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CHAIR:

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1st SESSION, 67th GENERAL ASSEMBLY
Province of Prince Edward Island
1 CHARLES III, 2023

(Bill No. 16)

An Act to Amend the Planning Act

Hon. Rob Lantz
Minister of Housing, Land and Communities

GOVERNMENT BILL

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Acting King's Printer
Charlottetown, Prince Edward Island

**For House
Use Only**

**Prince Edward Island
Legislative Assembly**

**ASSEMBLY / SESSION / YEAR
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AMENDMENTS

BILL NUMBER: 16

PAGE No. 2 of 14 PAGES

TITLE: An Act to Amend the Planning Act

#	SECTION	AMENDMENT	DATE

NOTED:

CERTIFIED CORRECT:

COMMITTEE CLERK

CHAIR, IN COMMITTEE



AN ACT TO AMEND THE PLANNING ACT

BILL NO. 16

2023

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. **Section 1 of the *Planning Act* R.S.P.E.I. 1988, Cap. P-8, is amended**
 - (a) **by the addition of the following after clause (b):**
 - (b.1) **“Department”** means the Department of Housing, Land and Communities;
 - (b) **in clause (f), by the deletion of the words “Agriculture and Land” and the substitution of the words “Housing, Land and Communities”.**
2. **Section 23 of the Act is repealed and the following substituted:**
 23. **Definitions**
 - (1) In this Part,
 - (a) **“appropriate authority”** means the Minister or a council, as the case may be; and
 - (b) **“enforcement officer”** means an enforcement officer appointed under subsection (2).
 - Appointment of enforcement officers**
 - (2) A person may be appointed as an enforcement officer to enforce the provisions of this Act, the regulations or a bylaw, as the case may be,
 - (a) by the Minister, for an unincorporated area or an incorporated area that does not have an official plan approved by the Minister; and
 - (b) by a council, for its municipality.
3. (1) **Section 24 of the Act is amended by the addition of the following after subsection (2):**
 - Absence of development permit**
 - (2.1) Where any development requires a development permit, no person shall commence the development without first obtaining the required development permit, and no building permit or occupancy permit shall be issued by the appropriate authority prior to the issuing of the development permit.

- (2) **Subsection 24(3) of the Act is amended by the addition of the words “permit, occupancy permit” after the words “no building”.**

4. The Act is amended by the addition of the following after section 24:

24.1 Inspection

- (1) For the purpose of ensuring compliance with this Act, the regulations, a bylaw, a permit, an approval or an order made under this Act, the regulations or a bylaw, an enforcement officer may, at any reasonable time,
- (a) enter and inspect any land, building, premises or work site in an area in which the enforcement officer has authority to conduct inspections;
 - (b) require documents or objects relevant to the inspection to be produced for inspection or for the purpose of obtaining copies or extracts of them;
 - (c) conduct tests, make inquiries and take samples, measurements, photographs or video recordings as the enforcement officer considers necessary; and
 - (d) perform any other duties relating to inspections prescribed by the regulations or a bylaw, as the case may be.

Accompanying person

- (2) An enforcement officer may be accompanied by any person who has experience or expertise relating to a matter relevant to the inspection for the purpose of assisting the enforcement officer to carry out an inspection.

Removal of documents

- (3) For the purposes of conducting an inspection, an enforcement officer may remove documents that may relate to compliance, and may make copies or extracts from them or any part of them.

Receipt

- (4) An enforcement officer shall provide a receipt for documents removed under subsection (3) to the person who provided the documents.

Return of documents

- (5) A document removed under subsection (3) shall be returned within 14 business days from the time when the document was removed.

Copy admissible in evidence

- (6) A copy or extract of a document removed for the purposes of inspection and certified by an enforcement officer is admissible in evidence in any proceeding or prosecution as proof, in the absence of evidence to the contrary, of the original, without proof of the appointment, authority or signature of the person purporting to have certified the copy or extract.

Right of entry

- (7) Subject to subsection (8), every owner or occupant shall allow an enforcement officer and any accompanying person to enter any land, building, premises or work site at any reasonable time for the purposes of administering and enforcing this Act, the regulations or a bylaw, as the case may be.

Entry to dwelling place

- (8) An enforcement officer shall not enter a dwelling place except with the consent of the occupant of the dwelling place or under the authority of a warrant.

Authority to issue warrant

- (9) Where, on *ex parte* application, a justice is satisfied by information on oath that
- (a) entry to a dwelling place is necessary in order for an enforcement officer to carry out the purpose specified in subsection (1);
 - (b) entry to the dwelling place is necessary for any other purpose relating to the administration of this Act, the regulations or a bylaw; and
 - (c) entry to the dwelling place has been refused or there are reasonable grounds to believe that entry will be refused,

the justice may at any time sign and issue a warrant authorizing the enforcement officer named in the warrant to enter the dwelling place, subject to any conditions that may be specified in the warrant.

Use of force

- (10) An enforcement officer who executes a warrant shall not use force unless accompanied by a peace officer and the use of force is specifically authorized in the warrant.

24.2 Order of enforcement officer

- (1) Where an enforcement officer believes on reasonable grounds that any provision of this Act or the regulations or a bylaw, permit or approval made or given under this Act, as the case may be, is being contravened, the enforcement officer may issue to the registered owner or occupier of the land, building or development or a person who is performing any activity for which a permit or approval is required under this Act or the regulations or bylaw, as the case may be, an order in writing requiring compliance with the contravened provision.

Expiry

- (2) An order issued under subsection (1) shall specify that it shall be carried out immediately or before the expiry of a specified period.

Effect of order

- (3) Where an order issued under subsection (1) specifies
- (a) that it be carried out immediately, the order may specify that all of the work or activity related to the land, building or development, or the part of it specified in the order, other than the work necessary to carry out the order, shall stop until the order is complied with to the satisfaction of an enforcement officer; and
 - (b) the period within which it is to be carried out, and where it is not carried out within that period, the order may specify that the work or the activity, or the part of it specified in the order, other than the work necessary to carry out the order, shall stop until the order is complied with to the satisfaction of an enforcement officer.

24.3 Content of order

- (1) An order of an enforcement officer shall
- (a) be in writing;
 - (b) be signed by the enforcement officer;
 - (c) state the location of the land, building or activity in respect of which the order is issued;
 - (d) state the action required to be taken and the reasons for it; and
 - (e) state the time period within which the action shall be completed.

Costs of carrying out order

- (2) The costs of carrying out the work specified in an order of an enforcement officer under this Act are the responsibility of the person named in the order or the registered owner of the land, building or development in respect of which the order was issued.

Requirement to comply

- (3) A person to whom an order under section 24.2 is issued shall comply with the order.

Service of order

- (4) No person to whom an order under section 24.2 is issued is required to comply with the order or direction until the order has been served on the person.

When order sufficiently served

- (5) An order is deemed to be sufficiently served
- (a) when a copy is personally served on the person to whom it is directed;
 - (b) when a copy is sent by facsimile or by other electronic means to the person to whom it is directed and an acknowledgement of receipt is received;
 - (c) five days after a copy is sent by mail addressed to the person to whom it is directed at the last known address for that person; or
 - (d) in the case of a registered owner of real property, five days after a copy is sent by mail to the address for the registered owner shown on the last revised assessment roll.

Service on corporation

- (6) Where the person to be served is a corporation, service on a director, officer or recognized agent of the corporation in accordance with subsection (5) is deemed to be service on the corporation for the purposes of this Act.

Order for substituted service

- (7) Where it is impractical for any reason to serve the order in a manner referred to prescribed in subsection (5), an *ex parte* application may be made to a judge of the Supreme Court, who may make an order for substituted service, providing for the steps to be taken to bring the matter to the attention of the person to be served.

Evidence

- (8) An order of an enforcement officer is *prima facie* proof in proceedings in any court not only that the order was legally made, but also that every administrative prerequisite necessary to enable the making of the order was done and satisfied, and no further proof other than the production of the original order or a copy of it certified by the appropriate authority or the appropriate authority's authorized representative is necessary.

24.4 False information

- (1) No person shall knowingly give false information in any application, return or statement made to the Minister, a municipality, an enforcement officer or any other officer or employee of the Department or a municipality or any other person lawfully acting under the authority of this Act, the regulations or a bylaw, in respect of any matter under this Act, the regulations or a bylaw.

Production of permit

- (2) Where any development that requires a development permit is being carried on, an enforcement officer may require a person referred to in subsection 24.2(1) to show the permit for the development to the enforcement officer.

Offence

- (3) The refusal or failure by a person to comply within 24 hours with the requirement under subsection (2) to show a development permit to an enforcement officer is an offence to which section 26 applies.

24.5 Obstruction

No person shall obstruct or attempt to obstruct any person lawfully acting under the authority of this Act, the regulations or a bylaw.

5. Section 25 of the Act is amended

- (a) **in clause (a),**
- (i) **by the deletion of the words “or the regulations” and the substitution of the words “, the regulations or a bylaw”,**
 - (ii) **by the deletion of the words “ or an officer of Agriculture and Land” and the substitution of the words “, an officer of Housing, Land and Communities or the chief administrative officer of the municipality, as the case may be,”, and**
 - (iii) **by the deletion of the word “he” and the substitution of the words “the person”; and**
- (b) **in clauses (b) and (c), by the deletion of the word “administrator” and the substitution of the words “chief administrative officer”.**

6. The Act is amended by the addition of the following after section 25:

25.1 Prosecution - sufficient proof

- (1) In a prosecution for an offence under this Act, the regulations or a bylaw, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the defendant, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the defendant establishes that the offence was committed without the knowledge or consent of the defendant.

Prosecution - burden of proof

- (2) In a prosecution for an offence under this Act, the regulations or a bylaw,
- (a) the burden of proving due diligence, on a balance of probabilities, is on the defendant;
 - (b) the registered owner of the property on which any development, activity, matter or thing that is prohibited or regulated by this Act or the regulations or a bylaw is or was commenced, continued, carried on or used, is deemed to have caused or permitted it to happen, unless it is established, on a balance of probabilities, that the registered owner

did not cause or permit it to happen, and the burden of proving so, on a balance of probabilities, is on the registered owner;

- (c) no condition, variance, exception, exemption, excuse or qualification prescribed by this Act or the regulations or a bylaw, as the case may be, is required to be set out or negated, as the case may be, in an information or summary offence ticket laid with respect to a charge under this Act or the regulations or a bylaw; and
- (d) the burden of proving that any condition, variance, exception, exemption, excuse or qualification prescribed by this Act or the regulations or a bylaw operates in favour of the defendant is on the defendant, to prove on a balance of probabilities, and the prosecutor is not required, except by way of rebuttal, to prove that the condition, variance, exception, exemption, excuse or qualification does not operate in favour of the defendant, whether or not it is set out in the information or summary offence ticket.

7. Section 26 of the Act is repealed and the following substituted:

26. Penalty - individual

- (1) Subject to subsection (2), any individual who contravenes or fails to comply with
 - (a) a provision of this Act or the regulations or a bylaw; or
 - (b) a term, condition or provision of a permit issued, order made or approval granted or issued under this Act or the regulations or a bylaw,is guilty of an offence and, if no penalty is otherwise specifically provided in this Act or the regulations or bylaw, as the case may be, is liable on summary conviction to a fine of not less than \$500 and not more than \$10,000.

Penalty - corporation

- (2) Any corporation that contravenes or fails to comply with
 - (a) any provision of this Act or the regulations or a bylaw; or
 - (b) any term, condition or provision of any permit issued, order made or approval granted under this Act or the regulations or a bylaw,is guilty of an offence and, if no penalty is otherwise specifically provided in this Act or the regulations or bylaw, as the case may be, is liable on summary conviction to a fine of not less than \$2,000 and not more than \$100,000.

Personal liability of corporate officers for offence of corporation

- (3) Any officer, director or agent of a corporation who directs, authorizes, assents to, acquiesces to or participates in the commission of an offence by that corporation under subsection (2) is guilty of an offence and is liable, in respect of the commission of an offence by the corporation under subsection (2), to any penalty set out in subsection (1).

Continuing offence

- (4) Notwithstanding the maximum penalties specified in subsections (1) and (2), where a contravention of or failure to comply with a provision of this Act, the regulations or a bylaw or an order or approval continues for more than one day, the person responsible is guilty of a separate offence for each day or part of a day on which the contravention or failure to comply continues, and is liable to a fine
 - (a) in the case of an individual, in the amount of \$500 for each day or part of a day on which the offence continues; and
 - (b) in the case of a corporation, in the amount of \$2,000 for each day or part of a day on which the offence continues.

Aggravating factor - financial advantage

- (5) Where a person charged with an offence under this Act or the regulations or a bylaw has committed the offence for financial advantage or to avoid the financial burden of compliance with this Act or the regulations or the bylaw, the judge may, notwithstanding any maximum fine set for that offence under subsection (1) or (2),
- (a) where the offence was committed for financial advantage, impose a fine that will ensure that no financial advantage is gained from the commission of the offence; or
 - (b) where the offence was committed to avoid the financial burden of compliance with this Act or the regulations or the bylaw, impose a fine that is appropriate in the circumstances.

Notification required

- (6) A judge shall not impose a fine under subsection (5) unless the prosecutor has, before the time set for the person charged to appear in court, notified the person that a fine under subsection (5) will be sought if the person is convicted.

Limitation period

- (7) Notwithstanding section 224 of the *Municipal Government Act* R.S.P.E.I. 1988, Cap. M-12.1, proceedings with respect to an offence under this Act or the regulations or a bylaw may be instituted at any time
- (a) within two years after the time when the act or omission that is alleged to constitute the offence occurred; or
 - (b) where the Minister or the chief administrative officer of the municipality, as the case may be, completes a certificate described in subsection (8), within two years after the date on which the Minister or the municipality, learned of the act or omission referred to in clause (a).

Certificate

- (8) A certificate of the Minister or the chief administrative officer, as the case may be, certifying the date referred to in clause (7)(b) is admissible in evidence in any legal proceeding or prosecution under this Act or the regulations or the bylaw, as applicable, without proof of the signature or official character of the person appearing to have signed the certificate, and, in the absence of any evidence to the contrary, is proof of that date.

Prosecution of Crown

- (9) For the purposes of subsection (2), the Government of Prince Edward Island or the Government of Canada is deemed to be a corporation.

26.1 Additional penalties

- (1) Where a person is convicted of an offence under this Act or the regulations or a bylaw, in addition to any other penalty that may be imposed pursuant to this Act or the regulations or a bylaw, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make such order as the court may determine, including one or more of the following orders:
- (a) prohibiting the person from doing anything that may result in the continuation or repetition of the offence;
 - (b) directing the person to take any action the court considers appropriate to remedy any situation that resulted, results or may result, or to prevent any situation that may result, from the act or omission that constituted the offence;

- (c) directing the person to pay to the Government or a municipality, as the case may be, the costs incurred by the Government or the municipality, in carrying out the investigation of the offence;
- (d) directing the person to compensate the Government, a municipality or any other person, in whole or in part, for the costs of any remedial or preventive action that was carried out or caused to be carried out by the Government, the municipality or that other person, as the case may be, and was made necessary by the act or omission that constituted the offence;
- (e) directing the person to post a bond or pay money into court in an amount that will ensure compliance with any order made pursuant to this section;
- (f) requiring the person to comply with any other conditions the court considers appropriate in the circumstances for securing the good conduct of the person and for preventing the person from repeating the offence or committing other offences.

Debt due

- (2) Where the court makes an order pursuant to clause (1)(c) or (d), the costs constitute a debt due to the Government, the municipality or the person to be compensated, as the case may be.

Effective date

- (3) An order made pursuant to subsection (1) comes into force on the day on which it is made or on any other day specified in the order and continues in force for the period specified in the order.

Variation of court order

- (4) Where a court has made an order pursuant to subsection (1), the court may, on application by the person to whom it is directed or the Crown or the municipality, as the case may be, require the person to appear before it and, after hearing the person and the Crown or the municipality, as applicable, may make an order
 - (a) changing the original order or the conditions specified in it;
 - (b) relieving the person absolutely or partially from compliance with any or all of the order;
 - (c) reducing the period for which the original order is to remain in effect; or
 - (d) extending the period for which the original order is to remain in effect for an additional period not to exceed one year.

Notice to interested persons

- (5) Before making an order pursuant to subsection (1) or (4), the court may direct that notice be given to any persons the court considers to be interested and the court may hear these persons.

No other application without court's permission

- (6) Where an application made pursuant to subsection (4) in respect of a person has been heard by a court, no other application pursuant to subsection (4) may be made with respect to the person except with leave of the court.

8. Section 27 of the Act is repealed and the following substituted:

27. Protection from personal liability

No proceedings for damages shall be commenced, and no liability shall be found against

- (a) the Minister;

- (b) a council or a member of a council;
- (c) a Chief Administrative Officer; or
- (d) an enforcement officer

for any loss or damage caused by anything done or omitted to be done by the person lawfully, in good faith and without negligence in the performance or intended performance of the person's functions or duties or the exercise of the person's powers under this or any other enactment or a bylaw, as the case may be.

9. This Act comes into force on a date that may be proclaimed by the Lieutenant Governor in Council.

EXPLANATORY NOTES

SECTION 1 amends section 1 of the *Planning Act* R.S.P.E.I. 1988, Cap. P-8, to add a definition of “Department”.

SECTION 2 repeals section 23 of the Act and substitutes a new subsection 23(1) that defines the terms “appropriate authority” and “enforcement officer”, and a new subsection 23(2) that authorizes an appropriate authority to appoint enforcement officers to enforce the provisions of the Act, the regulations or a bylaw.

SECTION 3 amends subsection 24(1) of the Act to add a new subsection 24(2.1) that prohibits the commencement of development that requires a development permit until the permit has been issued, and also prohibits the issuing of a building permit or occupancy permit until the development permit has been issued. The section also amends subsection 24(3) of the Act to word it consistently with the new subsection (2.1).

SECTION 4 amends the Act by adding new sections 24.1 to 24.5. Section 24.1 authorizes inspections of land, buildings, premises or work sites by enforcement officers to ensure compliance with the Act, the regulations, a bylaw, a permit, an approval or an order. Section 24.2 authorizes an enforcement officer to issue an order in writing as specified. Section 24.3 specifies the content of the order and how the order must be served on the person to whom it is directed. Section 24.4 provides that it is an offence to knowingly give false information in respect of a matter under the Act, the regulations or a bylaw, and also authorizes an enforcement officer to require production of a development permit for an ongoing development within one day. Section 24.5 provides that it is an offence to obstruct or attempt to obstruct a person acting lawfully under the Act, the regulations or a bylaw.

SECTION 5 amends clause 25(a) of the Act to replace a reference to the name of the Department with a reference to the “chief administrative officer of a municipality”.

SECTION 6 amends the Act by adding a new section 25.1 that clarifies issues of proof in the context of a prosecution for an offence under the Act.

SECTION 7 repeals section 26 of the Act and substitutes new sections 26 and 26.1 to provide for the penalties that apply to an individual or a corporation that is guilty of a contravention of the Act, the regulations or a bylaw or a term or condition of a permit or approval.

SECTION 8 repeals section 27 of the Act. The substance of this section is now in new sections 24.1 and 24.4. A new section 27 is added to provide protection from personal liability for the specified persons in the performance or intended performance of their duties or exercise of their powers under the Act and regulations, another enactment or a bylaw.

SECTION 9 provides for the commencement of the Act.

(Bill No. 16)

An Act to Amend the Planning Act

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	June 2, 2023
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Antoinette Perry, Lieutenant Governor

Honourable Darlene Compton, Speaker

Joseph Jeffrey, Clerk

Hon. Rob Lantz
Minister of Housing, Land and Communities

GOVERNMENT BILL

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