

NATIONAL ASSEMBLY

SECOND SESSION

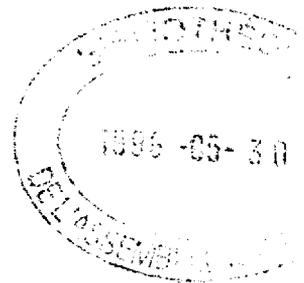
THIRTY-FIFTH LEGISLATURE

Bill 23

**An Act to amend the Act to
preserve agricultural land and
other legislative provisions in
order to promote the preservation
of agricultural activities**

Introduction

**Introduced by
Mr Guy Julien
Minister of Agriculture, Fisheries and Food**



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EXPLANATORY NOTES

The object of this bill is to promote the sustainable development of agricultural activities in agricultural zones through amendments primarily to the Act to preserve agricultural land and the Act respecting land use planning and development.

As regards the exercise of municipal jurisdiction in respect of agricultural zones, the bill proposes that specific measures be introduced into development plans and related documents to promote the planning of agricultural activities in agricultural zones, and to ensure priority for the use of land for agricultural activities and the harmonious coexistence of agricultural and non-agricultural activities. It also provides that an application for authorization is admissible by the Commission de protection du territoire agricole only if it is in conformity with the zoning by-law.

The bill provides for the establishment, within each regional county municipality, of an agricultural advisory committee responsible, in particular, for making recommendations on the planning of agricultural land, agricultural practices, and environmental concerns.

Producers in agricultural zones will be protected from legal proceedings brought by third parties by reason of the noise, dust or odours produced by agricultural activities, and will not be prevented from carrying on their activities provided they comply with the Environment Quality Act and the regulations governing dust and noise, and with municipal by-laws governing odours.

The bill introduces the possibility for a municipality, as of the date of coming into force of the first original or revised development plan of the regional county municipality or community to which it belongs, of obtaining from the Commission, on certain conditions, a general decision covering several proposals to use land for residential purposes in keeping with an overall vision of the agricultural zone.

Besides recasting certain of the Commission's decision-making criteria, amending the regulatory powers of the Government and making a number of fines more dissuasive, the bill contains various administrative and technical measures to facilitate the application of the Act and the operations of the Commission.

Lastly, the bill removes the provisions that apply to the creation of exclusive sectors and in cases determined by regulation of the Government, the requirement to obtain the authorization of the Commission. It contains transitional provisions and consequential amendments.

LEGISLATION 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 respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (R.S.Q., chapter M-14);
- Act to preserve agricultural land (R.S.Q., chapter P-41.1);
- Environment Quality Act (R.S.Q., chapter Q-2);
- Act to amend the Act to preserve agricultural land (1989, chapter 7).

Bill 23

An Act to amend the Act to preserve agricultural land and other legislative provisions in order to promote the preservation of agricultural activities

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The title of the Act to preserve agricultural land (R.S.Q., chapter P-41.1) is replaced by the following title:

“Act respecting the preservation of agricultural land and agricultural activities”.

2. Division I of the said Act becomes Chapter I, and its heading is amended by adding the words “AND SCOPE”.

3. Section 1 of the said Act, amended by section 792 of chapter 2 of the statutes of 1996, is again amended

(1) by inserting, before paragraph 1, the following paragraph:

“(0.1) “agricultural activities” means the practice of agriculture, including the practice of allowing land to lie fallow, the storage and use, on a farm, of chemical, organic or mineral products and of farm machinery and equipment for agricultural purposes, and the storage, packaging, transformation and sale, on a farm, of agricultural products from that farm;”;

(2) by inserting the words “, transfer of a right of superficies,” after the word “licitation” in the fourth line of paragraph 3;

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

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

(4) by replacing paragraph 7 by the following paragraphs:

“(7) “sugar bush” means a stand of trees, covering an area of at least six hectares, suitable for the production of maple syrup;

“(7.1) “appropriate available area” means a vacant area of land on which the intended use is allowed by the applicable municipal zoning by-law and by the interim control measures, if any;”;

(5) by replacing paragraph 8 by the following paragraph:

“(8) “lot” means an immatriculated parcel of land on a cadastral plan, a parcel of land described by metes and bounds in transfer instruments, or any residual part of an immatriculated parcel of land after separation of the parcels of land described by metes and bounds in transfer instruments and the immatriculated parts;”;

(6) 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 of Lower Canada or” in the first, second and third lines of paragraph 10;

(7) by adding, at the end, the following paragraphs:

“A forest stand identified by the letters ER, ERFT, ERBB, ERBJ or ERO on the forest inventory maps drawn up by the Ministère des Ressources naturelles is presumed to be suitable for the production of maple syrup within the meaning of this Act.

For the purposes of this Act, “regional county municipality” includes Ville de Laval and Ville de Mirabel.”

4. The said Act is amended by inserting, after section 1, the following section:

1.1 The object of the agricultural land preservation regime established by this Act is to secure a lasting territorial basis for the practice of agriculture, and to promote, in keeping with the concept of sustainable development, the preservation and development of agricultural activities and enterprises in the agricultural zones established by the regime.”

5. The said Act is amended by inserting, after section 2, the following heading:

“CHAPTER II

“PRESERVATION OF AGRICULTURAL LAND”.

6. Division II of the said Act, comprising sections 3 to 21, becomes Division I of Chapter II.

7. Section 4 of the said Act is amended by replacing the third paragraph by the following paragraph:

“A member shall remain in office at the expiry of his term to complete the hearing of cases before him.”

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

“**9.** The members of the personnel of the commission are governed by the Public Service Act (chapter F-3.1.1).”

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

“**12.** In the exercise of its jurisdiction, the commission shall give proper consideration to the fact that it is in the general interest to preserve agricultural land and agricultural activities. It shall also give proper consideration to regional characteristics.

The commission may consider all facts that come to its attention.”

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

“**13.1** For the purposes of this chapter and Divisions I and II of Chapter III, the certified association has the required interest to intervene in respect of an application.”

11. Section 14 of the said Act, amended by section 825 of chapter 2 of the statutes of 1996, is again amended by replacing the word “order” in the second line of the first paragraph by the word “authorization”.

12. Section 15 of the said Act is amended

(1) by replacing the word “A” in the first line of the fourth paragraph by the words “A hard copy of a document stored in an electronic medium and a”;

(2) by striking out the words “, the secretary” in the third line of the fourth paragraph;

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

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

13. Section 19.1 of the said Act is amended

(1) by inserting the words “or declaration” after the word “application” in the first line of subparagraph 2 of the first paragraph;

(2) by inserting the words “or declaration” after the word “application” in the third line of subparagraph 2 of the first paragraph;

(3) by striking out the second paragraph.

14. Section 19.2 of the said Act is repealed.

15. Division II.1 of the said Act, comprising sections 21.0.1 to 21.9, becomes Division II of Chapter II.

16. Section 21.0.3 of the said Act is replaced by the following section:

“21.0.3 The Government shall appoint and fix, where applicable, the salary or additional salary and the allowances of the secretary of the appeal tribunal.

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

17. Section 21.0.9 of the said Act is replaced by the following section:

“21.0.9 The appeal tribunal has jurisdiction to decide any question of law or fact.

Except in the case of an error of law or fact in the contested decision, the appeal tribunal may not reexamine the assessment of the application made by the commission on the basis of criteria the commission was required to consider.

An 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.”

18. Section 21.0.10 of the said Act is replaced by the following section:

“21.0.10 The appeal tribunal may confirm the decision or order brought before it; it may also quash the decision or order in whole or in part and may render the decision which, in its opinion, should have been rendered in first instance or it may remit the matter to the commission.”

19. Section 26 of the said Act is amended by replacing the words “In a designated agricultural region, no person may” in the first line by the words “Except in the cases and circumstances determined in a regulation under section 80, no person may, in a designated agricultural region,”.

20. Section 28 of the said Act is amended

(1) by replacing the words “No person may, except with” in the first line of the first paragraph by the words “Except in the cases and circumstances determined in a regulation under section 80, no person may, without”;

(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”;

(3) by replacing the word “railway,” in the sixth line of the second paragraph by the words “railway or”;

(4) by striking out the words “or the surface of a lot in respect of which there exists a right recognized under Division IX” in the sixth and seventh lines of the second paragraph.

21. Section 29 of the said Act is amended

(1) by replacing the word “No” in the first line of the first paragraph by the words “Except in the cases and circumstances determined in a regulation under section 80, no” and by replacing the words “except with” in the same line by the word “without”;

(2) by replacing the word “railway,” in the fourth line of the first paragraph by the words “railway or”;

(3) by striking out the words “, or the surface of a lot in respect of which there exists a right recognized in virtue of Division IX” in the fifth and sixth lines of the first paragraph.

22. Section 30 of the said Act, amended by section 796 of chapter 2 of the statutes of 1996, is again amended by adding, after the second paragraph, the following paragraph:

“Where the motion is not filed by the commission, the commission must be impleaded.”

23. Section 31 of the said Act, amended by section 797 of chapter 2 of the statutes of 1996, is again amended by replacing the words “Division IX” in the first three paragraphs by the words “Chapter VII”.

24. Section 31.1 of the said Act is amended by replacing the words “Division IX” in the first paragraph by the words “Chapter VII”.

25. Section 32 of the said Act, amended by section 798 of chapter 2 of the statutes of 1996, is replaced by the following section:

“32. In the cases and circumstances determined in a regulation under section 80, a person applying for the issue of a building permit for a lot situated in an agricultural zone without an authorization from the commission must send to the commission a declaration setting forth the right entitling that person to build without authorization.

No local municipality, regional county municipality or community may issue a building permit for a lot situated in an agricultural zone unless the commission has issued an authorization or a notice of compliance with this Act or the three-month period prescribed by section 100.1 has elapsed.”

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

“32.1 In the cases and circumstances determined in a regulation under section 80, a person who subdivides or alienates an area of land in respect of which a right is recognized under Chapter VII, must send a declaration to the commission setting forth the right entitling him to proceed without the authorization of the commission.”

27. Section 33 of the said Act is repealed.

28. Section 41 of the said Act, amended by section 803 of chapter 2 of the statutes of 1996, is again amended

(1) by replacing the figure “20” in the second line of subparagraph 1 of the second paragraph by the figure “30”;

(2) by replacing the figure “20” in the second line of subparagraph 2 of the second paragraph by the figure “30”.

29. Subdivision 5 of Division III of the said Act, comprising sections 43 to 46, 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, amended by section 806 of chapter 2 of the statutes of 1996, is again amended by replacing the words “Confédération de l’Union des producteurs agricoles” in the fifth line of the first paragraph by the words “certified association”.

32. Section 52 of the said Act, amended by section 812 of chapter 2 of the statutes of 1996, is again amended by striking out the words “secretary of the” in the first line.

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

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

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

“§ 3. — *Applications*”.

35. Section 58 of the said Act, amended by section 825 of chapter 2 of the statutes of 1996, is replaced by the following sections:

“58. A person wishing to do anything for which an authorization or permit is required in respect of a lot situated in an agricultural zone, or wishing to have a lot included in an agricultural zone, must apply therefor to the local municipality in whose territory the lot is situated, and forward a copy of the application to the commission.

Similarly, a regional county municipality, a community, a government department, a public agency or an agency providing public services wishing, for its own purposes or for a project of which it is the promoter, to do anything 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 forward a copy of the application to the commission.

A local municipality wishing to make an application under the second paragraph may transmit its application directly to the commission, together with a statement as to whether the application is consistent with its zoning by-law, with the interim control measures, if any, and with any other document required by the commission.

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

The local municipality shall, within 45 days of receiving the application, transmit it to the commission together with its recommendation, and transmit the assessment of an authorized officer as to whether the application is consistent with its zoning by-law and with the interim control measures, if any.

The local municipality shall also transmit to the applicant a copy of all the documents mentioned in the second paragraph.

“58.2 The recommendation must give reasons and must take into consideration the criteria set out in section 62, in the provisions of the zoning by-law or in the interim control measures, if any. In addition, if the application concerns a new use for purposes other than agriculture, the recommendation must include a description of any appropriate available areas elsewhere in the territory of the local municipality, outside the agricultural zone, that could meet the applicant's needs.

“58.3 An application under section 58 shall be entered in the general register of the commission at the expiry of 45 days.

“58.4 In the case of an application under the second or third paragraph of section 58, the commission must request the regional county municipality or the community and the certified association to transmit a recommendation to it within 45 days.

The recommendation must give reasons and must take into consideration the criteria set out in section 62.

The recommendation from the regional county municipality or the community must also take into consideration the objectives of the development plan, the provisions of the complementary document and the interim control measures, if any, and be submitted together with a statement as to whether the application is consistent with such plan, document or by-law.

“58.5 An application is not admissible if the commission has received a statement indicating that the application is inconsistent with the zoning by-law of the local municipality or with the interim control measures, if any.

An application may, however, be admissible upon receipt of

(a) a copy of a proposed by-law adopted by the council of the local municipality and the effect of which would be to make the application consistent with the zoning by-law, and

(b) a notice from the regional county municipality or the community confirming that the amendment proposed by the local municipality would be consistent with the development plan or with the interim control measures of the regional county municipality or community.”

36. Section 59 of the said Act, amended by section 825 of chapter 2 of the statutes of 1996, is replaced by the following:

“59. A local municipality may apply to the commission to determine the cases and circumstances in which its zoning by-law would allow the introduction of new uses of land for residential purposes in an agricultural zone, at the places it indicates.

The application must be submitted with favourable assessments from the regional county municipality or community and the certified association, and any document required by the commission.

“59.1 Sections 58.3 and 58.4, adapted as required, apply to an application under section 59.

“59.2 In examining the application, the commission, in addition to taking into consideration the criteria set out in section 62, must be satisfied that the conditional authorization applied for reflects an overall view of the agricultural zone and is in keeping with the concept of sustainable development of agricultural activities.

“§ 4. — *General provisions*”.

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

“61.1 Where an application concerns an authorization for a new use for purposes other than agriculture, the applicant must first demonstrate that there is no appropriate available area elsewhere in the territory of the local municipality, outside the agricultural zone, that is suitable for the purposes for which the application is made.

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

“61.2 Where an application for authorization concerns the introduction of a new use for institutional, commercial or industrial purposes, or the introduction of several new residential uses on a lot contiguous to the boundaries of an agricultural zone or urbanization perimeter, it shall be considered to be an application for exclusion.

Where an application for authorization concerns a lot situated close to the boundaries of an agricultural zone or an urbanization perimeter, the commission must satisfy itself that the application will not cause a change in those boundaries or an extension of that perimeter. If the commission is not so satisfied, the application shall be considered to be an application for exclusion.

This section does not apply to the construction of a public road.”

38. Section 62 of the said Act, amended by section 812 of chapter 2 of the statutes of 1996, is again amended

(1) by striking out the words “Subject to sections 69.0.7 and 69.0.8,” in the first line of the first paragraph;

(2) by replacing subparagraph 3 of the second paragraph by the following subparagraph:

“(3) the consequences of an authorization on existing agricultural activities and their development, and on the possible agricultural use of neighbouring lots;”;

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

“(10) the socioeconomic conditions necessary for the viability of a community where justified by the low population density of the region.”;

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

“(1) a statement transmitted by a regional county municipality or a community indicating that the application is inconsistent with the interim control by-law or with the objectives of the development plan and with the provisions of the complementary document;”.

39. Section 62.1 of the said Act is amended

(1) by replacing the word and figure “section 62.” in paragraph 3 by the words and figures “sections 12, 61.1, 61.2, 62 and 65.1;”;

(2) by adding, after paragraph 3, the following paragraph:

“(4) the fact that a lot division is immatriculated on a cadastral plan.”

40. Section 62.2 of the said Act, amended by section 825 of chapter 2 of the statutes of 1996, is repealed.

41. Section 64 of the said Act, amended by section 813 of chapter 2 of the statutes of 1996, is again amended

(1) by inserting the words “to the regional county municipality,” after the word “as” in the third line;

(2) by adding the following paragraph:

“Every decision by the commission granting all or part of an application under section 59 shall be made conditional on the adoption and putting into force, within 24 months of the decision, of the provisions of the development plan and the municipal by-law implementing it, and on the incorporation as compulsory measures, in the by-law, of the conditions set out in the decision. Once those conditions are fulfilled, the decision takes effect on the date of the filing of the by-law at the record office of the commission.”

42. Section 65 of the said Act, amended by section 814 of chapter 2 of the statutes of 1996, is replaced by the following sections:

“65. A regional county municipality or a 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 of which it is the promoter, must apply therefor to the local municipality in whose territory the lot is situated and forward a copy of the application to the commission.

A local municipality wishing to make an application under the first paragraph may do so, with the support of the regional county municipality or the community concerned, by transmitting its application directly to the commission together with the statement as to whether the application is consistent with its zoning by-law, with the interim control measures, if any, and with any other document required by the commission.

An application for exclusion made by an applicant other than an applicant mentioned in the first or second paragraph is not admissible.

Sections 58.1 to 58.4, adapted as required, apply to an application for exclusion.

“65.1 In examining an application for exclusion, the commission shall, in addition to taking into consideration the criteria set out in section 62, satisfy itself that the exclusion answers a need and meets a development objective of the local municipality, the regional county municipality or the community, having regard to the objectives of the development plan.”

43. Division IV.0.1 of the said Act, comprising sections 69.0.1 to 69.0.8, is repealed.

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

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

“74.1 The permit shall be signed by the president or any person authorized for that purpose by the commission and shall be issued upon payment of the duties determined by regulation.

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

46. The said Act is amended by replacing Division V.1, comprising sections 79.1 to 79.25, by the following chapter:

“CHAPTER III

“AGRICULTURAL ACTIVITIES IN AGRICULTURAL ZONES

“DIVISION I

“REGULATION OF AGRICULTURAL ACTIVITIES

“§ 1. — *Territorial organization and land use*

“79.1 Every regional county municipality and every community shall, in respect of the agricultural zone in its territory, exercise its powers in the area of land use planning and development in such a way as to promote priority for the use of land for agricultural activities and in keeping with the object of this Act.

From the date of its coming into force, every revised development plan, amendment to a development plan or interim control by-law of a regional county municipality or community that affects an agricultural zone is deemed to be consistent with the first paragraph.

“79.2 A person wishing to erect a building, other than a farm building, on a lot in an agricultural zone must comply with any distance standard imposed on neighbouring farming operations by any Act, regulation or by-law in force at the time of the erection, or imposed as a condition under a certificate of authorization issued under the Environment Quality Act (chapter Q-2) or pursuant to a municipal odour by-law.

No building permit may be issued by a municipality to the owner of a lot who fails to comply with such distance standards unless the owner has filed, for entry in the land register at the registry office concerned, a declaration to waive, in respect of each of the neighbouring farming operations required to comply with the standard, the remedies that would have been available to him had he complied with the standards imposed.

The declaration shall have the same effect as a real servitude; notwithstanding article 1181 of the Civil Code of Québec, it is established by means of a declaration registered against the lot for which the application is made and against each lot on which the

buildings or infrastructures used for the agricultural activity subject to the distance standards are situated.

“§ 2. — *Mediation*

“**79.3** Any person suffering injury because his current or projected exercise of an agricultural activity in an agricultural zone is restricted or prevented by reason of the application of a municipal planning by-law or nuisance by-law may apply for the intervention of a mediator.

“**79.4** The role of the mediator is to allow the parties to present their points of view, and to foster agreement between the parties.

The mediator may also give an opinion on the dispute, if it subsists, and make recommendations.

“**79.5** No proceedings may be brought against the mediator for any act performed or omission made in good faith in the performance of his duties.

“**79.6** The application must include the reasons therefor and be submitted in writing to the regional county municipality or the community. A copy of the application must be forwarded by the applicant to the local municipality.

The application must also set out the facts of the case, state the injury suffered, and include any relevant document.

“**79.7** Within 15 days of receipt of the application, the warden of the regional county municipality or the chairman of the community shall designate a mediator acceptable to the parties.

If a mediator is not so designated, the applicant may present his application to the director referred to in section 79.21, who shall designate a mediator.

The warden or the chairman or, as the case may be, the director, shall thereupon publish a summary of the application including the name of the mediator in a newspaper distributed in the territory or in a municipal information bulletin referred to in section 346.1 of the Cities and Towns Act (chapter C-19) or article 437.1 of the Municipal Code of Québec (chapter C-27.1), to allow interested persons to forward written submissions.

“79.8 The parties shall provide the mediator with all the information or documents he requires for the examination of the application.

“79.9 In examining the application, the mediator shall take into consideration, particularly, proper and generally accepted agricultural standards, and the consequences of the municipal by-law on the current or projected agricultural activities of the applicant, and on those of the other producers in the agricultural zone.

“79.10 In examining the application, the mediator may require expert opinions from a member of the personnel of the Ministère de l’Agriculture, des Pêcheries et de l’Alimentation, the Ministère de l’Environnement et de la Faune, the Ministère des Affaires municipales and the Ministère des Ressources naturelles, designated by the Minister responsible for each department.

“79.11 The mediator may convene any person to obtain his point of view.

“79.12 The mediator may refuse or cease to examine an application where he considers

(1) that the application is frivolous or made in bad faith, or that, in the circumstances, his intervention serves no purpose;

(2) that the applicant has refused or neglected to supply information or documents required under section 79.6;

(3) that the by-law has already been found to be consistent with the provisions contained in the development plan pursuant to subparagraph 2.1 of the first paragraph and the third paragraph of section 5 of the Act respecting land use planning and development.

“79.13 The mediator shall refuse or cease to examine an application where judicial proceedings brought in relation to similar facts and with respect to the same by-law are in progress or have been the subject of a final decision disposing of the application.

“79.14 Where the mediator refuses or ceases to examine an application, he shall advise, in writing, the warden of the regional county municipality, the chairman of the community or the director, as the case may be, as well as the applicant, the local municipality and any interested persons having forwarded to him written submissions of the grounds for his decision.

“79.15 Where the mediator considers it advisable to intervene, he shall, as soon as possible, submit a report of his findings or recommendations to the persons referred to in section 79.14.

The mediator may make any recommendation he considers appropriate in order to settle the dispute. He may also, where he considers it appropriate, transmit his report to any interested person.

“79.16 The local municipality shall, within 60 days of receiving the mediator’s report, inform the mediator and the applicant in writing of the action it intends to take in response to any recommendations made and, if it intends to take no action, of the reasons for its decision.

“DIVISION II

“CIVIL REMEDIES FOR CERTAIN FORMS OF INCONVENIENCE CAUSED BY THE PRACTICE OF AGRICULTURE

“§ 1. — *Judicial proceedings*

“79.17 In an agricultural zone, no person shall incur liability toward a third person by reason of dust, noise or odours resulting from agricultural activities, or shall be prevented by such a third person from exercising such agricultural activities, if they are exercised

(1) in accordance with the regulatory standards adopted under the Environment Quality Act (chapter Q-2) that relate to dust and noise or, as regards odours, in accordance with the regulatory standards adopted by a municipality under the third paragraph of section 113 of the Act respecting land use planning and development;

(2) subject to section 100, in accordance with the provisions of the Environment Quality Act as regards any matter not covered by regulatory standards.

“79.18 Where a plaintiff or an applicant in an action or proceedings brought against a person exercising agricultural activities in an agricultural zone

(1) claims damages to compensate for the dust, noise or odours resulting from the activities, or

(2) applies for an injunction to prevent or modify the exercise of the activities,

it is incumbent upon the plaintiff or applicant, to establish liability, to prove that the person exercising the agricultural activities has contravened the applicable regulatory standards or the Environment Quality Act, as the case may be.

“79.19 In an agricultural zone, the inconvenience caused by dust, noise or odours resulting from agricultural activities does not exceed the limit of tolerance neighbours owe each other, to the extent that the activities are exercised

(1) in accordance with the regulatory standards adopted under the Environment Quality Act that relate to dust and noise or, as regards odours, in accordance with the regulatory standards adopted by a municipality under the third paragraph of section 113 of the Act respecting land use planning and development;

(2) subject to section 100, in accordance with the provisions of the Environment Quality Act as regards any matter not covered by regulatory standards.

“DIVISION III

“ADMINISTRATION

“79.20 The Minister designated by the Government is responsible for the application of sections 79.21 and 79.22.”

“79.21 The Minister shall designate a person to act as director for the purposes of sections 79.3 to 79.16.

“79.22 The functions of the director shall be to receive the applications filed with him and to designate, from among the personnel at his disposal, the persons needed to act as mediators or conciliators.”

47. Division VI of the said Act, comprising sections 80 and 81, becomes Chapter IV.

48. Section 80 of the said Act is amended

(1) by inserting the words “of Chapter II” after the words “Division V” in the second line of paragraph 2;

(2) by replacing the word “where” in the first line of paragraph 3 by the words “and circumstances in which”;

(3) by inserting the words “of Chapter II” after the words “Division V” in the first line of paragraph 4;

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

“(6.1) determine the cases and circumstances in which a rudimentary structure may be erected to serve as a shelter in a wooded area without the authorization of the commission;

“(6.2) determine the cases and circumstances in which a residential site built upon before the issue of the designated agricultural region decree may be enlarged so as to comply with environmental standards without the authorization of the commission;

“(6.3) determine the cases and circumstances in which all or part of a lot may be alienated in favour of producers without the authorization of the commission;

“(6.4) determine the cases and circumstances in which advertising billboards may be erected without the authorization of the commission;

“(6.5) determine the cases and circumstances in which surplus expropriated land may be retroceded by a municipality without the authorization of the commission;

“(6.6) determine the cases and circumstances in which an application referred to in section 32 must be accompanied with a declaration;

“(6.7) determine the cases and circumstances in which a declaration is required under section 32.1;”;

(5) by striking out paragraph 7.1;

(6) by replacing paragraph 8 by the following paragraph:

“(8) determine the amount of duties, fees, expenses and costs payable in respect of any application or declaration submitted to the commission or in respect of any application submitted to the appeal tribunal, and the classes of persons which may be exempted therefrom;”;

(7) by inserting, after paragraph 9, the following paragraphs:

“(9.1) determine the amount of duties payable for the issue of an attestation under section 15 or 105.1;

“(9.2) fix the fees and costs to be borne by a person against whom an order or notice of non-compliance is issued, which may vary according to the nature of the alleged contravention and the area of land used unlawfully, or according to whether the order or notice was issued with or without a prior declaration;”.

49. Section 81 of the said Act is repealed.

50. Section 83 of the said Act is amended by inserting the words “the cadastral plan be amended accordingly and that” after the word “that” in the second line.

51. Division VII of the said Act, comprising sections 82 to 94, becomes Chapter V.

52. Subdivision 1 of Division VII of the said Act, comprising sections 82 to 86, becomes Division I of Chapter V.

53. Section 85 of the said Act, amended by section 821 of chapter 2 of the statutes of 1996, is again amended by adding, after the second paragraph, the following paragraph:

“Where the motion is not filed by the commission, the commission must be impleaded.”

54. Subdivision 2 of Division VII of the said Act, comprising sections 87 to 94, becomes Division II of Chapter V.

55. Section 90 of the said Act is replaced by the following sections:

“90. Every person who contravenes section 26 by removing earth, sand or gravel, or contravenes section 27 or 70, is guilty of an offence and is liable

(1) for a first offence, to a fine of not less than \$5,000 for the first hectare of land used unlawfully and of not more than an additional \$15,000 for each additional hectare or fraction of a hectare;

(2) for any subsequent offence, to a fine of not less than \$15,000 and not more than \$25,000 for each hectare or fraction of a hectare.

“90.1 Every person who is guilty of an offence referred to in section 90 in respect of an area of land of less than one hectare, or who is guilty of an offence other than an offence referred to in section 90, is liable

(1) for a first offence, to a fine of not less than \$500 and not more than \$6,000 in the case of a natural person and, in the case of a legal person, to a fine of not less than \$1,000 and not more than \$36,000;

(2) for any subsequent offence, to a fine of not less than \$1,000 and not more than \$12,000 in the case of a natural person and, in the case of a legal person, to a fine of not less than \$2,000 and not more than \$72,000.”

56. Division VIII of the said Act, comprising sections 95 to 100.1, becomes Chapter VI.

57. Section 96 of the said Act is amended

(1) by striking out the words “secretary of the” in the second line of the second paragraph;

(2) by striking out the words “The Government may, in addition, authorize the exclusion of a lot situated in an exclusive sector.” in the sixth, seventh and eighth lines of the second paragraph.

58. Section 100.1 of the said Act is amended

(1) by replacing the words “by means of the deposit of a plan and book of reference” in the first and second lines of the first paragraph by the words “, an alienation”;

(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;

(3) by replacing the fourth paragraph by the following paragraph:

“In the case of alienation, subdivision or use for any purpose other 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

(a) the deposit of the act of alienation at the registry office;

(b) the date of the first municipal tax account sent in respect of a construction, or

(c) the date on which work, other than construction work, ends.”;

(4) by adding, after the seventh paragraph, the following paragraph:

“The right to contest granted by the seventh paragraph may, however, be exercised only before the Superior Court, and only when the dispute to which it pertains has already been brought before that court.”

59. Division IX of the said Act, comprising sections 101 to 105, becomes Chapter VII.

60. Division X of the said Act, comprising sections 105.1 to 118, becomes Chapter VIII.

61. Section 105.1 of the said Act is amended by inserting, after the first paragraph, the following paragraph:

“The commission may also, when an order has been complied with, deposit two certified true copies of an attestation to that effect at the registry office.”

62. Section 115 of the said Act is amended by replacing the figure “79.12” in the first line by the figure “79.20”.

ACT RESPECTING THE ACQUISITION OF FARM LAND BY NON-RESIDENTS

63. 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 seeing to the application of this Act, and, to that end, sections 7, 8, 11, 13, 13.1, 14, 16, 17, 18.5, 19 and 21.0.1 to 21.0.11 of the Act to preserve agricultural land (chapter P-41.1), adapted as required, apply.”

ACT RESPECTING LAND USE PLANNING AND DEVELOPMENT

64. Section 5 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1) is amended

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

“(2.1) without restricting the generality of subparagraphs 1 and 2 or limiting the application of the other elements of the plan with regard to the overall territory of the regional county municipality, determine such land use guidelines and land use designations as the regional county municipality considers appropriate to ensure, in the agricultural zone within its territory, that land use planning and development standards are compatible with the objective of ensuring priority for the use of land for agricultural activities and, within that framework, the harmonious coexistence of agricultural and non-agricultural uses;”;

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

“The complementary document of a regional county municipality whose territory includes an agricultural zone must contain the elements it considers appropriate for the implementation of section 79.1 of the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1), together with parameters to determine, in relation to the forms of inconvenience resulting from odours caused by certain agricultural activities, the separation distances referred to in the third paragraph of section 113.”

65. Section 56.14 of the said Act is amended by inserting the words “the guidelines and projects relating to the agricultural zone, if the territory includes such a zone, and” after the word “including” in the fifth line of the first paragraph.

66. Section 113 of the said Act is amended by replacing the third paragraph by the following paragraph:

“A zoning by-law may not contain a provision establishing a separation distance pursuant to subparagraph 4 of the second paragraph, where one of the structures or one of the uses to which it applies is in an agricultural zone established under the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1), except for the purpose of ensuring the preservation of a water supply or reducing the inconvenience resulting from the odours caused by agricultural activities. For any other purpose, the by-law may contain a provision establishing a separation distance applying to a structure, a use or a location in an agricultural zone, only if it specifies

(1) the open space that must be left between different structures or different uses on adjacent lots in contiguous zones, and the use and development of the open space;

(2) the open space that must be left between places in which manure is spread and non-agricultural structures or uses.”

67. Chapter V.1 of Title I of the said Act, introduced by section 22 of chapter 102 of the statutes of 1987, is replaced by the following chapter:

“CHAPTER V.1

“AGRICULTURAL ADVISORY COMMITTEES

“148.1 Every regional county municipality whose territory includes an agricultural zone established under the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1) shall establish an agricultural advisory committee.

Any other regional county municipality may pass a by-law to establish such a committee.

“148.2 A regional county municipality having established an agricultural advisory committee shall determine, by by-law, the number of members who will sit on the committee.

“148.3 The regional county municipality shall appoint the members of the committee from among the following persons:

(1) the members of the council of the regional county municipality;

(2) the farm producers, within the meaning of the Farm Producers Act (chapter P-28), who are not eligible under subparagraph 1, who reside in the territory of the regional county municipality, and whose names are entered on a list drawn up by the certified association within the meaning of that Act that contains three times the number of names as there are committee positions available. If the number of farm producers residing in the territory of the regional municipality is insufficient, the list shall contain the names of all the farm producers;

(3) persons who are not eligible under subparagraph 1 or 2 and who reside in the territory of the regional county municipality.

At least one-half of the members of the committee must be selected from among the persons eligible under subparagraph 2 of the first paragraph.

Subject to the second paragraph, the regional county municipality may determine, by by-law, the number of members who must be selected under each subparagraph of the first paragraph.

“148.4 The members of the committee shall serve for an indeterminate period of time.

A member shall cease to be a member upon being replaced, resigning, or ceasing to be eligible under the first paragraph of section 148.3. A member appointed under a particular subparagraph of that paragraph, pursuant to the second paragraph of that section or pursuant to a by-law adopted under the third paragraph of that section, shall also cease to be a member upon ceasing to be eligible under that subparagraph.

A member may resign by transmitting a signed resignation to the regional county municipality. The resignation takes effect from its date of receipt.

“148.5 The regional county municipality shall designate the chairman of the committee from among its members. The chairman shall hold office for an indeterminate period of time.

The chairman shall cease to hold office upon being replaced, ceasing to be a member of the committee or resigning from the office of chairman.

The chairman may resign by transmitting a signed resignation to the regional county municipality. The resignation takes effect from its date of receipt.

“148.6 The function of the committee is to examine, at the request of the council of the regional county municipality or on its own initiative, any matter relating to agricultural land planning, the practice of agricultural activities and the environmental aspects pertaining to such planning and practice.

A further function of the committee is to make the recommendations it considers appropriate regarding the matters it has examined to the council of the regional county municipality.

“148.7 The committee may establish rules for its internal management.

“148.8 The regional county municipality may allocate funds and assign personnel to assist the committee in fulfilling its functions.

“148.9 For the purposes of the legislative provisions governing the regional county municipality with respect to the reimbursement of the expenses of the members of the council, the office of chairman or committee member is deemed to be an office for which the members of the council may be entitled to the reimbursement of their expenses.

The regional county municipality may, following the same procedure as for the reimbursement of the expenses of the members of the council, establish rules relating to the reimbursement of the expenses of the chairman and of the other committee members who are not such members.”

68. The said Act is amended by inserting, after section 266, the following section:

“266.1 For the purposes of section 79.1 of the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1), policies shall be defined in notices sent to each regional county municipality by the Minister designated in accordance with section 267 of this Act.

Such notices shall set out, in addition, parameters to serve in the establishment of separation distances as a means of reducing the inconvenience caused by odours and the determination of the conditions on which exemptions may be granted.”

69. Section 267 of the said Act is amended

(1) by adding, at the end of the first paragraph, the following sentence: “The Minister shall, for that purpose, consult the other ministers concerned.”;

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

“Where the Minister gives his opinion, in light of governmental policy, on a document concerning an agricultural zone established pursuant to the Act respecting the preservation of agricultural land and agricultural activities (chapter P-41.1), he shall take into consideration whether the elements it contains are consistent with the objectives referred to in subparagraph 2.1 of the first paragraph of section 5.”

ACT RESPECTING THE MINISTÈRE DE L'AGRICULTURE,
DES PÊCHERIES ET DE L'ALIMENTATION

70. Section 2 of the Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (R.S.Q., chapter M-14) is amended by inserting, after paragraph 1, the following paragraph:

“(1.1) he shall devise and ensure the updating of a guide to agricultural practices, in cooperation with the Minister of Municipal Affairs, the Minister of the Environment and Wildlife, and the Minister of Natural Resources, and see to its distribution;”.

ENVIRONMENT QUALITY ACT

71. Section 19.1 of the Environment Quality Act (R.S.Q., chapter Q-2) is amended by adding, at the end, the words “and, as regards the odours caused by agricultural activities, to the extent prescribed by any municipal by-law adopted under the third paragraph of section 113 of the Act respecting land use planning and development (chapter A-19.1).”

ACT TO AMEND THE ACT TO PRESERVE AGRICULTURAL LAND

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

TRANSITIONAL AND FINAL PROVISIONS

73. For the purposes of sections 74 to 77, “regional county municipality” means, in addition to its ordinary meaning, an urban community, Ville de Laval and Ville de Mirabel.

74. For the purposes of the third paragraph of section 58.4 of the Act respecting the preservation of agricultural land and agricultural activities, enacted by section 35 of this Act, a regional county municipality, from the coming into force of this section until the date of coming into force of the development plan, must, when it makes a recommendation to the Commission de protection du territoire agricole, take into account the governmental policies referred to in section 266.1 of the Act respecting land use planning and development, enacted by section 68 of this Act.

75. The provisions of subparagraph 2.1 of the first paragraph and those of the third paragraph of section 5 of the Act respecting land use planning and development, enacted by section 64 of this Act, shall not operate to require a regional county municipality to

amend a development plan in force on (*insert here the date of coming into force of section 64 of this Act*).

76. No regional county municipality may, before a report of the agricultural advisory committee it has established pursuant to section 148.1 of the Act respecting land use planning and development, enacted by section 67 of this Act, has been submitted at a sitting of the council of the regional county municipality, or before the expiry of a period of 30 days after the council requested the committee to submit its report if the committee has failed to do so within such period, approve or withhold approval of, pursuant to section 137.3 of that Act, a planning by-law pertaining specially to an agricultural zone established under the Act respecting the preservation of agricultural land and agricultural activities or relating to agricultural activities, within the meaning of section 1 of that Act, that can be exercised in that zone.

The time limit set out in section 137.3 of the Act respecting land use planning and development begins to run on the day the report is submitted or, as the case may be, upon the expiry of the period referred to in the first paragraph.

In addition to the reason for withholding approval set out in that section, the regional county municipality may withhold approval of a by-law on the ground that it is not consistent with the governmental policy communicated to the regional county municipality regarding the preservation and sustainable development of agricultural activities in agricultural zones. Where approval is withheld on that ground, sections 137.4 and 137.5 of the Act respecting land use planning and development apply and, for that purpose, the dispute submitted to the Commission municipale du Québec and the decision to be rendered by the Commission shall bear on the conformity of the by-law with governmental policy.

If the regional county municipality is not required, pursuant to section 137.3 of the Act respecting land use planning and development, to approve or withhold approval of the by-law referred to in the first paragraph because it has adopted it itself, the regional county municipality shall not bring the by-law into force until a report of its agricultural advisory committee has been submitted at a sitting of the council of the regional county municipality or until the expiry of a period of 30 days after the council requested the committee to submit its report if the committee has failed to do so within such period.

If the regional county municipality is not required to approve or withhold approval of the by-law because there is no development plan in force in its territory, sections 137.2 to 137.5 and 137.15 of the Act respecting land use planning and development and the first two paragraphs of this section apply and, for that purpose, the decision to be made by the regional county municipality and, where applicable, the dispute submitted to the Commission municipale du Québec and the decision to be rendered by the Commission shall bear on the conformity of the by-law with the governmental policy referred to in the third paragraph.

The first paragraph does not apply to a by-law which the regional county municipality has, on (*insert here the date of coming into force of this section*), approved or withheld approval of or in respect of which the time limit granted to the regional county municipality for such purpose has expired. The fourth and fifth paragraphs do not apply to a by-law which is already in force on that date.

This section shall cease to apply in the territory of a regional county municipality upon the coming into force of the first original or revised development plan, or the first by-law amending the development plan, as the case may be, that takes into account the governmental policy referred to in the third paragraph.

77. From (*insert here the date of the coming into force of this section*) until the date of coming into force of the revised development plan of the regional county municipality of which it forms a part, a local municipality may, before adopting a planning by-law that concerns its agricultural zone or affects agricultural activities, apply to the council of the regional county municipality, by way of a resolution, for its opinion as to the compatibility of the projected by-law with the governmental policies referred to in section 266.1 of the Act respecting land use planning and development, enacted by section 68 of this Act.

The regional county municipality may, if it considers it expedient, seek the opinion of its agricultural advisory committee and of any expert.

78. For the purposes of sections 79 and 80, the words “amended Act” mean the Act to preserve agricultural land (R.S.Q., chapter P-41.1) as it stands following the coming into force of this Act, and the words “current Act” mean that Act as it stood before (*insert here the date of coming into force of section 58 of this Act*), together with section 35 of the Act to amend the Act to preserve agricultural land (1989, chapter 7).

79. Applications made to a local municipality before (*insert here the date of coming into force of section 35 of this Act*) but having yet to be filed at the record office of the commission, shall be governed by the provisions of the amended Act.

80. Applications filed at the record office of the commission before (*insert here the date of coming into force of section 35 of this Act*) but having yet to be heard on that date shall be governed by the provisions of the amended Act, except that they may not be declared to be not admissible for the reasons set out in section 58.3, enacted by section 35 of this Act, in section 58.5, enacted by section 35 of this Act, and in section 65, replaced by section 42 of this Act.

Applications filed at the record office of the commission before (*insert here the date of coming into force of section 35 of this Act*), and having been heard on or before that date, shall be governed by the provisions of the current Act.

81. Section 17 of this Act applies to any application or right to contest that has not been heard before the commission on (*insert here the date of coming into force of this section*).

82. Notwithstanding section 46 of this Act, every complaint filed by a producer concerning the current or projected exercise of an agricultural activity in an agricultural zone that is restricted or rendered impossible by reason of the application of a municipal planning or nuisance by-law in force on (*insert here the date of coming into force of this section*), shall be examined by the commissioner appointed to hear complaints who has the mandate to foster an agreement between the municipality and the complainant that is consistent with governmental policy relating to the preservation of agricultural land and agricultural activities.

83. In any Act and in any regulation, by-law, order in council, ministerial order, order, contract or other instrument, the words "Act to preserve agricultural land" are replaced by the words "Act respecting the preservation of agricultural land and agricultural activities".

84. The secretary of the Tribunal d'appel en matière de protection du territoire agricole appointed by Order in Council 775-90 (1990, G.O. 2, 2315) continues to be governed by section 9 of the Act to preserve agricultural land as it read on (*insert here the date of the day preceding the date of assent to this Act*).

85. Until the coming into force of the by-laws adopted by a municipality under the third paragraph of section 113 of the Act respecting land use planning and development, the immunity from prosecution provided for in section 79.17, enacted by section 46 of this Act, also applies with regard to odours caused by agricultural activities exercised in an agricultural zone in the territory of the municipality, if those activities are exercised

(1) in accordance with the standards set out in the Guidelines concerning the prevention of air pollution in livestock operations, prepared by the Minister of the Environment and Wildlife and published in the *Gazette officielle du Québec*. Any subsequent amendment made to the Guidelines by the Minister shall be so published and shall take effect on the date of publication ;

(2) subject to section 100 of the Act respecting the preservation of agricultural land and agricultural activities, in accordance with the provisions of the Environment Quality Act as regards matters not covered by standards in the above-mentioned Guidelines.

The provisions of sections 79.18 and 79.19, enacted by section 46 of this Act, adapted as required, apply in respect of any action or proceedings brought by reason of odours caused by agricultural activities and in which the application of this section and the above-mentioned Guidelines are matters in issue.

86. A municipality may avail itself of section 59 of the Act respecting the preservation of agricultural land and agricultural activities enacted by section 36 of this Act, only from the date of coming into force of the first original or revised development plan of the regional county municipality or of the community of which it is a part that takes into account the governmental policies referred to in the third paragraph of section 76 of this Act.

87. The provisions of this Act come into force on the date or dates to be fixed by the Government.