



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-THIRD LEGISLATURE

Bill 100

An Act to amend the Act to preserve agricultural land

Introduction

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**Introduced by
Mr Michel Pagé
Minister of Agriculture, Fisheries and Food**

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EXPLANATORY NOTES

This bill amends the Act to preserve agricultural land, in particular, by conferring upon an independent tribunal the function of hearing appeals from decisions of the Commission de protection du territoire agricole.

The bill also provides that, in the future, land owners will not be required to obtain the authorization of the commission before alienating or subdividing a lot situated in an agricultural zone or erecting more than one residence on such a lot provided they meet certain conditions concerning the size of contiguous areas.

Moreover, the Commission de protection du territoire agricole will identify an exclusive sector within the limits of an agricultural zone and determine the uses that will be permitted on the lots comprised in such a sector. In addition, a commissioner will be appointed to hear the complaints of agricultural producers who believe they have been wronged by the application of a municipal by-law affecting their farming activities.

The bill also provides that, without restricting the application of the Environment Quality Act, a person will incur no liability in respect of third persons for any dust, odors or noise resulting from farming activities if he carries on his farming activities according to law and in compliance with the regulations and orders which apply to his farming activities.

In addition the bill establishes a special fund that will serve to ensure the defence of persons who are being sued by reason of dust, odors or noise resulting from their farming activities.

Finally, the bill contains transitional measures necessary for the carrying out of the Act.

Bill 100

An Act to amend the Act to preserve agricultural land

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 by inserting, after paragraph 13, the following paragraph:

“(13.1) “producer” means a person within the meaning of paragraph *j* of section 1 of the Farm Producers Act (R.S.Q., chapter P-28);”.

2. Section 4 of the said Act is amended by replacing the figure “16” in the first line of the first paragraph by the figure “10” and the figure “5” in the second line of the same paragraph by the figure “2”.

3. Section 7 of the said Act is replaced by the following section:

“**7.** One member may hear and decide any matter within the competence of the commission, except in a case where the commission must give its advice.”

4. Section 12 of the said Act is replaced by the following section:

“**12.** In exercising its jurisdiction, the commission shall take into account that it is in the general interest to preserve agricultural land and farming activities. It shall also examine all the facts that have been submitted to its consideration.”

5. Sections 18 to 18.4 of the said Act are repealed.

6. Division II.1 of the said Act is amended by inserting, after the heading, the following:

“§ 1.—*Appeal to the appeal tribunal*

“21.01 A tribunal consisting of not more than nine members, including the president and vice-president, appointed for not more than five years by the Government is hereby established under the name of “Tribunal d’appel en matière de protection du territoire agricole”. Once established, the term of office of the members cannot be reduced.

The Government shall fix the salary and, as the case may be, the additional salary, allowances or fees of each member of the appeal tribunal.

Every member shall remain in office at the expiry of his term to conclude the cases pending before him.

The president and vice-president of the appeal tribunal shall hold office on a full-time basis.

“21.02 The sittings of the appeal tribunal shall be presided over by the president or by a member designated by him for that purpose. Three members shall be a quorum.

If the president is absent or unable to act, he shall be replaced by the vice-president.

“21.03 Sections 5, 8 to 13, and 15 to 21, adapted as required, apply to the appeal tribunal.

“21.04 Any interested party may appeal from a decision or order of the commission before the appeal tribunal.

“21.05 Appeals shall be filed at the record office of the appeal tribunal within sixty days of the date of the decision or order forming the object of the appeal.

The appeal tribunal may, for cause, extend that period provided that not more than six months have elapsed from the date of the decision or order.

“21.06 On the request of the appeal tribunal, the commission shall transmit to the record office of the appeal tribunal the contested decision or order together with any other relevant document.

“21.07 The appeal suspends the execution of the decision or of any conclusions of an order requiring restoration of a site, except in the case of an order enjoining a person to cease an activity carried on in contravention of this Act and in the case where the appeal tribunal allows provisional execution.

Any appeal from an order whose execution is not suspended shall be heard by preference by the appeal tribunal.

“21.08 Before ruling on an appeal, the appeal tribunal shall give interested parties and the commission the opportunity to be heard.

“21.09 An appeal shall bear, in whole or in part, on the object of the initial application, but cannot claim more than what had been applied for.

In appeal, proof may be made of any new fact having occurred prior to the decision or order appealed from, whether or not such fact has already been submitted as evidence.

The appeal from a decision suspends, by operation of law, any new application to obtain the same conclusions, until a decision is rendered on the appeal.

Subject to section 21.1, the decision of the appeal tribunal is final.

“21.010 The appeal tribunal may confirm a decision or order appealed from; it may also quash the decision or order in whole or in part and render the decision which, in its opinion, should have been rendered in first instance.

“21.011 Every decision of the appeal tribunal must give reasons and be transmitted in writing to the applicant and any interested person, to the commission and to the municipal corporation and regional county municipality in which the lot affected by the appeal is situated.

“§ 2.—Appeal to the Court of Québec”.

7. Section 21.1 of the said Act is amended by replacing the word “commission” in the second line of the first paragraph by the words “appeal tribunal”.

8. Section 21.3 of the said Act is amended by inserting the words “, to the appeal tribunal” after the word “parties” in the third line of the first paragraph.

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

“21.4 The appeal is brought by filing with the appeal tribunal a notice of appeal served on the parties and on the commission, within ten days after the date of the decision authorizing it.

The filing of the notice constitutes service on the appeal tribunal.”

10. Section 21.5 of the said Act is amended

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

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

11. Section 21.7 of the said Act is amended by adding, after the first paragraph, the following paragraph:

“In the case of an appeal from a decision of the appeal tribunal relating to an order of the commission, the Court of Québec may confirm or quash the order.”

12. The said Act is amended by inserting, after section 29.1, the following section:

“29.2 Notwithstanding sections 28 and 29, a person may, without the authorization of the commission, divide into lots or alienate an area of not less than one hundred hectares if the contiguous residual area consisting of one or several lots forms an area of not less than one hundred hectares.”

13. Section 31 of the said Act is amended by adding, after the fifth paragraph, the following paragraph:

“From (*insert here the date of coming into force of this Act*), the right of residential use conferred by this section, and which was legally exercised before 1 July 1988, may be extinguished by leaving uncropped for more than one year the area to which the right applies.”

14. The said Act is amended by inserting, after section 31, the following section:

“31.1 Notwithstanding section 26, a person may, without the authorization of the commission, erect one residence on one or several contiguous lots which are vacant lots or lots in respect of which rights are not recognized under Division IX and which are owned by the person, if the area of the lot or contiguous lots is or constitutes an area of not less than one hundred hectares. The person may use for that purpose an area not exceeding one-half hectare.

For the purposes of the first paragraph, the person shall, beforehand, file in the record office of the commission a statement accompanied with the land title and a plan describing the area on which the residence will be erected.”

15. Section 44 of the said Act is amended by striking out the fifth paragraph.

16. Section 59 of the said Act is amended

(1) by inserting, after the first sentence of the second paragraph, the following sentence: "The municipal corporation shall indicate whether the application is consistent with its by-laws.";

(2) by inserting, after the second sentence of the third paragraph, the following sentence: "The regional county municipality or the community shall indicate whether the application is consistent with the interim control by-law or the development plan in force.";

(3) by replacing the words and figures "sections 12 and 62" in the third line of the fourth paragraph by the word and figure "section 62".

17. Section 62 of the said Act is replaced by the following section:

"62. Subject to sections 69.07 and 69.08, the commission may authorize, on such conditions as it may determine, the use, for purposes other than agriculture, the subdivision, the alienation, the inclusion or the exclusion of a lot or the cutting of maple trees.

In rendering a decision, giving its advice or issuing a permit on a matter referred to it, the commission shall take into consideration

(1) the soil capability of the lot and of the neighbouring lots;

(2) the current use of the lot, in particular the type of agriculture and the extent to which it is practised and the possible uses of the lot for agricultural purposes;

(3) the consequences of an authorization on the use and the possibilities of agricultural use of neighbouring lots;

(4) the restrictions and effects resulting from the application of the Acts and the regulations, in particular those relating to the environment and, more particularly, with respect to livestock operations;

(5) the availability of other sites where farming restrictions would be eliminated or reduced;

(6) the homogeneity of the farming community and farming operations;

(7) the impact on the preservation of water and soil resources in the municipality and in the region;

(8) the establishment of land holdings having an area sufficient for farming activities.

The commission may take into consideration

(1) the impact on the economic development of the region;

(2) the socioeconomic conditions necessary for the viability of a rural community where the low density of occupancy of the territory and the isolation of the community within a region justify it;

(3) the consequences of a refusal for the applicant.”

18. The said Act is amended by inserting, after section 62, the following sections:

“62.1 When making a decision, the commission shall not take into consideration

(1) the fact that the object of the application has been wholly or partly achieved;

(2) the possible consequences of the decision on an offence already committed;

(3) any fact or evidence not related to a provision of section 62.

“62.2 The commission may refuse an application on the sole ground that it is not accompanied with an indication to the effect that the application is consistent with the by-laws of the municipal corporation, the interim control by-law or the development plan in force.”

19. Section 64 of the said Act is amended by striking out the second paragraph.

20. Section 65 of the said Act is amended by replacing the third paragraph by the following paragraph:

“Section 62 applies to the application.”

21. The said Act is amended by inserting, after Division IV, the following division:

“DIVISION IV.01

“EXCLUSIVE SECTOR

“69.01 The commission shall identify as an exclusive sector, on the agricultural zone plan, any part of that zone which it determined on the basis of the identification of soils having a soil capability of class 1, 2 or 3 and organic soils, as inventoried on the maps of soil capability for agriculture prepared within the scope of the Canada Land Inventory.

The organic soils referred to in the first paragraph are soils which enjoy a climate of 2 500 corn-heat units or more.

“69.02 The plan of the agricultural zone which comprises the exclusive sector shall delimit that zone and sector and be accompanied with a technical description of their boundaries established in accordance with the second paragraph of section 34.

“69.03 The commission shall submit the plan to the Government, for approval.

The secretary of the commission shall send two certified copies of the plan and technical description to the clerk or secretary-treasurer of the municipal corporation and regional county municipality concerned and to the Confédération de l'Union des producteurs agricoles.

The Government shall publish the plan in the *Gazette officielle du Québec* with a notice that at the expiry of a period of not less than forty-five days after that publication the plan will be approved, with or without amendment.

If the plan is approved by the Government, the decree approving it shall come into force on the date fixed therein.

“69.04 The decree, together with the agricultural zone plan and the technical description of its boundaries, shall be filed in the record office of the commission.

“69.05 The secretary of the commission shall send two certified copies of the decree, plan and technical description to the clerk or secretary-treasurer of the municipal corporation and regional county municipality concerned, to the Confédération de l'Union des producteurs agricoles and to the registrar of the registration division in which the municipality is situated, for registration purposes.

“69.06 The commission shall publish in the *Gazette officielle du Québec* and in a newspaper circulated in the municipality where the agricultural zone is established a notice of the coming into force of the agricultural zone decree of the municipality comprising the exclusive sector.

“69.07 The commission shall not authorize the exclusion of a lot comprised in an exclusive sector.

“69.08 From the coming into force of a decree approving an agricultural zone plan comprising an exclusive sector, the commission shall not authorize, in that sector, the use, for purposes other than agriculture, the subdivision or alienation of a lot, the cutting of maple trees, or issue a permit for the removal of topsoil unless it is proven to it that there is no appropriate area available elsewhere in the region for the purposes contemplated by the application and that the application is compatible with agriculture or will have no effect on the preservation of agricultural land, as regards the provisions of section 62.

From the same date, the commission shall not grant, in that sector, any authorization for public utility purposes to a regional county municipality, municipal corporation, community, department, public body or agency providing public utility services except upon proof that there is no appropriate area available elsewhere in the region or that the implementation of such services will not affect the homogeneity of the farming operations or involve significant changes in farming activities.”

22. The said Act is amended by inserting, after section 79, the following:

“DIVISION V.1

“FARMING ACTIVITIES

“§ 1.—*Application*

“79.1 This division applies to the following farming activities: agriculture as well as the fact of letting the land lay fallow, the utilization of chemical, organic or mineral products and the use of farming machinery and implements.

The storing, processing, transformation and sale of farm products on the farm shall also constitute farming activities.

“§ 2.—*Complaints*

“79.3 Every producer who believes that he has been wronged or that he is likely to be wronged by the application of a municipal planning by-law or a municipal by-law respecting nuisance affecting his farming activities in an agricultural zone may file a complaint, in writing, with the commissioner.

“79.3 Every producer who believes that he has been wronged or that he is by the application of a municipal planning by-law or a municipal by-law respecting nuisance affecting his farming activities likely to be wronged in an agricultural zone may file a complaint, in writing, with the commissioner.

“79.4 The commissioner shall, if he has reasonable cause to believe that the complaint justifies his intervention, notify forthwith the municipality concerned and transmit a copy of the complaint to it.

In addition, he shall, within thirty days from the receipt of the complaint, cause to be published in a newspaper circulated in the territory of the municipality having adopted the by-law forming the object of the complaint,

(1) a summary of the content of the complaint;

(2) the text of the provision of the municipal by-law in question;

(3) the indication that any interested person wishing to intervene and express his views in respect of the complaint must, within thirty days from the date of publication, notify the commissioner;

(4) the indication that, during the said period, any interested person may, on request, obtain a copy of the complaint from the commissioner.

“79.5 The commissioner may convene the parties and other interested persons to obtain their views.

“79.6 If the commissioner deems it advisable to hold a public hearing, he shall notify the parties and other interested persons. He shall, in such case, cause to be published in a newspaper circulated in the territory of the municipality concerned, a summary of the content of the complaint and he shall indicate the date, time and place of the hearing.

“79.7 In examining a complaint, the commissioner shall be assisted by two persons designated by the Minister of Agriculture, Fisheries and Food and two persons designated by the Minister of Municipal Affairs.

The Government shall fix their salary, additional salary, allowances or fees, as the case may be.

“79.8 In examining a complaint, the commissioner shall take into consideration, in particular, the standards applicable to farming activities, the observance of legislative provisions, of the regulations and of orders other than those issued pursuant to this Act which govern such activities and the impact of the municipal by-law on the farming activities of the complainant and on the farming activities of the other producers of the agricultural zone.

“79.9 The commissioner shall, with dispatch, transmit to the parties a report giving the reasons for his conclusions and recommendations.

He shall cause the report to be published in a newspaper circulated in the territory of the municipality concerned.

“79.10 The commissioner may, within two years after the date of a report, refuse to consider any new complaint in respect of the provisions of a municipal by-law which formed the subject of the report.

“79.11 The Government may, by regulation, establish rules of procedure and management applicable to the complaints received by the commissioner.

“79.12 The Minister of Justice shall be responsible for the carrying out of sections 79.1 to 79.11.

“§ 3.—Measures relating to farming activities

“79.13 Without restricting the application of the Environment Quality Act (R.S.Q., chapter Q-2) and the recourses available to a person under the said Act, no person shall incur any liability in respect of a third person by reason of dust, odor or noise resulting from farming activities in an agricultural zone or be prevented by the third person from carrying on farming activities if he does so according to law and in compliance with the regulations and orders made under the Environment Quality Act with respect to dust, odors or noise resulting from farming activities in agricultural zones.

“79.14 Where a plaintiff or applicant in an action or proceedings against a person who carries on farming activities in an agricultural zone claims

(1) damages by reason of dust, odors or noise resulting from farming activities, or

(2) an injunction with a view to prevent the carrying on of farming activities,

The plaintiff or applicant has, in particular, the burden to prove, for the purpose of establishing responsibility, that the person who carries on farming activities has acted illegally or has contravened the regulations or orders made under the Environment Quality Act with respect to dust, odors or noise resulting from farming activities.

“79.15 In agricultural zones, every person who wishes to erect a building on his lot shall, in respect of neighbouring farming operations, comply with any standard as to distance, imposed on such farming operations pursuant to any Act or regulation in force at the time of the erection.

The municipal corporation shall not issue a building permit where the said standard is not complied with by the owner of the lot contemplated by the application, unless the latter has deposited, for registration purposes, in the office of the registration division concerned, a declaration whereby he waives, in respect of each neighbouring farming operation that is subject to the said standard, the recourses that would have been available to him if he had complied with the standards imposed.

The declaration has the same effect as a servitude and shall be registered against the lot contemplated by the application and against the lots on which a farming activity subject to the distance standards is carried on.

“§ 4.—Special fund

“79.16 A special fund called the farming activities fund shall be established at the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation. The fund will serve to ensure the defence of producers against whom an action, proceedings or order has or have been instituted or issued by reason of dust, odors or noise resulting from farming activities in agricultural zones.

“79.17 The Government shall determine the date of the beginning of the activities of the fund and its assets and liabilities. It shall also determine the nature of the goods and services which may be financed by the fund as well as the nature of the expenses which may be charged to it.

“79.18 The fund shall be made up of the following sums, except interest:

(1) the sums collected for goods and services financed by the fund;

(2) the sums advanced by the Minister of Finance under the first paragraph of section 79.20;

(3) the sums paid by the Minister of Agriculture, Fisheries and Food out of the appropriations allocated for that purpose by Parliament.

“79.19 The management of the sums which constitute the fund shall be entrusted to the Minister of Finance. Such sums shall be allocated to him and deposited with financial institutions designated by him.

The accounting operations and the recording of financial commitments imputable to the fund shall, notwithstanding section 13 of the Financial Administration Act (R.S.Q., chapter A-6), be made by the Minister of Agriculture, Fisheries and Food. The said minister shall, in addition, certify that such commitments and the outlays resulting therefrom do not exceed available balances and that they comply therewith.

[[**“79.20** The Minister of Finance may advance to the fund, with the authorization of the Government and on the conditions it determines, sums taken out of the consolidated revenue fund.

The Minister may, conversely, advance to the consolidated revenue fund, on a short-term basis and on the conditions he determines, any part of the sums constituting the fund not required for its operation.

Any advance made to the fund shall be repayable out of such fund.]]

“79.21 The remuneration and expenses pertaining to the social benefits and other conditions of employment of persons assigned to the activities of the fund in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1) shall be paid out of the fund.

“79.22 Any surplus accumulated by the fund shall be paid into the consolidated revenue fund on the dates and to the extent determined by the Government.

“79.23 Sections 22 to 27, 33, 35, 45, 47 to 49, 51, 57 and 70 to 72 of the Financial Administration Act shall apply to the fund, adapted as required.

“79.24 The fiscal year of the fund shall end on 31 March.

“79.25 Notwithstanding any contrary provision, the Minister of Finance shall, in the event of an insufficiency in the consolidated revenue fund, pay out of the fund the sums required for the execution of a judgment against the Crown which has become a *res judicata*.”

23. Section 80 of the said Act is amended

(1) by replacing paragraph 6 by the following paragraph:

“(6) define the rules of internal management of the commission and of the appeal tribunal;”;

(2) by inserting, after paragraph 7, the following paragraph:

“(7.1) identify the public utility services to which section 69.08 applies;”;

(3) by inserting the words “, the appeal committee” after the word “commission” in the second line of paragraph 8.

24. Section 85 of the said Act is amended by replacing the words “The commission” in the first line of the second paragraph by the words “Any interested person, including the Attorney General, the commission or the municipal corporation in which the lot is situated,”.

25. Section 96 of the said Act is amended by adding, at the end of the second paragraph, the following sentence: “The Government may, in addition, authorize the exclusion of a lot situated in an exclusive sector.”

26. Section 100.1 of the said Act is amended

(1) by inserting the words and figure “in section 31.1 or in” after the words “provided for” in the third line of the first paragraph;

(2) by adding, after the fifth paragraph, the following paragraphs:

“A notice of non-compliance with the fifth paragraph is an administrative measure and may be issued on the sole basis of information obtained, without prior notice, by a member or employee of the commission.

A notice of non-compliance issued as in the preceding paragraph may, however, be contested before the commission at a hearing held pursuant to section 14.1. Any interested person may also request the commission to hold a hearing to decide the merits of the notice by

making an application therefor filed at the record office within sixty days of the date of the notice.”

27. Section 115 of the said Act is replaced by the following section:

“115. Subject to section 79.12, the Minister shall be responsible for the carrying out of this Act.”

28. The provisions of this Act apply to applications filed in the record office of the commission before (*insert here the date of coming into force of this Act*) which have not, on or before that date, been the subject of a hearing.

The provisions of sections 21.01 to 21.011 of the Act to preserve agricultural land apply to orders and decisions made within less than sixty days before (*insert here the date of coming into force of this Act*) for the unexpired portion of that period. An application for review filed in the record office within that time becomes, by operation of law, an application for appeal within the meaning of this Act.

[[29. The sums required for the administration of section 6 of this Act and sections 79.1 to 79.12 of the Act to preserve agricultural land, enacted by section 22 of this Act are taken, for the year 1988-89, out of the consolidated revenue fund to the extent determined by the Government.]]

30. No agricultural zone plan comprising an exclusive sector may be approved by the Government under sections 69.01 to 69.06 of the Act to preserve agricultural land, before the agricultural zone has been the object of a review under Division IV.1.

Until such a plan is approved under sections 69.01 to 69.06 of the Act to preserve agricultural land, the commission shall not authorize the exclusion of a lot the area of which is mainly constituted of soils having a soil capability of class 1, 2 or 3 and of organic soils, as inventoried on the maps of soil capability for agriculture prepared within the scope of the Canada Land Inventory.

Until the plan is approved, the commission shall not grant authorizations under section 62 of the Act to preserve agricultural land unless the area of the lot is mainly constituted of soils having a soil capability of class 1, 2 or 3 and of organic soils, as inventoried on the maps of soil capability for agriculture prepared within the scope of the Canada Land Inventory; the commission shall, in that case, apply forthwith section 69.08 of the said Act to the application.

The organic soils referred to in this section are soils which enjoy a climate of 2 500 corn-heat units or more.

The second, third and fourth paragraphs do not apply to the territory of municipalities situated in agricultural zones designated by order of the Government.

31. The provisions of this Act will come into force on the date or dates fixed by the Government.