

1994 BILL 57

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 57

DELEGATED ADMINISTRATION ACT

THE MINISTER OF LABOUR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 57

1994

DELEGATED ADMINISTRATION ACT

(Assented to , 1994)

Table of Contents

Definitions	1
Administrative agreement	2
Minister satisfied	3
Public meeting	4
Terms of agreement	5
Termination by Minister	6
Administrative authority	7
Effect of agreement	8
Subdelegation	9
Review by Minister	10
Financial records	11
Fees and levies	12
Financial Administration Act	13
Audit, inspection	14
Liability exemption	15
Annual reports	16
Offence	17
Regulations	18

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "administrative agreement" means a contract authorized by the Lieutenant Governor in Council under section 2;
- (b) "administrative authority" means a corporation that is a party to an administrative agreement;
- (c) "corporation" means a corporation incorporated or registered under the *Business Corporations Act* or a society incorporated under the *Societies Act*;

- (d) “industry” means a business, activity, status or other thing or matter that is regulated or administered by or under an enactment;
- (e) “Minister” means the member of the Executive Council authorized by an Act, a regulation or the Lieutenant Governor in Council to administer an enactment;
- (f) “public official” means
 - (i) a board or corporation created by an Act and any of its officers and employees that is authorized by an enactment to exercise a responsibility, or
 - (ii) an employee of the Crown in right of Alberta who is employed or engaged as deputy minister, chair, officer, inspector, investigator, registrar, director or manager or in another office named in the enactment and who is authorized by the enactment to exercise a responsibility, but does not include an officer of a court;
- (g) “responsibility” includes a power, duty, function or any other action.

Administrative agreement

2(1) In accordance with this Act, the Minister may enter into a contract with a corporation under which the responsibilities of the Minister or of a public official under an enactment are exercised by the corporation instead of by the Minister or the public official.

(2) A Minister must not enter into a contract referred to in subsection (1) unless the Lieutenant Governor in Council authorizes the Minister to do so.

(3) An order of the Lieutenant Governor in Council may make the authorization subject to any terms or conditions the Lieutenant Governor in Council requires.

(4) An order of the Lieutenant Governor in Council may be specific or general in its effect.

Minister satisfied

3 Before entering into an administrative agreement, the Minister must be satisfied that

- (a) under the terms of the agreement, the corporation is able to carry out the responsibilities of the Minister or the public official under the enactment efficiently and effectively, and

- (b) the corporation will have due regard to the interests of the general public, of the persons affected by or subject to the enactment and of the industry.

Public meeting **4(1)** Before entering into an administrative agreement, the Minister must hold at least one public meeting respecting the proposed agreement.

(2) A notice calling a public meeting must be

(a) published in a newspaper circulating in the area in which the meeting is to be held at least once not less than 2 weeks immediately prior to the week containing the date for the public meeting set out in the notice, and

(b) published in The Alberta Gazette at least 10 days prior to the date for the public meeting set out in the notice.

(3) At a public meeting, the Minister or a person approved by the Minister must provide those attending the meeting with information the Minister considers relevant.

Terms of agreement

5(1) An administrative agreement must

(a) confer on the Minister power to prescribe or approve a scheme of appointments of members or directors of the administrative authority;

(b) authorize the administrative authority to exercise all or any of the responsibilities given to the Minister or a public official under a specified enactment and provide for an orderly transfer of the responsibilities to the administrative authority;

(c) authorize the administrative authority to collect money by the levy of assessments, fees or charges with respect to the responsibilities exercised by the administrative authority or any services provided by the administrative authority in the exercise of those responsibilities;

(d) authorize the administrative authority to use money collected by the levy of assessments, fees or charges for the purpose of defraying the costs to the administrative authority of exercising the responsibilities;

(e) authorize the Minister or a person approved by the Minister to enter without a warrant at any reasonable time premises where the administrative authority or its employee or agent is exercising a responsibility to which the administrative

agreement relates for the purpose of carrying out an audit of the finances of, the performance of or the exercise of the responsibilities by the administrative authority;

- (f) provide for a method of amending the administrative agreement;
- (g) provide for a method of terminating the administrative agreement and the orderly transfer of responsibilities to the Minister or public official referred to in the enactment;
- (h) include any term or condition the Minister considers necessary for the effective and efficient exercise of the responsibilities by the administrative authority;
- (i) include any term or condition the Minister considers necessary to protect the interests of the general public, of the persons affected by or subject to the provisions of the enactment and of the industry.

(2) Subject to subsection (1)(c) and (d), an administrative agreement must not authorize an administrative authority to make regulations within the meaning of section 1(1)(f) of the *Regulations Act*.

Termination by
Minister

6(1) Notwithstanding the administrative agreement or any enactment or other law, the Minister, with or without cause, may unilaterally terminate an administrative agreement if, in the opinion of the Minister, it is in the public interest to do so.

(2) Notice of the Minister's intention to terminate an administrative agreement under this section must be given to all other parties to the agreement not less than 2 days before the effective date of the termination.

(3) On and after the date on which an administrative agreement is terminated under this section, the corporation that was a party to the agreement must not exercise and the Minister or public official must exercise the responsibility referred to in the agreement in accordance with the enactment.

(4) No action or proceeding lies or may be instituted or continued against the Crown in right of Alberta, a member of the Executive Council or a public official based on any claims for compensation or payment for loss or damage in contract, property, tort, equity or otherwise as a result of the termination of an administrative agreement under this section.

Administrative
authority

7(1) An administrative authority must not make, amend or rescind a by-law of the authority without the prior approval of the Minister.

(2) An administrative authority must not change the articles, objects or purposes of the authority without the prior approval of the Minister.

(3) An administrative authority may fix or levy assessments, fees and charges in respect of the responsibilities exercised by it only in accordance with this Act, the regulations and the administrative agreement.

(4) An administrative authority must not be wound up, discontinued, liquidated or amalgamated without the prior approval of the Minister.

Effect of
agreement

8(1) Notwithstanding the enactment referred to in an administrative agreement, an administrative authority may do the following:

- (a)** exercise the responsibility under the enactment the administrative authority is authorized to exercise under the administrative agreement,
- (b)** exercise all the powers necessary or incidental to exercising the responsibility and to conducting its affairs generally, including
 - (i)** conducting programs for the information, education and training of persons involved in the industry, or
 - (ii)** establishing and maintaining funds in respect of the industry for the compensation of persons who suffer loss or for the rectification of conditions caused by the activities carried on in the industry and, on termination of the administrative agreement or the dissolution of the administrative authority, providing for the disposition of those funds for the benefit of the industry and consumers of any goods or services provided by the industry,
- (c)** fix or levy assessments, fees or charges and collect them as it is authorized by this Act, the regulations or the administrative agreement, or
- (d)** require persons to pay an assessment, fee or charge and collect the payment in accordance with this Act, the regulations and the administrative agreement.

(2) If an administrative authority is authorized under this Act or by an administrative agreement to exercise a responsibility established by an enactment,

- (a) the Minister or public official on whom the responsibility is conferred by the enactment must not exercise it,**
- (b) the administrative authority is subject to any limitations or conditions on the exercise of the responsibility that are imposed expressly or by implication under this Act, the enactment or the administrative agreement,**
- (c) a reference respecting the responsibility in the enactment to the Minister or public official on whom the responsibility is conferred by the enactment is deemed to be a reference to the administrative authority, and**
- (d) a person who is affected by an action taken or decision made by the administrative authority may appeal the action or decision in accordance with the enactment and this Act.**

Subdelegation 9(1) Unless otherwise provided by the Lieutenant Governor in Council or the administrative agreement, an administrative authority may subdelegate all or any of the responsibilities given to it to one or more individuals employed or engaged by the authority.

(2) Unless otherwise provided by the Lieutenant Governor in Council, the following applies to the subdelegation of a responsibility:

- (a) the subdelegation must be given by resolution in writing by the directors of the administrative authority made in accordance with the by-laws, and**
- (b) the administrative authority must**
 - (i) reserve the right to terminate the subdelegation at any time with or without cause,**
 - (ii) impose terms or conditions on the subdelegation that will allow the directors to monitor the exercise of the subdelegated responsibility, and**
 - (iii) provide for a process under which any person affected by an action taken or decision made by the individual to whom the responsibility is subdelegated may appeal to the administrative authority.**

Review by
Minister

10(1) A person who is affected by an action taken or decision made by a administrative authority may request in writing that the Minister review the action or decision of the authority only if no appeal is provided for under the enactment.

(2) The Minister may refuse to review an action or decision of an administrative authority.

(3) The Minister may review a matter under subsection (1) as requested in any manner the Minister considers appropriate in the circumstances.

(4) Notwithstanding section 8 and the administrative agreement under which the administrative authority is authorized to take the action or make the decision, the Minister may make any decision with respect to the matter in dispute that appears to the Minister to be appropriate in the circumstances, and that decision is final.

Financial
records

11(1) An administrative authority must

(a) maintain financial records acceptable to the Minister, and

(b) provide for the auditing of its financial statements by a certified general accountant, a certified management accountant or a chartered accountant.

(2) The Minister may ask the Auditor General to conduct an investigation of the financial affairs of an administrative authority if the Minister

(a) is not satisfied with the audited financial statements of the administrative authority, or

(b) has reasonable grounds for doing so.

(3) If the Auditor General agrees to conduct an investigation of the financial affairs of an administrative authority, the Auditor General may require the authority and its directors, officers, employees and agents to provide the Auditor General with any explanations and information the Auditor General requires.

(4) An administrative authority and its directors, officers, employees or agents must provide the Auditor General with the explanations and information requested by or on behalf of the Auditor General.

Fees and
levies

12(1) This section applies to an administrative authority that is authorized by an administrative agreement to levy assessments, fees or charges

- (a) on persons who are required to apply for and receive a licence in order to carry out an activity in an industry, or
- (b) in respect of a responsibility to regulate an industry or to register a person or thing under an enactment.

(2) An assessment, fee or charge referred to in subsection (1) may be levied only

- (a) to reimburse the cost of the administrative authority's administration and the exercise of the responsibilities authorized under the administrative agreement, and
- (b) in an amount and manner and on persons approved by the Minister.

(3) A power to levy assessments, fees or charges must be exercised by a by-law of the administrative authority approved in writing by the Minister.

(4) Unless the Minister approves a shorter period, an administrative authority must not enact a by-law respecting assessments, fees or charges less than 3 months before the beginning of the period to which the assessments, fees or charges apply.

(5) Before approving a by-law that levies an assessment, fee or charge, the Minister may ask for representations from members of the public and any persons who, in the opinion of the Minister, are affected by the assessment, fee or charge.

(6) A by-law that levies an assessment, fee or charge must provide for a date after which the assessment, fee or charge is applicable.

(7) An assessment, fee or charge is a debt payable to the administrative authority by the person required to pay it under the by-law.

Financial
Administration
Act

13(1) Money levied or collected by an administrative authority under the authority of an administrative agreement

- (a) is not public money within the meaning of that term under the *Financial Administration Act*, and

(b) may be disposed of for the purposes of the administrative authority in accordance with this Act, the regulations and the administrative agreement.

(2) The *Financial Administration Act* does not apply to an administrative authority or an administrative agreement.

Audit,
inspection

14(1) For the purpose of ensuring that this Act, the regulations and the administrative agreement are complied with, the Minister or a person approved by the Minister, without a warrant and at any reasonable time,

(a) may enter premises, other than a private dwelling, where an administrative authority or its employee, agent or officer is carrying out a responsibility under an enactment,

(b) may carry out an audit of the finances of, the performance of or the exercise of the responsibility by the administrative authority, and

(c) may inspect and make copies of any document relating to the audit.

(2) On entering premises under subsection (1) the Minister or approved person must, on request, produce identification and provide information on the power to carry out an audit.

Liability
exemption

15(1) No action lies against the Crown in right of Alberta, a member of the Executive Council or a public official for anything done or not done by an administrative authority in good faith while exercising responsibilities under an enactment in accordance with this Act, the regulations and the administrative agreement.

(2) The Crown in right of Alberta, a member of the Executive Council and a public official are not liable for any negligence or nuisance of an administrative authority that causes injury, loss or damage to any person or property.

Annual reports

16(1) An administrative authority must give the Minister an annual report in a form acceptable to the Minister for each financial year of the authority including

(a) a list of the members and directors of the administrative authority,

(b) the articles, objects, purposes and by-laws of the administrative authority and any amendments made to them,

(c) a report on the activities of the administrative authority, and

(d) the audited financial statements of the administrative authority.

(2) The administrative authority must give the Minister the annual report within 60 days of the end of the financial year to which the report relates or on a later date approved by the Minister.

(3) On receipt of an annual report, the Minister must lay a copy of the annual report before the Legislative Assembly if it is sitting and, if it is not sitting, within 15 days after the commencement of the next ensuing sitting.

Offence

17(1) An administrative authority and every officer, employee or agent of an administrative authority that contravenes this Act or the regulations is guilty of an offence and liable to a fine of not more than \$10 000.

(2) Every person who is guilty of an offence under this Act is liable on conviction for each day or part of a day on which the offence occurs or continues.

(3) If a person is convicted of an offence under this Act and the court is satisfied that, as a result of the commission of the offence, monetary benefits accrued to the offender, the court may order the offender to pay, in addition to a fine under subsection (1), a fine in an amount equal to the court's estimation of the amount of those monetary benefits.

Regulations

18(1) The Lieutenant Governor in Council may make regulations

(a) respecting administrative agreements, the terms that must be included in the agreements and the amendment of the agreements;

(b) respecting public meetings, including but not limited to the circumstances under which they must be held;

(c) respecting financial, policy or management audits of administrative authorities;

(d) respecting the termination of administrative agreements;

(e) respecting the collection of, accounting for and remitting by an administrative authority to the Provincial Treasurer of assessments, fees or charges levied under an enactment;

- (f) respecting the imposition of assessments, fees or charges under an enactment by an administrative authority on persons or classes of persons specified in the regulations;
 - (g) respecting any matter that may be necessary to permit an administrative authority to exercise a responsibility in accordance with this Act.
- (2) The *Regulations Act* applies to a regulation made under subsection (1) and does not apply to an order, by-law or rule made under any other section.