

2008 Bill 23

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First Session, 27th Legislature, 57 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 23**

## **WEED CONTROL ACT**

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MR. MITZEL

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 23*  
*Mr. Mitzel*

## **BILL 23**

2008

### **WEED CONTROL ACT**

*(Assented to , 2008)*

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

**Definitions**

1 In this Act,

- (a) "bylaw" includes, in respect of an improvement district or special area, an order made by the local authority;

- (b) “chief administrative officer” means
  - (i) the chief administrative officer of a local authority appointed under the *Municipal Government Act*, or
  - (ii) if subclause (i) does not apply, an officer of a local authority designated by the local authority;
- (c) “control” means
  - (i) to inhibit the growth or spread, or
  - (ii) to destroy;
- (d) “destroy” means
  - (i) to kill all growing parts, or
  - (ii) to render reproductive mechanisms non-viable;
- (e) “inspector” means a person appointed as an inspector pursuant to Part 2;
- (f) “land” includes
  - (i) fixtures on the land, and
  - (ii) the land down to the low water mark of a stream, lake or other body of water that borders or is located on land;
- (g) “local authority” means
  - (i) in respect of an improvement district or a special area, the Minister responsible for the *Municipal Government Act*, or
  - (ii) in respect of all other municipalities, the council of the municipality;
- (h) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (i) “municipality” means

- (i) a municipality or improvement district formed under the *Municipal Government Act*,
- (ii) a municipality formed under a special Act, or
- (iii) a special area constituted under the *Special Areas Act*;
- (j) “noxious weed” means a plant designated in accordance with the regulations as a noxious weed and includes the plant’s seeds;
- (k) “occupant” means, subject to section 26, a person who occupies, exercises control over or has the right to occupy or exercise control over land;
- (l) “owner” means
  - (i) in respect of land, subject to section 26, the person who is registered as an owner of the land under the *Land Titles Act*, or
  - (ii) in respect of personal property, the person who
    - (A) is the legal owner of it,
    - (B) has lawful possession of it, or
    - (C) has the right to exercise control over it;
- (m) “prohibited noxious weed” means a plant designated in accordance with the regulations as a prohibited noxious weed and includes the plant’s seeds;
- (n) “seed-cleaning facility” means a building, structure or vehicle that is designed, intended or used to clean, grade or size seed.

## **Part 1 Weed Control**

### **Noxious weeds — control**

**2** A person shall control a noxious weed that is on land the person owns or occupies.

**Prohibited noxious weeds — destroy**

**3** A person shall destroy a prohibited noxious weed that is on land the person owns or occupies.

**Spread of weeds prohibited**

**4(1)** Subject to the regulations, a person shall not use or move any thing that, if used or moved, might spread a noxious weed or prohibited noxious weed.

**(2)** Subsection (1) does not apply if the thing is used or moved in a manner directed by an inspector under section 13.

**Disposal and storage of weed seeds**

**5(1)** A person shall not deposit or permit to be deposited noxious weed seeds or prohibited noxious weed seeds where they might spread.

**(2)** A person shall store refuse that may contain noxious weed seeds or prohibited noxious weed seeds, including screenings from cleaning, sizing or grading seed, in a container that will prevent the scattering of the seeds.

**(3)** Subsection (2) does not apply if the refuse is disposed of in a manner directed by an inspector under section 13.

**Seed-cleaning facility**

**6(1)** A person shall not operate a seed-cleaning facility or provide a seed-cleaning facility for rent or lease

- (a) unless the person is licensed under the regulations, and
- (b) except in accordance with the terms of the licence.

**(2)** Despite subsection (1), a farmer may operate a seed-cleaning facility the farmer owns to process seed for the farmer's personal use.

## **Part 2 Inspectors**

### **Municipal inspectors**

**7(1)** A local authority shall appoint inspectors to enforce and monitor compliance with this Act within the municipality.

**(2)** If the Minister directs an inspector appointed under section 8 to enforce and monitor compliance with this Act within a municipality on the municipality's behalf,

- (a) an appointment of an inspector previously made by the local authority is void, and
- (b) the local authority shall not make any further appointments until the Minister revokes the direction.

### **Provincial inspectors**

**8(1)** The Minister may appoint inspectors to enforce and monitor compliance with this Act within Alberta.

**(2)** The Minister may direct an inspector appointed under subsection (1) to enforce and monitor compliance with this Act on behalf of a municipality if

- (a) the Minister gives advance written notice to the municipality, and
- (b) in the opinion of the Minister,
  - (i) the local authority failed to appoint sufficient inspectors to enforce and monitor compliance with this Act, or
  - (ii) the inspectors appointed by the local authority are not properly enforcing and monitoring compliance with this Act.

### **Municipal inspectors — joint authority**

**9** An inspector appointed by a municipality may, with the consent of the local authority of another municipality, enforce and monitor compliance with this Act within the other municipality.



#### **Inspector's identification**

**10(1)** A person who appoints an inspector shall provide the inspector with identification in the form required by the Minister.

**(2)** An inspector shall, on request, produce the inspector's identification while acting under the authority of this Act

- (a) in respect of land, to the occupant or owner of the land, and
- (b) in respect of personal property, to the owner of the personal property.

### **Part 3 Inspector's Powers and Notices**

#### **Obstruction of inspector**

**11** A person shall not wilfully obstruct or delay an inspector in the exercise of the inspector's duties or powers to enforce and monitor compliance with this Act.

#### **Entry and inspection power**

**12(1)** An inspector may enter land or inspect land or personal property at a reasonable time

- (a) to monitor compliance with this Act, including making inquiries, taking samples or performing tests, or
- (b) to enforce an inspector's notice, local authority's notice or Minister's notice in accordance with section 18.

**(2)** An inspector shall not enter a building unless the owner or occupant of the land on which the building is situated

- (a) consents, or
- (b) has been given a written notice.

**(3)** Subsection (2) does not apply if the building is, or is part of, a seed-cleaning facility, grain-handling facility or auction market.

**(4)** An inspector shall not enter a private residence unless the occupant of the land consents.

- (5) A written notice under subsection (2)(b) must
- (a) name a reasonable time of entry, and
  - (b) be given at least 24 hours before the time of entry.

**Inspector's notice**

**13(1)** If an inspector finds non-compliance with this Act, an inspector may give an inspector's notice in writing requiring compliance

- (a) in respect of land, to the occupant of the land and to the owner of the land, and
- (b) in respect of personal property, to the owner of the personal property.

(2) If an inspector finds growing or spreading prohibited noxious weeds, the inspector shall give an inspector's notice requiring the weeds to be destroyed.

**Contents of inspector's notice**

**14(1)** An inspector's notice must direct the method, subject to the regulations, and time for compliance with this Act.

(2) The notice may contain directions, including limiting the use of land, for the year in which it is given and the following year.

(3) The notice must not require the destruction of crops unless in the inspector's opinion the destruction of crops is necessary to control noxious weeds or destroy prohibited noxious weeds.

(4) The notice must not require the destruction of more than 20 acres of growing crops unless the local authority of the municipality in which the crops are growing has consented in writing.

(5) Subsection (4) does not apply if the growing crop

- (a) does not have a significant commercial value, or
- (b) is a crop of noxious weeds or prohibited noxious weeds.

**Local authority's notice**

**15(1)** A local authority may give a local authority's notice to control noxious weeds and to destroy prohibited noxious weeds to the owners and occupants of land in a subdivided area that does not exceed 20 acres.

**(2)** The notice may direct the method, subject to the regulations, and the time for the destruction of the weeds.

**(3)** The notice may contain directions for the year in which it is given.

**Minister's notice**

**16(1)** The Minister may, by order, give a Minister's notice requiring a person to cease an activity that, in the opinion of the Minister, is in contravention of this Act.

**(2)** The notice may prohibit

- (a) the activity that, in the opinion of the Minister, is in contravention of this Act,
- (b) the use of any facility, and
- (c) the use or movement of anything as specified in the order.

**(3)** The notice must

- (a) contain the reasons for the making of the notice, and
- (b) be served on the person to whom it is directed.

**(4)** The Minister may apply by way of originating notice to the Court of Queen's Bench to seek an order of the court directing the person to comply with the Minister's notice.

**Compliance with notice**

**17(1)** A person given a notice under this Part in accordance with section 24 shall, subject to the right to appeal an inspector's notice or a local authority's notice, comply with the notice.

**(2)** If a notice of appeal is filed, a notice is stayed until

- (a) the appeal is disposed of, and

(b) a review by the Minister under section 20 is completed or the time to apply for a review has expired.

**(3)** If there is a conflict between notices given under this Act,

(a) a Minister's notice prevails over a local authority's notice or an inspector's notice, and

(b) an inspector's notice prevails over a local authority's notice.

#### **Enforcement of notice**

**18** An inspector may take any action that the inspector determines is necessary to fulfil a requirement of a notice given under this Part that has not been complied with when

(a) in respect of an inspector's notice or a local authority's notice,

(i) the appeal period in the regulations has expired or the appeal has been determined, and

(ii) the request for review period in the regulations has expired or the request has been considered,

or

(b) in respect of a Minister's notice, a court order referred to in section 16 has been served on the person to whom the notice was directed.

## **Part 4 Appeal of Inspector's Notice or Local Authority's Notice**

#### **Appeals**

**19(1)** A local authority shall establish, at least annually, an independent appeal panel to determine appeals of inspector's notices and local authority's notices.

**(2)** A person who is given an inspector's notice or local authority's notice may, in accordance with the regulations, appeal it to an appeal panel.

(3) The appeal panel may confirm, reverse or vary the inspector's notice or local authority's notice.

**Review**

**20(1)** An appellant may, in accordance with the regulations, request a review by the Minister of a decision of an appeal panel.

(2) The Minister may confirm, reverse or vary the decision of the appeal panel and the decision of the Minister is final.

**Part 5  
Recovery of Inspector's  
Expenses**

**Inspector's notices and local authority's notices**

**21(1)** Expenses incurred by an inspector enforcing an inspector's notice or a local authority's notice are a debt due to the local authority by the person subject to that notice.

(2) The chief administrative officer shall give a debt recovery notice to the debtor

- (a) demanding recovery of the debt due, including a statement of expenses, and
- (b) advising of the debtor's right to object within 30 days of being given the debt recovery notice.

(3) Within 30 days of being given a debt recovery notice, the following persons may object in writing to the chief administrative officer:

- (a) in respect of unoccupied land, the owner of the land;
- (b) in respect of occupied land, the occupant and the owner of the land;
- (c) in respect of personal property, the owner of the personal property.

(4) A local authority may take any or all of the following steps to recover the debt due from any person who is given a debt recovery notice:

- (a) in the same manner as property taxes against land to which the inspector's notice or local authority's notice relates;
- (b) by filing a certificate with the clerk of the Court of Queen's Bench at any judicial district certifying the amount owing;
- (c) by bringing an action in debt.

(5) Subsection (4)(a) and (b) do not apply to recovery against a person from whom the chief administrative officer received an objection in accordance with subsection (3).

(6) A certificate filed under subsection (4)(b) becomes an order of the Court of Queen's Bench and may be enforced as a judgment of that court.

#### **Minister's notice**

**22(1)** Expenses incurred by the Minister to enforce a Minister's notice are a debt due to the Minister by the person subject to the notice.

(2) The debt due may be recovered by an action in debt.

#### **Appointment of municipal inspector**

**23(1)** The salary and expenses incurred by the Minister with respect to an inspector directed by the Minister to enforce and monitor compliance with this Act on behalf of a municipality under section 8 are a debt due to the Minister by the municipality.

(2) The debt due may be recovered

- (a) by withholding it from a grant or other money payable to the municipality by the Crown, or
- (b) by bringing an action in debt.

## **Part 6 Miscellaneous Matters**

#### **Service of notices**

**24(1)** A notice given under Part 3 or 5 must

- (a) be in the form required by the Minister, and
- (b) be served on a person in accordance with subsection (2) or (3).

**(2)** The notice, except for a local authority's notice, must be served on a person

- (a) by delivering it personally to the person,
- (b) by leaving it with a person who appears to be 18 years of age or older at the private residence or place of business of the person, or
- (c) if service under clause (a) or (b) is impractical,
  - (i) by posting the notice
    - (A) on the land or, if practicable, on the personal property to which the notice relates, or
    - (B) at the private residence of the person intended to be served,

and

- (ii) by sending a copy of the notice by regular mail
  - (A) in respect of land, to the last address listed in the assessment roll of the municipality for the owner of the land, or
  - (B) in respect of personal property, to the last known address of the owner.

**(3)** A local authority's notice must be sent by regular mail to the last address listed in the assessment roll of the municipality for the owner of the land subject to the notice.

**(4)** For the purpose of this section, a notice sent by regular mail is deemed to have been received by the person 7 days from the date of mailing.

### **Subsequent owner or occupant subject to notice**

**25(1)** A notice given under this Act is effective against a subsequent owner or occupant of the land or a subsequent owner of personal property from the time the notice was originally given.

**(2)** An owner of land or personal property shall provide a copy of the notice to a person before that person enters into an agreement to acquire the interest in the land or personal property.

**(3)** A chief administrative officer shall, on request, provide a mortgagee or purchaser of land a copy of all notices given under this Act that relate to that land.

### **Highways — designated owner or occupant**

**26(1)** If a highway is owned or occupied by a municipality, the local authority may

- (a) in respect of an improvement district or a special area, by order, or
- (b) in respect of all other municipalities, by bylaw,

provide that for the purposes of this Act a person is the owner or occupant of the highway to the highway's midpoint to the extent that the person is the owner or occupant of land that borders the highway.

**(2)** If a local authority makes an order or bylaw under subsection (1), the municipality is not an owner or occupant of the land for the purposes of this Act.

**(3)** A bylaw or order made under subsection (1) is not effective unless the Minister approves it.

**(4)** In this section, "highway" means a highway as defined in the *Traffic Safety Act* and includes the land on which it is situated.

### **Refusal, revocation or suspension of licence**

**27** The Minister may refuse, revoke or suspend a seed-cleaning facility licence if the applicant or holder has, in the Minister's opinion, contravened this Act.





### **Offence and penalty**

**28** A person who contravenes this Act is guilty of an offence and liable to a fine of not more than \$5000 or, in the case of failure to comply with a Minister's notice, a fine of not more than \$1000 for each day the offence continues.

### **Disposition of fines**

**29** A fine imposed for an offence under this Act committed within a municipality belongs to the municipality.

### **Regulations**

**30** The Minister may make regulations

- (a) respecting the designating of a plant as a noxious weed or prohibited noxious weed, generally or in respect of any part of Alberta;
- (b) respecting the directions that may be given in a notice under Part 3 of this Act;
- (c) respecting the sale, use, handling or movement of a thing that might contain or cause the growth or spread of noxious weeds or prohibited noxious weeds;
- (d) respecting appeals, appeal panels and reviews of appeals;
- (e) respecting the licensing of a person who operates a seed-cleaning facility or who provides a seed-cleaning facility for rent or lease;
- (f) respecting forms for the purposes of this Act.

### **Act binds Crown**

**31** The Crown is bound by this Act.

### **Amends RSA 2000 cP-40**

**32** The *Public Lands Act* is amended in sections 63 and 79 by striking out "restricted weeds" wherever it occurs and substituting "prohibited noxious weeds".

## **Explanatory Notes**

**32** Amends chapter P-40 of the Revised Statutes of Alberta 2000.  
Sections 63 and 79 presently read:

*63 A holder of a disposition shall with respect to the land contained  
in the holder's disposition*

**Repeal**

**33** The *Weed Control Act*, RSA 2000 cW-5, is repealed.

**Coming into force**

**34** This Act comes into force on Proclamation.

- (a) *use only first class seed that is free and clear of all noxious weeds and restricted weeds within the meaning of the Weed Control Act,*
- (b) *cut, keep down and destroy all noxious weeds and restricted weeds to which the Weed Control Act applies,*
- (c) *submit to the Minister when requested by the Minister to do so a plan and a statement showing the purpose for which the land is to be used or developed and the manner in which that use or development is to be achieved, and*
- (d) *use the land in a manner that promotes and implements conservation.*

*79 The Minister may exempt a lessee from the payment of any portion of the lessee's rent for a period not exceeding 3 crop years following the date of issue of the lease if the land contained in the lease*

- (a) *is infested with noxious weeds or restricted weeds to which the Weed Control Act applies,*
- (b) *has partly reverted to its natural state, or*
- (c) *requires extensive clearing or excessive costs for land preparation before cultivation can be commenced.*

**33** Repeals chapter W-5 of the Revised Statutes of Alberta 2000.

**34** Coming into force.





**RECORD OF DEBATE**

Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>
Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>
Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>
Stage	Date	Member	From	To
		<b>Questions and Comments</b>	<b>From</b>	<b>To</b>