



NATIONAL ASSEMBLY

FIFTH SESSION

THIRTY-SECOND LEGISLATURE

Bill 44

An Act to amend the Act to preserve agricultural land

Introduction



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

**Québec Official Publisher
1985**

EXPLANATORY NOTES

This Act amends the Act respecting the protection of agricultural land.

It provides that henceforth any person wishing to apply to the commission and any person to whom the commission intends to issue an order will be entitled to a public hearing and to have prior communication of the documents the commission may consider in reaching a decision on the matter.

In addition, any interested person will be authorized under the bill to have a decision or order reviewed by the commission sitting for that purpose. Applications for review will be heard by a division formed exclusively of revisors who did not sit on the hearing of the application that is under review. The final decision of the commission will make any new application based on the same facts inadmissible.

Regarding the commission's decision making powers, the bill sets forth a new criterion that the commission may take into account, namely, the socio-economic conditions that are necessary for the viability of a rural community, where the low density of occupancy of the soil and the distance from other communities justifies it.

The bill establishes a new mode of periodic review of agricultural zones within the framework of the preparation and review of development plans of communities or regional county municipalities. It will be possible to carry out such a review every five years by way of agreement between the commission and the communities or the regional county municipalities and, failing agreement, by decision of the Government, following a procedure involving the municipal corporations and the Confédération de l'Union des producteurs agricoles.

The bill also contains provisions designed to clarify the scope of certain sections of the Act, to facilitate the application of certain other sections and to give a stronger legal claim to holders of titles to property in farming areas. Among other things, irrefutable presumptions of the validity of deeds are established so as to make them free of all question on the expiry of certain periods, from 3 months to 5 years, as the case may be.

Finally, the bill contains provisions of a purely technical nature, or concordance.

Bill 44

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, at the end of paragraph 6, the words “, except a regional county municipality”.

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

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

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.

Where a unanimous decision is not reached, the matter shall be heard by a division composed of three members.”

3. Section 12 of the said Act is amended by adding the following paragraph:

“The commission may also take into consideration the socio-economic conditions necessary for the viability of a rural community where that is justified by the low density of occupancy of the territory and by the distance between communities.”

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

“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.”

5. Section 18 of the said Act is replaced by the following sections:

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

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

The decision of the commission on an application for review is final and without appeal.

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

“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.

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.

“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.

“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.

“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.”

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

“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.

Any by-law adopted under this section requires the approval of the Government. If it is so approved, the by-law comes into force ten days after its publication in the *Gazette officielle du Québec* or on any later date indicated therein.”

7. Section 29 of the said Act is amended by inserting the words “or registration of alienation” after the word “alienation” in the second line of the first paragraph.

8. Section 30 of the said Act is amended

(1) by inserting, at the end of the first paragraph, the words “Nullity in this case cannot be set up, however, against a person who has obtained the authorization of the commission or against his successors.”;

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

9. 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 where he carries on his principal occupation”;

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

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

10. Section 41 of the said Act is replaced by the following section:

“41. A lot situated in a reserved area may, without the authorization of the commission, be subdivided, alienated and used for municipal or public service purposes identified by by-law, by a municipal corporation, a regional county municipality, a community, a department, a public body or an agency providing public services.”

11. Section 44 of the said Act is amended by inserting, at the end of the third paragraph, the words “, and signed by the members of the commission who took part in the decision”.

12. Section 59 of the said Act is amended by adding, after the second paragraph, the following paragraph:

“The recommendation shall be substantiated, taking into account the criteria described in sections 12 and 62.”

13. Section 60 of the said Act is replaced by the following section:

“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.

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

14. The said Act is amended by inserting, after section 60, the following section:

“60.1 At least twenty days before the expiry of the time limit the commission fixes for the presentation of written representations under this Act, it shall send to the applicant and to any interested person involved in the file copy of the analysis of the file made by its personnel.”

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

“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.

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.”

16. Section 64 of the said Act is amended

(1) by inserting, after the word “and” in the first line of the first paragraph, the words “signed by the members of the commission who took part in it; it shall be”;

(2) by adding the following paragraph:

“Every final decision of the commission makes any other application based on the same facts inadmissible.”

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

“DIVISION IV.1

“REVIEW OF THE AGRICULTURAL ZONE

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

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.

The commission may, at any time, send to a regional county municipality or a community the notice provided for in the second paragraph even if the latter has not applied for a review of the agricultural zone to the commission.

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.

“**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.

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

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

“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.”

18. Section 70 of the said Act is amended by striking out the words “for the purpose of sale” in the third line.

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

20. Section 85 of the said Act is amended by adding the following paragraph:

“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.”

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

“100.1 A subdivision or construction in respect of which the commission has, after (*insert here the date of coming into force of this section*), 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.

In the case of a declaration received before (*insert here the date of coming into force of this Act*), the subdivision or construction is deemed to have been made in accordance with this Act where over two years have elapsed since the commission received the declaration.

This section does not apply in the case of fraud or false declaration. 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.

In the case of alienation, subdivision or construction 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 to the owner in respect of that construction.”

22. Section 105.1 of the said Act is replaced by the following section:

“105.1 The commission or any person may have a decision of the commission registered and have it entered in the index of immovables opposite any lot contemplated therein.

The same applies to an order of the commission that was the subject of an order or a judgment of the Superior Court pursuant to section 85 or of a judgment rendered by the Superior Court pursuant to section 30.”

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

24. 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 6 of this Act.

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

26. This Act comes into force on (*insert here the date of assent to this Act*).