

FARM PRACTICES PROTECTION (RIGHT TO FARM) ACT**CHAPTER 23***Assented to June 21, 1995***Contents****PART 1****DEFINITIONS**

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

PART 1

DEFINITIONS

Definitions

1. In this Act:

"board" means the Farm Practices Board established under section 9;

"complainant" means a person who under section 3 applies for a determination referred to in that section;

"farm business" means a business in which one or more farm operations are conducted, and includes a farm education or farm research institution to the extent that the institution conducts one or more farm operations;

"farm operation" means any of the following activities involved in carrying on a farm business:

- (a) growing, producing, raising or keeping animals or plants, including mushrooms, or the primary products of those plants or animals;
- (b) clearing, draining, irrigating or cultivating land;
- (c) using farm machinery, equipment, devices, materials and structures;
- (d) applying fertilizers, manure, pesticides and biological control agents, including by ground and aerial spraying;
- (e) conducting any other agricultural activity on, in or over agricultural land;

and includes

- (f) intensively cultivating in plantations, any
 - (i) specialty wood crops, or
 - (ii) specialty fibre cropsprescribed by the minister;
- (g) conducting turf production
 - (i) outside of an agricultural land reserve, or
 - (ii) in an agricultural land reserve with the approval under the *Agricultural Land Commission Act* of the Provincial Agricultural Land Commission;

- (h) aquaculture as defined in the *Fisheries Act* when carried on by a person licensed, under Part 3 of that Act, to carry on the business of aquaculture;
- (i) raising or keeping game, within the meaning of the *Game Farm Act*, by a person licensed to do so under that Act;
- (j) raising or keeping fur bearing animals, within the meaning of the *Fur Farm Act*, by a person licensed to do so under that Act;
- (k) processing or direct marketing by a farmer of
 - (i) the products of a farm owned or operated by the farmer, and
 - (ii) within limits prescribed by the minister, of products not of that farm,

to the extent that the processing or marketing of those products is conducted on the farmer's farm;

but does not include

- (l) an activity, other than grazing or hay cutting, if the activity constitutes a forest practice as defined in the *Forest Practices Code of British Columbia Act*;
- (m) breeding pets or operating a kennel;
- (n) growing, producing, raising or keeping exotic animals, except types of exotic animals prescribed by the minister;

"farmer" means the owner or operator of a farm business;

"land use regulation" means an enactment that restricts or prescribes the use to which land or premises may be put or the nature of business or activities that may be conducted on land or premises but does not include a bylaw under section 932 or 933 of the *Municipal Act*;

"normal farm practice" means a practice that is conducted by a farm business in a manner consistent with

- (a) proper and accepted customs and standards as established and followed by similar farm businesses under similar circumstances, and
- (b) any standards prescribed by the Lieutenant Governor in Council,

and includes a practice that makes use of innovative technology in a manner consistent with proper advanced farm management practices and with any standards prescribed under paragraph (b).

PART 2

RIGHT TO FARM

Normal farm practices protected

2. (1) If each of the requirements of subsection (2) is fulfilled in relation to a farm operation conducted as part of a farm business,
 - (a) the farmer is not liable in nuisance to any person for any odour, noise, dust or other disturbance resulting from the farm operation, and
 - (b) the farmer must not be prevented by injunction or other order of a court from conducting that farm operation.
- (2) The requirements referred to in subsection (1) are that the farm operation must
 - (a) be conducted in accordance with normal farm practices,
 - (b) be conducted on, in or over land
 - (i) that is in an agricultural land reserve,
 - (ii) on which, under the *Municipal Act*, farm use is allowed, or
 - (iii) as permitted by a valid and subsisting licence, issued to that person under the *Fisheries Act*, for aquaculture, and
 - (c) not be conducted in contravention of the *Health Act*, *Pesticide Control Act*, *Waste Management Act*, the regulations under those Acts or any land use regulation.
- (3) If each of the requirements of subsection (2), except subsection (2) (b) (ii), is fulfilled in relation to a farm operation conducted as part of a farm business,
 - (a) despite section 298 of the *Municipal Act*, and despite section 784 (5) of that Act under which section 298 is made applicable for the purposes of Part 24 of that Act, the farmer does not contravene a bylaw made under section 789 (1) (a) or (b), 932 or 933 of the *Municipal Act*, by the council of a municipality or by the board of a regional district, only because of conducting that farm operation, and
 - (b) despite section 750 of the *Municipal Act*, and despite section 820.1 (1) of that Act under which section 750 is made applicable to a regional district and its board, the farmer must not be prevented by injunction or other order of a court from conducting that farm operation.

Complaints

3. (1) If a person is aggrieved by any odour, noise, dust or other disturbance resulting from a farm operation conducted as part of a farm business, the person may apply in writing to the board for a determination as to whether the odour, noise, dust or other disturbance results from a normal farm practice.
- (2) Every application under subsection (1) must
 - (a) contain a statement of the nature of the complaint, the name and address of the person making the application, the name and address of the farmer and the location of the farm,
 - (b) be in a form acceptable to the chair of board, and
 - (c) be accompanied by the fee prescribed by the Lieutenant Governor in Council.

Settlement

4. In the interest of reaching a settlement of a complaint that is the subject of an application under section 3 (1), the chair of the board, at any time before a panel of the board has decided the application, may inquire into matters relevant to the complaint, and, as part of that inquiry, may
 - (a) obtain the advice of persons who are knowledgeable about normal farm practices, and
 - (b) consult with the farmer identified in the application and the complainant.

Establishing panels to hear applications

5. After receipt of an application that meets the requirements of section 3, the chair of the board, if satisfied that any consultations under section 4 have been terminated without achieving a settlement of the complaint, or that settlement is unlikely, must
 - (a) establish a panel of the board to hear the complaint, and
 - (b) appoint 3 members of the board to the panel.

Hearing of complaints

6. (1) The panel established to hear an application must hold a hearing and must

- (a) dismiss the complaint if the panel is of the opinion that the odour, noise, dust or other disturbance results from a normal farm practice, or
 - (b) order the farmer to cease the practice that causes the odour, noise, dust or other disturbance if it is not a normal farm practice, or to modify the practice in the manner set out in the order, to be consistent with normal farm practice.
- (2) The board, after giving the complainant an opportunity to be heard, may refuse to refer an application to a panel for the purpose of a hearing, or, after a hearing has begun, the panel to which an application has been referred may refuse to continue the hearing or to make a decision if, in the opinion of the board or the panel, as the case may be,
 - (a) the subject matter of the application is trivial,
 - (b) the application is frivolous or vexatious or is not made in good faith, or
 - (c) the complainant does not have a sufficient personal interest in the subject matter of the application.
- (3) The board must give written reasons for a decision under subsection (2) refusing to refer an application to a panel.
- (4) A panel must give written reasons for a decision under subsection (1) or (2).
- (5) Written notice of the decision, under this section, of the board or a panel, accompanied by the written reasons for the decision, must be delivered to the complainant and the farmer affected by the decision.

Conduct of hearings

- 7.
 - (1) Subject to any regulations under section 12 (2) (c), the board may determine the practices and procedures to be followed for the purposes of hearings required under section 6.
 - (2) A hearing is open to the public and may be conducted in an informal manner.
 - (3) The board or a panel may receive or accept evidence whether or not it would be admissible in a court of law.
 - (4) If a member of a panel is absent or unable to attend a hearing, the member is disqualified from continuing to participate in the hearing, and the member or members remaining present may exercise and perform all the jurisdiction, powers and duties of the panel.

- (5) Despite subsection (2), a panel of the board may exclude the public from a hearing for the purpose of receiving evidence if the panel considers that the desirability of avoiding disclosure of the evidence in order to protect the interest of any person, or to protect the public interest, outweighs the desirability of public disclosure.

Appeal

8. (1) Within 60 days after receiving written notice, in accordance with section 6 (5), of a decision of the board or a panel of the board made under section 6, the complainant or farmer affected by the decision may appeal the decision to the Supreme Court on a question of law or jurisdiction.
- (2) An appeal from a decision of the Supreme Court lies to the Court of Appeal with leave of a justice of the Court of Appeal.

PART 3

FARM PRACTICES BOARD

Establishment of the Farm Practices Board

9. (1) A board to be known as the Farm Practices Board is hereby established, consisting of
- (a) the members of the British Columbia Marketing Board, and
 - (b) not more than 10 additional members whom the minister may appoint to the Farm Practices Board.
- (2) The chair of the British Columbia Marketing Board is also the chair of the Farm Practices Board.
- (3) The chair may designate one or 2 vice chairs of the Farm Practices Board from among its members.
- (4) In the absence of the chair, or if the chair is unable to act, a vice chair has the powers of the chair.
- (5) The Lieutenant Governor in Council may determine the remuneration, reimbursement of expenses and other conditions of employment of the chair, the vice chair and the members of the Farm Practices Board in relation to carrying out their responsibilities under this Act.

Staff

10. (1) The British Columbia Marketing Board may provide the Farm Practices Board with administrative and other services.
- (2) Employees who, after taking into account the availability of any services that may be provided to the board under subsection (1), are considered necessary to carry out the powers and duties of the board under this Act may be appointed under the *Public Service Act*.
- (3) In accordance with any regulations under section 12 (2) (d), the board may engage or retain specialists and consultants that the board, after taking into account the availability of any services that may be provided to the board under subsection (1), considers necessary to carry out the powers and duties of the board, and the board may determine their remuneration.
- (4) The *Public Service Act* does not apply to the engagement, retention or remuneration of specialists and consultants engaged or retained under subsection (3).

Responsibilities of board

11. (1) The board or a panel of the board may exercise the powers and perform the duties that are conferred or imposed on it by or under this Act.
- (2) On the board's own initiative or at the request of a municipality or regional district, or of a trust council under the *Islands Trust Act*, the board may study, report on, and make recommendations concerning, any matter related to farm practices.
- (3) The board must provide the minister with any information requested by the minister as to the policies and procedures of the board.
- (4) The minister may order the board to study any matter related to farm practices and the board must conduct the study and report its findings and recommendations to the minister.
- (5) In carrying out their powers and duties under this Act, the board members have the powers, privileges and protections given under sections 12, 15 and 16 of the *Inquiry Act* to a commissioner appointed under Part 2 of that Act.

PART 4

REGULATIONS

Power to make regulations

12. (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations
- (a) prescribing fees payable in respect of an application made under section 3,
 - (b) respecting standards for the purpose of the definition of “**normal farm practice**”,
 - (c) governing practices and procedures for
 - (i) hearings before a panel of the board, and
 - (ii) inquiries and consultations respecting complaints or other matters before the board or a panel of the board,
 - (d) for the purpose of section 10 (3), respecting the engagement or retention of specialists and consultants by the board, and
 - (e) prescribing the number of members that constitutes a quorum at meetings of the board.
- (3) The minister may make regulations prescribing
- (a) specialty wood crops or specialty fibre crops for the purpose of paragraph (f) of the definition of “**farm operation**”,
 - (b) limits referred to in paragraph (k) of the definition of “**farm operation**”, and
 - (c) exceptions for the purpose of paragraph (n) of the definition of “**farm operation**”.

PART 5

CONSEQUENTIAL AMENDMENTS AND COMMENCEMENT

Agriculture Protection Act

13. *The Agriculture Protection Act, S.B.C. 1989, c. 19, is repealed.*

Land Title Act

14. *Section 86 (1) (c) of the Land Title Act, R.S.B.C. 1979, c. 219, is amended by striking out "or" at the end of subparagraph (viii) and by adding the following:*

- (x) the anticipated development of the subdivision would unreasonably interfere with farming operations on adjoining or reasonably adjacent properties, due to inadequate buffering or separation of the development from the farm; or
- (xi) despite subparagraph (ix), the extent or location of highways and highway allowances shown on the plan is such that it would unreasonably or unnecessarily increase access to land in an agricultural land reserve.

Municipal Act

15. *Section 817.1 (1) (b) of the Municipal Act, R.S.B.C. 1979, c. 290, is amended by striking out "977," and substituting "973.3,".*

16. *Section 943 (1) is amended by adding the following definitions:*

"farm business", "farm operation" and "farmer" have the same meanings as in the Farm Practices Protection (Right to Farm) Act;

"farming area" means an area of land that

- (a) *is in an agricultural land reserve, or*
- (b) *is affected by a valid and subsisting licence, for aquaculture, under the Fisheries Act; .*

17. *Section 945 is amended*

(a) by adding the following subsection:

- (2.3) *A community plan may include policies of the local government respecting the maintenance and enhancement of farming on land in a farming area or in an area designated for agricultural use in the community plan. , and*

(b) in subsection (4) by adding the following paragraph:

- (c.1) *protection of farming. .*

18. *Section 952 is amended by adding the following subsection:*

- (8) Despite section 950 of this Act and subsections (1) (b) and (5) of this section, a board must not exercise the powers under subsection (1) (b) or (5) to prohibit or restrict the use of land for a farm business in a farming area, unless the board receives the approval of the minister responsible for the administration of the *Farm Practices Protection (Right to Farm) Act*.

19. Section 963 is amended by adding the following subsection:

- (5) Despite subsections (1) to (4), a local government must not exercise the powers under this section to prohibit or restrict the use of land for a farm business in a farming area unless the local government receives the approval of the minister responsible for the administration of the *Farm Practices Protection (Right to Farm) Act*.

20. The following Division is added to Part 29:

Division (4.1) – Farm Standards and Bylaws

Definition

- 973.1** In this Division “**minister**” means the minister responsible for the administration of the *Farm Practices Protection (Right to Farm) Act*.

Provincial standards for farm bylaws

- 973.2** (1) The minister may establish, publish and distribute standards in relation to farming areas for the guidance of local governments in the preparation of rural land use bylaws, zoning bylaws and bylaws under this Division.
- (2) Standards under subsection (1) may differ for different parts of British Columbia.

Farm bylaws

- 973.3** (1) Subject to receiving the approval of the minister, a local government may make bylaws in relation to farming areas
- (a) respecting the conduct of farm operations as part of a farm business,
 - (b) respecting types of buildings, structures, facilities, machinery and equipment that are prerequisite to conducting farm operations specified by the local government and that must be utilized by farmers conducting the specified farm operations,
 - (c) respecting the siting of stored materials, waste facilities and stationary equipment, and

- (d) prohibiting specified farm operations.
- (2) A bylaw under subsection (1) may prescribe differently for different
 - (a) sizes or types of farms,
 - (b) types of farm operations,
 - (c) site conditions,
 - (d) uses of adjoining land, or
 - (e) areas.

Application

- 973.4** (1) Sections 952 (8), 963 (5) and 973.3 do not apply to a local government or a local trust committee under the *Islands Trust Act* until the Lieutenant Governor in Council, by regulation under subsection (2), declares that this section applies to that local government or local trust committee.
- (2) The Lieutenant Governor in Council may declare by regulation that, on and after the date specified in the regulation, sections 952 (8), 963 (5) and 973.3 apply to the board of a regional district specified in the order and to
 - (a) the council of any municipality, or
 - (b) the local trust committee of any local trust areawithin that regional district.

Three year review of bylaws affecting farming areas

- 973.5** (1) A board or a local trust committee to which section 973.4 applies must review all rural land use bylaws and zoning bylaws of the board or local trust committee, as the case may be, in order to identify to what extent, if any, the provisions of those bylaws, relating to any farming areas within the regional district or local trust area, are inconsistent with the standards established under section 973.2 by the minister.
- (2) A council to which section 973.4 applies must review all zoning bylaws of the council in order to identify to what extent, if any, the provisions of those bylaws, relating to any farming areas within the municipality, are inconsistent with the standards established under section 973.2 by the minister.
- (3) During the first 3 years after section 973.4 commences to apply, to the board of a regional district, to a local trust committee of a local trust area

or to the council of a municipality, as the case may be, or during any extension to that 3 year period that the minister may grant,

- (a) the board or local trust committee may amend, by bylaw, its rural land use bylaws or zoning bylaws, and
- (b) the council may amend, by bylaw, its zoning bylaws,

in order to achieve consistency between the bylaws as they relate to any farming areas within the regional district, local trust area or municipality and the standards established under section 973.2 by the minister.

- (4) As an exception to the usual requirements regarding rural land use bylaws and zoning bylaws, a bylaw that makes an amendment authorized under subsection (3) may be adopted without public hearing.

21. *Section 974 (1) is amended by adding “, (4.1)” after “Division (4)”.*

22. *Section 976 is amended by adding the following subsection:*

- (6.1) A development permit for land that has been designated under section 945 (4) (c.1) may include requirements for screening, landscaping, fencing and siting of buildings or structures, in order to provide for the buffering or separation of development from farming on adjoining or reasonably adjacent land.

23. *Section 977 is amended*

- (a) *in subsection (2) by striking out “but subject to regulations under subsection (4),”*

- (b) *by adding the following subsection:*

- (2.1) Subsections (1) and (2) cease to have effect in an area after a zoning or rural land use bylaw for that area is approved under section 952 (8) or 963 (5)., *and*

- (c) *by repealing subsections (3) to (10).*

24. *Section 980 (12) is repealed.*

Commencement

25. This Act comes into force by regulation of the Lieutenant Governor in Council.