or in the cases determined by regulation” after the word “commission” in the second line of the first paragraph;

(2) by replacing the words “identify a residual part of a lot as a separate lot by depositing a plan and book of reference or alienate it” in the second and third lines of the second paragraph by the words “alienate a residual part of a lot”.

24. Section 29 of the said Act is amended by inserting the words “or in the cases determined by regulation” after the word “commission” in the second line of the first paragraph.

25. Section 30 of the said Act is amended by adding, after the second paragraph, the following paragraph:

“In every case where the commission does not bring the motion, it must be implemented.”

26. Section 32 of the said Act is amended by replacing the first paragraph by the following paragraph:

“**32.** No local municipality, regional county municipality or urban community may issue a building permit in respect of a lot situated in a designated agricultural region unless the application is accompanied by an authorization from the commission, where its authorization is required, or, in the cases determined by regulation, by a declaration from the applicant stating that the project contemplated in the application does not require the authorization of the commission.”

27. Section 33 of the said Act is repealed.

28. Section 41 of the said Act is amended by inserting the words “or 30 metres in the case of a public tertiary road” after the word “metres” in the second line of subparagraph 1 of the second paragraph.

29. Subdivision 5 of Division III of the said Act is repealed.

30. The said Act is amended by inserting, after the heading of Division IV, the following heading:

“§ 1.—*Agricultural zone decree*”.

31. Section 47 of the said Act is amended by replacing the words “Confédération de l’Union des producteurs agricoles” in the sixth line of the first paragraph by the words “certified association”.

32. The said Act is amended by inserting, after section 53, the following heading:

“§ 2.—*Effects of the agricultural zone decree*”.

33. The said Act is amended by inserting, after section 57, the following heading:

“§ 3.—*Applications entered on the general roll*”.

34. Section 58 of the said Act is replaced by the following sections:

“58. A person other than a person to whom section 59 applies who wishes to do anything for which an authorization or permit is required in respect of a lot situated in an agricultural zone or who wishes to have a lot included in an agricultural zone must apply therefor to the local municipality in whose territory the lot is situated and send a copy of the application to the commission.

The application must be accompanied by every document required by regulation.

“58.1 Upon receipt of the application, the clerk or secretary-treasurer of the local municipality shall notify the applicant and the commission of the date of receipt of the application. The local municipality shall consider the application and may, for that purpose, require such information and documents as it considers relevant.

The local municipality must, within thirty days of receipt of the application, send it to the commission, make a recommendation to the commission, and send a notice respecting the conformity of the application with its town planning by-laws.

The local municipality must also send a copy of all the documents required under the second paragraph to the applicant.

“58.2 The recommendation must give reasons and take into account the criteria set out in section 62. Furthermore, where the application concerns a new non-agricultural use, the recommendation must include an indication of any appropriate areas available outside the local municipality’s agricultural zone that could satisfy the application.

“58.3 Every application under section 58 shall be entered on the commission’s general roll at the end of a period of thirty days.

However, an application is inadmissible if the commission has received a notice of non-conformity with the local municipality’s town planning by-laws or if it is considered to be an application for exclusion in accordance with section 61.2.

“58.4 Except in the cases described in the second paragraph of section 58.3, an application, including an application for inclusion, may be entered on the public and municipal roll on the initiative of the commission, or at its discretion at the request of a local municipality, a regional county municipality or an urban community. Sections 59.2 to 59.6 apply to such an application.”

35. Section 59 of the said Act is replaced by the following headings and sections:

“§ 4.—Applications entered on the municipal and public roll

“59. A regional county municipality, an urban community, a department, a public body or an agency providing public utility services wishing to do anything for its own purposes or for the purposes of a project it is promoting for which an authorization or permit is required in respect of a lot situated in an agricultural zone must apply therefor to the local municipality in whose territory the lot is situated and send a copy of the application to the commission.

A local municipality wishing to make an application under the first paragraph may do so by sending its application directly to the commission, together with the documents required under the second paragraph of section 59.1 and by regulation.

“59.1 Upon receipt of an application, the clerk or secretary-treasurer of the local municipality shall notify the applicant and the commission of the date of receipt of the application. The local municipality shall consider the application and may, for that purpose, require such information and documents as it considers relevant.

The local municipality must, within thirty days of receipt of the application, send it to the commission, make a recommendation to the commission, and send a notice respecting the conformity of the application with its town planning by-laws.

The local municipality must also send a copy of all the documents required under the second paragraph to the applicant.

“59.2 An application under section 59 shall be entered on the commission’s municipal and public roll at the end of a period of thirty days.

It shall be heard at a public hearing, unless the parties waive their right thereto.

“59.3 The commission must request that the regional county municipality or urban community and the certified association make a recommendation on every application made under section 59 and send it to the commission within sixty days of its request.

“59.4 Recommendations made under sections 59.1 and 59.3 must give reasons and take into account the criteria set out in section 62. Furthermore, where the application concerns a new non-agricultural use, the recommendation of the municipality must include an indication of any appropriate areas available outside the local municipality’s agricultural zone that could satisfy the application.

“59.5 Furthermore, the regional county municipality or urban community must send to the commission, at the same time as the recommendation required under section 59.3, a notice of the conformity of the application with the interim control by-law or with the objectives of the development plan and the provisions of the complementary document.

If, in the territory concerned, both a development plan and an interim control by-law are in force at the same time and if the application is in conformity with the objectives of the development plan and with the provisions of the complementary document but not with the provisions of the interim control by-law, or vice-versa, the regional county municipality or urban community must, for the

purposes of the notice respecting conformity to be sent to the commission, refer to whichever of the documents contains provisions most recently in force applicable to the territory concerned.

“59.6 An application in respect of which the commission has received a notice of non-conformity with the local municipality’s town planning by-laws and a notice of non-conformity with the interim control by-law or with the objectives of the development plan and the provisions of the complementary document is inadmissible unless the commission receives a resolution relating to a by-law amending the plan or introducing a revised plan, the desired effect of which is to bring the application into conformity with the objectives of the development plan as amended or revised.

“§ 5.—General provisions”.

36. The said Act is amended by inserting, after section 61, the following sections:

“61.1 Where an application concerns authorization for a new non-agricultural use, the applicant must convince the commission that no appropriate area suitable for the implementation of his project is available outside the local municipality’s agricultural zone.

The commission may reject the application on the sole ground that appropriate areas are available outside the agricultural zone.

“61.2 Where an application concerns authorization for a new non-agricultural use and its object is the establishment of a new institutional, commercial or industrial use or more than one residential use on a lot that is contiguous to the boundaries of the agricultural zone or of an urbanization perimeter, the application must be considered to be an application for exclusion.

Furthermore, where an application concerns authorization for a new non-agricultural use of a lot situated in proximity to an urbanization perimeter, the applicant must convince the commission that his application will not have the effect of extending that perimeter. If he fails to convince the commission, the application must be considered to be an application for exclusion.”

37. Section 62 of the said Act is amended

(1) by replacing the words and figures “Subject to sections 69.0.7 and 69.0.8, the” in the first line of the first paragraph by the word “The”;

(2) by adding, after subparagraph 9 of the second paragraph, the following subparagraph:

“(10) the socioeconomic conditions necessary for the viability of a community.”;

(3) by replacing subparagraph 1 of the third paragraph by the following subparagraph:

“(1) a notice of non-conformity with the interim control by-law or with the objectives of the development plan and the provisions of the complementary document sent by a regional county municipality or by an urban community;”.

38. Section 62.1 of the said Act is amended by adding, after paragraph 3, the following paragraph:

“(4) the fact that a subdivision plan has been filed pursuant to article 2174*b* or 2175 of the Civil Code of Lower Canada.”

39. Section 62.2 of the said Act is repealed.

40. Section 64 of the said Act is amended by replacing the words “community and the municipal corporation in which” in the third and fourth lines by the words “regional county municipality or urban community and the local municipality in whose territory”.

41. Section 65 of the said Act is replaced by the following sections:

“65. A regional county municipality or an urban community, or a local municipality with the support of the regional county municipality or urban community, wishing to apply for the exclusion of a lot from the agricultural zone for its own purposes or for the purposes of a project it is promoting, must apply to the local municipality in whose territory the lot is situated and send a copy of the application to the commission.

A local municipality wishing to make an application under the first paragraph may do so by sending its application directly to the commission, together with the documents required under section 59.1 and by regulation.

An application for exclusion not made by an applicant referred to in the first paragraph is inadmissible.

Sections 59.1 to 59.6, adapted as required, apply to applications for exclusion.

“65.1 When considering an application for exclusion, the commission, in addition to taking account of the criteria set out in section 62, must be satisfied that the exclusion sought would fulfil a need and a development objective which must be proved by the regional county municipality or the urban community.”

42. Division IV.0.1 of the said Act is repealed.

43. Section 69.1 of the said Act is amended by replacing the words “Confédération de l’Union des producteurs agricoles” in the third and fourth lines of the fourth paragraph by the words “certified association”.

44. The said Act is amended by inserting, after section 74, the following section:

“74.1 The permit shall be signed by the president or secretary or by any person authorized for that purpose by the commission, upon payment of the fees prescribed by regulation.

The Government may, however, on the conditions it fixes, allow the required signature to be affixed to the permit by means of an automatic device or a facsimile of the signature to be affixed to the permit, the facsimile having the same force as the signature itself.”

45. Subdivision 2 of Division V.1 of the said Act is replaced by the following subdivision:

“§ 2.—*Mediator*

“79.2 For the purposes of this subdivision, the Minister shall appoint a mediator from among the members of the personnel of the commission for a term specified in the act of appointment.

“79.3 The role of the mediator is to allow an exchange of views between the parties to a dispute and to foster agreement between them.

He may also give his opinion on the dispute if it persists, and make recommendations.

“79.4 A mediator may not be prosecuted by reason of acts performed or omissions made in good faith in the performance of his duties.

“79.5 Where an existing or planned farming activity by a producer in an agricultural zone is restricted or prevented by reason

of the application of a municipal planning or nuisance by-law, he may, if the application of the by-law is prejudicial to him, apply for an intervention by the mediator.

“79.6 The application to the mediator must be in writing and give reasons.

It must, in addition, set out the facts, describe the prejudice suffered and be accompanied by all relevant documents.

“79.7 Within fifteen days of receipt of the application, the mediator shall send a copy to the local municipality.

“79.8 The applicant must provide the mediator with the information or documents he requires for examination of the application.

“79.9 In examining an application, the mediator shall consider, in particular, standard practice in farming activities and the impact of the municipal by-law on the present or planned farming activities of the applicant and those of other producers in the agricultural zone.

“79.10 In examining an application, the mediator may request an expert report from a member of the personnel of the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation and a member of the personnel of the Ministère des Affaires municipales, designated respectively by the Ministers responsible for those departments.

“79.11 The mediator may convene any person to obtain his views, and may hold a public meeting if he considers it expedient.

“79.12 The mediator may refuse or cease to examine an application if

(1) he considers that the application is frivolous or in bad faith or that an intervention by him would not be useful, given the circumstances; or

(2) the applicant refuses or neglects to provide the information or documents required under section 79.8.

“79.12.1 The mediator must refuse or cease to examine an application where judicial proceedings based on similar facts and bearing on the same by-law are in progress or have been the subject of a final judgment deciding the issue.

“79.12.2 Where he refuses or ceases to examine an application, the mediator must notify the applicant and the local municipality, in writing, of the reasons for his decision.

“79.12.3 Where the mediator considers it advisable to intervene, he shall, with dispatch, send a report of his conclusions or recommendations to the applicant and the local municipality.

He may make any recommendation he considers appropriate for solving the problem. He may, if he considers it advisable, send his report to any interested person.

“79.12.4 Within sixty days of receipt of the mediator’s report, the local municipality must inform the mediator and the applicant, in writing, of the action it intends to take in order to implement a recommendation or, if it does not intend to take any such action, it must inform them of the reasons for its decision.”

46. Subdivision 4 of Division V.1 of the said Act is repealed.

47. Section 80 of the said Act is amended

(1) by replacing the words “cases where” in the first line of paragraph 3 by the words “cases in which and conditions under which”;

(2) by striking out the words “and of the appeal tribunal” in the first and second lines of paragraph 6;

(3) by inserting, after paragraph 6, the following paragraphs:

“(6.1) determine the cases in which and conditions on which an extension of residential sites developed before the designated agricultural region decree may be used for purposes other than agriculture without the authorization of the commission;

“(6.2) determine the cases in which and conditions on which a lot or part of a lot may be alienated without the authorization of the commission;

“(6.3) determine the cases in which and conditions on which advertising signs may be erected without the authorization of the commission;

“(6.4) determine the cases in which and conditions on which excess rights of way may be retroceded by municipalities without the authorization of the commission;

“(6.5) determine the cases in which and conditions on which the declaration referred to in section 32 is required;”;

(4) by striking out paragraph 7.1;

(5) by replacing the words “submitted to the commission or to the appeal tribunal” in the second and third lines of paragraph 8 by the words “or declaration submitted to the commission”.

48. Section 81 of the said Act is repealed.

49. Section 85 of the said Act is amended by adding, after the second paragraph, the following paragraph:

“In every case where the commission does not bring the motion, it must be impleaded.”

50. Section 100.1 of the said Act is amended

(1) by striking out the words “by means of the deposit of a plan and book of reference” in the first and second lines of the first paragraph;

(2) by striking out the words “by means of the deposit of a plan and book of reference” in the second line of the third paragraph.

51. Section 115 of the said Act is amended by replacing the words and figure “Subject to section 79.12, the” in the first line by the word “The”.

ACT RESPECTING THE ACQUISITION OF FARM LAND BY NON-RESIDENTS

52. Section 34 of the Act respecting the acquisition of farm land by non-residents (R.S.Q., chapter A-4.1) is replaced by the following section:

“**34.** The commission is responsible for supervising the application of this Act and, to that end, sections 7, 8, 11, 13, 13.1, 14, 16, 17, 18.5 to 18.8 and 19 of the Act to preserve agricultural land (R.S.Q., chapter P-41.1) apply, adapted as required.”

ACT RESPECTING LAND USE PLANNING AND DEVELOPMENT

53. The Act respecting land use planning and development (R.S.Q., chapter A-19.1), amended by chapter 3 of the statutes of 1993, is again amended by replacing Chapter V.1 of Title I by the following:

“CHAPTER V.1

“AGRICULTURAL ADVISORY COMMITTEES

“148.1 The council of a regional county municipality shall, by by-law,

(1) establish an agricultural advisory committee composed of as many members as it determines, selected from among the members of the council and the farm producers and other citizens residing in the territory of the regional county municipality;

(2) confer on such committee powers of study and recommendation with respect to the development of agricultural land, related environmental issues and the practice of farming activities;

(3) empower the committee to establish its rules of internal management; and

(4) provide that the members remain in office until they are replaced.

The council of a regional county municipality may, by by-law, confer on such committee powers of study and recommendation with respect to land development.

“148.2 The members of the committee are appointed by resolution of the council of the regional county municipality, after consultation with the association certified under the Farm Producers Act (R.S.Q., chapter P-28) in the case of members who are farm producers.

The council may also appoint to the committee any persons whose services it may require for the performance of its functions.

“148.3 The council may vote and place at the disposal of the committee the funds the committee needs to fulfil its functions.”

TRANSITIONAL AND FINAL PROVISIONS

54. For the purposes of sections 56 to 59 and section 64, the words “Act as amended” mean the Act to preserve agricultural land (R.S.Q., chapter P-41.1) as it reads after the coming into force of this Act, and the words “present Act” mean that Act as it read before (*insert here the date of coming into force of this Act*).

55. Section 35 of the Act to amend the Act to preserve agricultural land (1989, chapter 7) is repealed.

56. Applications made to a local municipality before (*insert here the date of coming into force of this Act*) and not yet filed at the record office of the commission are governed by the provisions of the Act as amended.

57. Applications filed at the office of the commission before (*insert here the date of coming into force of this Act*) that have not been the subject of a hearing on that date are governed by the provisions of the Act as amended, but they cannot be judged inadmissible for the reasons contained in section 58.3 enacted by section 34 of this Act, in section 59.6 enacted by section 35 of this Act, or in section 65 replaced by section 41 of this Act.

58. Applications filed at the record office of the commission before (*insert here the date of coming into force of this Act*) that have been the subject of a hearing on that date continue to be governed by the provisions of the present Act.

59. Applications filed at the record office of the appeal tribunal before (*insert here the date of coming into force of this Act*) continue to be governed by the provisions of the present Act.

Notwithstanding the foregoing, the appeal tribunal may not extend the time limit for appeal and must render its decision within six months of taking the matter under advisement.

60. Proceedings to which the appeal tribunal is a party are transferred without continuance of suit to the Attorney General.

61. The Government acquires all the rights and assumes all the obligations of the appeal tribunal.

62. The terms of office of the president, vice-president, secretary and members of the appeal tribunal end not later than 31 December 1994, unless the Government fixes a later date.

63. The members of the personnel of the appeal tribunal who are members of the public service become members of the personnel of the commission to the extent and on the date determined by the Government.

64. Provisions of a regulation under paragraphs 6 and 8 of section 80 of the present Act with respect to the appeal tribunal remain in force until (*insert here the date of coming into force of sections 11 and 13 of this Act*).

65. The movable property, files, documents and records of the appeal tribunal become the movable property, files, documents and records of the commission to the extent and in accordance with the procedure determined by the Government.

66. The sums placed at the disposal of the appeal tribunal are transferred to the commission to the extent and in accordance with the procedure determined by the Government.

67. The term of office of the commissioner for complaints in matters of agricultural land preservation ends on (*insert here the date of coming into force of section 45 of this Act*).

68. The examination of complaints before the commissioner on (*insert here the date of coming into force of section 45 of this Act*) is continued by the mediator.

69. The records and other documents of the commissioner become the records and documents of the mediator to the extent and in the manner determined by the Government.

70. The sums placed at the disposal of the commissioner are transferred to the commission to the extent and in accordance with the procedure determined by the Government.

71. This Act comes into force on (*insert here the date of assent to this Act*) except sections 10, 11, 13, 14, 45, 60, 61, 63 and 65 to 70, which will come into force on the date or dates fixed by the Government.