

2016 Bill 24

Second Session, 29th Legislature, 65 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 24

FOREST AND PRAIRIE PROTECTION AMENDMENT ACT, 2016

THE MINISTER OF AGRICULTURE AND FORESTRY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 24

2016

FOREST AND PRAIRIE PROTECTION AMENDMENT ACT, 2016

(Assented to _____, 2016)

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

Amends RSA 2000 cF-19

1 The *Forest and Prairie Protection Act* is amended by this Act.

2 Section 1 is amended

(a) by adding the following after clause (a.1):

(a.11) “director” means a director under the *Forests Act*;

(b) in clause (a.3) by striking out “may be ignited and, if ignited,” **and substituting** “may ignite or be ignited and that, if it ignites or is ignited,”;

(c) by adding the following after clause (a.3):

(a.4) “fire season” means the period of time in a year determined under section 17 to be the fire season for that year;

(d) by adding the following after clause (b):

(b.01) “forest pest” means any biological entity that injures, harms or otherwise impairs the health of trees or forest ecosystems or has the potential to do so;

Explanatory Notes

1 Amends chapter F-19 of the Revised Statutes of Alberta 2000.

2 Definitions.

(e) by adding the following after clause (e):

(e.1) “off-highway vehicle” has the meaning assigned to it in the *Traffic Safety Act*,

(f) by adding the following after clause (g):

(g.1) “rolling stock” means

(i) any locomotive or railway car that operates on track, and

(ii) any other vehicle that by design or by the way it is equipped is capable of being operated on track;

(g) in clause (h) by adding “and includes an urban service area of a specialized municipality” **after** “(including a summer village)”.

3 Section 4 is amended

(a) by repealing subsection (2) and substituting the following:

(2) Each year in time for the beginning of the fire season, the council of a municipal district shall appoint, for a term not exceeding one year, with effect from the beginning of the fire season, a sufficient number of fire guardians to enforce this Act within the boundaries of the municipal district, except that part of the municipal district that is within a forest protection area.

(b) in subsection (3) by adding “except that part of the municipal district that is within a forest protection area” **after** “municipal district”.

4 Section 7(1) is amended by adding “except that part of the municipal district that is within a forest protection area,” **after** “of the municipal district”.

3 Section 4 presently reads in part:

(2) Each year before April 1 the council of a municipal district shall appoint, for a term not exceeding one year with effect from the beginning of April, a sufficient number of fire guardians to enforce this Act within the boundaries of the municipal district.

(3) The chief elected official, each councillor and the chief administrative officer are by virtue of their offices fire guardians in and for the municipal district.

4 Section 7(1) presently reads:

7(1) The council of a municipal district is responsible for fighting and controlling all fires within the boundaries of the municipal district and the costs and expenses shall be paid by the municipal district, subject to its right to recover them under section 9(3).

5 Section 8 is amended by striking out “, with the approval of the Lieutenant Governor in Council,”.

6 Section 10(1) is amended by striking out “the the” and substituting “the”.

7 Section 11(1)(a) is repealed and the following is substituted:

- (a) “railway legislation” has the meaning assigned to that term in the *Railway (Alberta) Act*,

8 Section 14 is amended

(a) in subsection (1)

- (i) **by adding** “or prohibit the operation of equipment or off-highway vehicles on any land” **after** “land”;
- (ii) **by adding** “or prohibition” **after** “closure”;

(b) by repealing subsection (2) and substituting the following:

5 Section 8 presently reads:

8(1) The Minister is not obligated to reimburse a municipal district for any money spent by it in controlling or extinguishing a fire on any land but the Minister may, with the approval of the Lieutenant Governor in Council, reimburse the council of a municipal district for any part of the costs and expenses in controlling or extinguishing a fire on unoccupied public land.

6 Section 10(1) presently reads:

10(1) If the council of a municipal district finds within its boundaries on privately owned land or occupied public land conditions that in its opinion constitute a fire hazard or a burning hazard, it may order the owner or the person in control of the land on which the the hazard exists to reduce, remove or eliminate the hazard within a fixed time and in a manner prescribed by the council.

7 Section 11(1) presently reads:

11(1) In this section,

- (a) “railway legislation”, “rolling stock” and “track” have the meanings respectively assigned to those terms in the Railway (Alberta) Act;*
- (b) “railway operator” means a person who owns or is otherwise responsible for the control, management or operation of rolling stock or track.*

8 Section 14 presently reads:

14(1) The Minister may, by order, close to public entry any land where the Minister considers that a fire hazard or a burning hazard warrants the closure.

(2) An order under subsection (1) must be published immediately at least twice a day for not less than 2 consecutive days by the radio and television stations or through such other means of communication that the Minister considers most likely to bring the matter to the attention of the public.

(2) An order under subsection (1) must be communicated immediately to the public by a means that the Minister considers most likely to bring the matter to the attention of the public.

(c) by repealing subsection (3) and substituting the following:

(3) Subject to the regulations, until the Minister, by order, rescinds the order made under subsection (1),

- (a) a person who is not a forest officer or fire guardian shall not enter on any land closed to public entry under subsection (1), or remain on that land, without a permit or the written permission of a forest officer, and
- (b) a person shall not carry out any activity or operate equipment or an off-highway vehicle on any land on which that activity or operation is prohibited by an order made under subsection (1).

(d) in subsection (4) by striking out “publication” and substituting “communication”.

9 Section 17(1) is amended by striking out “April 1” and substituting “March 1”.

10 Section 19(2) is amended by adding “except that part of the municipal district that is within a forest protection area” after “municipal district”.

11 Section 21(2) is repealed and the following is substituted:

(2) An order under subsection (1) must be communicated immediately to the public by a means that the Minister considers most likely to bring the matter to the attention of the public.

(3) Subject to the regulations, a person who is not a forest officer or fire guardian shall not enter a closed area without a permit or the written permission of a forest officer until the Minister, by order, reopens the closed area.

(4) Lack of publication pursuant to subsection (2) is not available as a defence to a person who has had actual notice of the order.

(5) For the purposes of subsection (4), actual notice of an order includes but is not limited to any oral notification from any person to the affected person that adequately informs the affected person generally of the contents and effect of the order.

(6) The Regulations Act does not apply to an order made under subsection (1) or (3).

9 Section 17(1) presently reads:

17(1) The period from April 1 to October 31 in each year is the fire season for the purposes of this Act.

10 Section 19(2) presently reads:

(2) A fire guardian appointed by a municipal council may in the fire guardian's discretion issue to an applicant a fire permit in respect of any land within the boundaries of that municipal district.

11 Section 21(2) presently reads:

(2) An order made pursuant to subsection (1) must be immediately published at least twice a day for not less than 2 consecutive days by the radio and television stations or through such other means of communication that are considered by the Minister most likely to bring the matter to the attention of the public.

12 Section 23 is repealed and the following is substituted:

Fire control plans

23(1) A person carrying on or having charge of an industrial or commercial operation on public land or within one kilometre of any public land shall at the request of a forest officer submit a fire control plan satisfactory to the forest officer, within the time determined by the forest officer.

(2) If a person referred to in subsection (1) fails to comply with the request of the forest officer within the time determined by the forest officer, the Minister may, by order, suspend the industrial or commercial operation of the person until a fire control plan satisfactory to the forest officer has been submitted to the forest officer.

13 Section 26(1) is repealed and the following is substituted:

Order to reduce or remove hazard

26(1) Where a forest officer finds on any land conditions that the forest officer considers to be a fire hazard or a burning hazard, the forest officer may order the owner or the person in control of the land to reduce, remove or eliminate the hazard within the time and in the manner that the forest officer orders.

14 The following is added after section 26:

Interference with fire control operations

26.1 A person shall not, unless authorized under this Act or another enactment, operate equipment, machinery, a vehicle, an aircraft or a vessel in a manner that interferes with or might interfere with the carrying out of fire control operations under this Act.

Operation of equipment or off-highway vehicles

26.2 Where a forest officer considers that an activity carried on by a person or the operation of equipment or an off-highway vehicle by a person on any land creates or might create a fire hazard or burning hazard, the forest officer may order the person to cease carrying on the activity or operating the equipment or off-highway vehicle for the period of time that the forest officer considers appropriate.

12 Section 23 presently reads:

23(1) A person carrying on or having charge of an industrial or commercial operation on public land or within one kilometre of any public land shall at the Minister's request submit to the Minister for the Minister's approval a fire control plan.

(2) The Minister may, by order, suspend the operations of any person until a satisfactory fire control plan has been submitted to the Minister and the plan has received the Minister's approval.

13 Section 26(1) presently reads:

26(1) Where a forest officer finds on any land conditions that are considered to constitute a fire hazard or a burning hazard, the officer may order the owner or the person in control of the land on which the hazard exists to reduce, remove or eliminate the hazard within the time and in the manner that the officer orders.

14 Interference with fire control operations; operation of equipment or off-highway vehicle.

15 Section 28 is repealed and the following is substituted:

Forest pest management

28 The Minister may carry out on any land, including land within the boundaries of an urban municipality, any measures that the Minister considers advisable for the prevention and control of a forest pest.

16 Section 31.4 is amended

- (a) **by repealing subsection (1) and substituting the following:**

Diseased and infested products

31.4(1) A forest officer may, without a warrant, seize any thing that the forest officer has reasonable grounds to believe harbours a forest pest.

- (b) **in subsections (2) and (3) by striking out “product” and substituting “thing”.**

17 Section 32 is amended by adding the following after subsection (2):

(2.1) A forest officer or a fire guardian may, for the purposes of an investigation, temporarily cordon off or secure an area of land or premises and prohibit any person from entering or remaining in the area or premises until the investigation is completed.

(2.2) A person shall not enter an area or premises that have been cordoned off or secured under subsection (2.1) without first obtaining the permission of a forest officer or fire guardian.

18 Section 36 is repealed and the following is substituted:

False statements

36 No person shall provide false or misleading information when information is required to be provided by that person under this Act.

15 Section 28 presently reads:

28 The Minister may carry out on any land any control measures that the Minister considers advisable for the prevention and control of injurious forest tree pest infestations or non-indigenous invasive species infestations.

16 Section 31.4 presently reads:

31.4(1) A forest officer may, without a warrant, seize any product that the officer has reasonable grounds to believe has an injurious forest tree pest infestation or a non-indigenous invasive species infestation or that is otherwise diseased.

(2) The Minister may order the destruction of a product seized under subsection (1).

(3) No right of compensation exists against the Crown or any person in respect of anything destroyed under subsection (2), but the Minister may provide such compensation in the amount or at the value that the Minister considers fair for the destroyed product.

17 Cordoning off or securing land.

18 Section 36 presently reads:

36 No person shall make a false statement in any document required under this Act or the regulations.

19 Section 37 is repealed and the following is substituted:

Offences and penalties

37(1) A person who contravenes this Act or the regulations or fails to comply with an order under this Act or a condition of a permit issued under this Act is guilty of an offence and liable

- (a) in the case of an individual, to a fine of not more than \$50 000 or to imprisonment for a period of not more than one year or to both fine and imprisonment, or
- (b) in the case of a corporation, to a fine of not more than \$500 000.

(2) A person who knowingly contravenes this Act or the regulations or knowingly fails to comply with an order under this Act or a condition of a permit issued under this Act is guilty of an offence and liable

- (a) in the case of an individual, to a fine of not more than \$100 000 or to imprisonment for a period of not more than 2 years or to both fine and imprisonment, or
- (b) in the case of a corporation, to a fine of not more than \$1 000 000.

20 Section 37.2(2) is amended by striking out “the offender’s”.

19 Section 37 presently reads:

37 A person who contravenes this Act or the regulations or who refuses or neglects to comply with any condition in a permit or with any order issued, or with any request directed to the person, pursuant to this Act or the regulations is guilty of an offence and liable,

- (a) if the offence was a contravention of section 18 or 22 within a forest protection area, to a fine of not more than the amount prescribed in the regulations and in default of payment to imprisonment for a term of not more than one year, or*
- (b) in any other case, to a fine of not more than the amount prescribed in the regulations and in default of payment to imprisonment for a term of not more than 90 days or to both fine and imprisonment.*

20 Section 37.2(2) presently reads:

(2) Where a court has made an order under subsection (1), the court may, on application by the offender or the Minister of Justice and Solicitor General, require both of them to appear before it and, after hearing both, may make any or all of the following orders if the court considers that the offender's circumstances have changed so as to warrant such an order:

- (a) an order changing the existing order;*
- (b) an order relieving the offender from compliance with all or any portion of the existing order;*
- (c) an order reducing the term of the existing order;*
- (d) an order extending the term of the existing order for an additional period not exceeding one year.*

21 The following is added after section 37.4:

Administrative penalties

37.5(1) Where a director is of the opinion that a person has contravened a provision of this Act, failed to comply with an order made under this Act or failed to comply with a condition of a permit that is specified for the purposes of this section in the regulations, the director may, subject to the regulations, by notice in writing given to that person require that person to pay to the Government an administrative penalty in the amount set out in the notice for each contravention or failure to comply.

(2) A notice of administrative penalty may require the person to whom it is directed to pay either or both of the following:

- (a)** a daily amount for each day or part of a day on which the contravention or failure to comply occurs or continues;
- (b)** a one-time amount to address economic benefit where the director is of the opinion that the person has derived an economic benefit directly or indirectly as a result of the contravention or failure to comply.

(3) An administrative penalty referred to in subsection (2)(a) may not exceed \$10 000 for each contravention or for each day or part of a day on which the contravention occurs or continues, as the case may be.

(4) A notice of administrative penalty must be served within 2 years after the date on which evidence of the alleged contravention or failure to comply first came to the attention of a forest officer.

(5) Subject to the right to appeal a notice of administrative penalty, where a person fails to pay an administrative penalty in accordance with the notice of administrative penalty and the regulations, the Minister may file a copy of the notice of administrative penalty with the clerk of the Court of Queen's Bench, and on being filed, the notice has the same force and effect and may be enforced as if it were a judgment of the Court.

21 Administrative penalties; appeal of administrative penalty; enforcement of administrative penalty.

(6) A person who pays an administrative penalty in respect of a contravention or failure to comply shall not be charged with an offence under this Act in respect of the contravention or failure to comply described in the notice of administrative penalty.

Appeal of administrative penalty

37.6(1) A person served with a notice of administrative penalty may appeal the imposition of or the amount of the administrative penalty, or both, by submitting a notice of appeal of administrative penalty in accordance with the regulations to the appeal body established or designated by the regulations.

(2) Subject to the regulations, the appeal body referred to in subsection (1) may make rules governing its own procedure and business.

(3) The *Regulations Act* does not apply to rules made under subsection (2).

(4) An appeal under subsection (1) must be dealt with in accordance with the regulations and the rules made under subsection (2).

22 Section 38(1) is repealed and the following is substituted:

Reimbursement for fire fighting costs

38(1) In addition to any fine imposed under section 37, at the request of the Crown, the court may order the convicted person to reimburse the Minister or any other person, or both, for the fire fighting costs involved as a debt to the Minister or person, and in that event the court shall determine those costs.

23 Section 40 is repealed and the following is substituted:

Civil action unaffected

40 Subject to section 5, the common law right to bring and maintain a civil action for damages caused by fire is not affected by this Act.

Protection from liability

40.1 No action lies and no proceeding may be brought against the Crown, the Minister, a director or a forest officer, or any

22 Section 38(1) presently reads:

38(1) In addition to any fine imposed under section 37, at the request of the Crown, the court may order the convicted person to reimburse the Minister for the fire fighting costs involved as a debt to the Minister and in that event shall determine those costs.

23 Section 40 presently reads:

40 The common law right to bring and maintain a civil action for damages caused by fire is not affected by this Act.

person acting under the direction of the Crown, the Minister, a director or a forest officer, for damages resulting from any order or decision under this Act or the regulations made in good faith by the Crown, the Minister, the director, the forest officer or the person.

24 Section 41 is amended

(a) by repealing clause (d) and substituting the following:

- (d) respecting the prevention and control of forest pests;
- (d.1) defining any word or expression that is used but not defined in this Act;

(b) by repealing clause (e) and substituting the following:

- (e) respecting the imposition of administrative penalties referred to in section 37.5, including regulations
 - (i) respecting notices of administrative penalty and their form and contents;
 - (ii) prescribing contraventions or failures to comply in respect of which an administrative penalty may be imposed and, subject to section 37.5(3), prescribing the amounts, or the manner of determining the amounts, of the administrative penalties that may be imposed;
 - (iii) respecting any other matter the Lieutenant Governor in Council considers necessary or advisable to carry out the intent and purpose of the system of administrative penalties;
- (e.1) respecting the form and contents of a notice of appeal of administrative penalty referred to in section 37.6(1);
- (e.2) designating a body as the appeal body, or respecting the establishment of an appeal body, for the hearing of appeals from notices of administrative penalty referred to in section 37.6(1);

24 Section 41 presently reads:

41 The Lieutenant Governor in Council may make regulations

- (a) respecting the issue and use of permits;*
- (b) respecting forest fire prevention and control measures to be observed;*
- (c) designating any part of Alberta as a forest protection area and respecting control measures applicable to it;*
- (d) respecting the prevention and control of injurious forest tree pest infestations or non-indigenous invasive species infestations;*
- (e) prescribing maximum monetary penalties for the purposes of section 37(a) and (b);*
- (f) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act.*

- (e.3) respecting the conduct of appeals before the appeal body referred to in section 37.6(1), including regulations
 - (i) respecting the applicability of the rules of evidence in judicial proceedings to hearings before the appeal body;
 - (ii) empowering the appeal body to proceed when a party to the appeal fails to appear at or attend a hearing;
 - (iii) empowering the appeal body to require the production of any record, object or thing;
 - (iv) respecting the awarding of costs;

25 Section 42(f) and (g) are repealed.

26 The *Municipal Government Act* is amended by repealing section 75(4).

25 Section 42 presently reads in part:

42 The Minister may make regulations

- (f) respecting rates of payment for persons required to assist or for equipment commandeered under section 13 or 30;*
- (g) respecting rates of payment for persons, equipment or services hired temporarily for operations for fire fighting, pollution clean-up, controlling injurious forest tree pest infestations or non-indigenous invasive species infestations or dealing with any other emergency;*

26 Amends chapter M-26 of the Revised Statutes of Alberta 2000. Section 75(4) presently reads:

(4) Sections 4(2) and (3), 7 and 19(2) of the Forest and Prairie Protection Act do not apply to the council of a municipal district with respect to the part of the municipal district that is within a forest protection area.

