

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 41

**An Act governing the acquisition
of farm land by non-residents**

First reading
Second reading
Third reading

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Ministre de l'agriculture et de l'alimentation

EXPLANATORY NOTES

This bill provides that a person not resident in Québec who proposes to acquire more than four hectares of farm land in Québec must obtain an authorization from the Commission de protection du territoire agricole du Québec.

This rule will apply to all Québec farm lands situated south of the Fiftieth Parallel of North Latitude except, in a designated agricultural region, land not included in a reserved area or in an agricultural zone established under the Act to preserve agricultural land. Outside a designated agricultural region, the requirement is not applicable to farm land used for purposes other than agriculture.

The bill provides that for the purposes of an acquisition of farm land, a person is resident in Québec if he has lived in Québec for at least three hundred and sixty-six days in the last twenty four months preceding the acquisition. In the case of a corporation, residence is established on the basis of the residence qualifications of the director, the shareholders or the members.

The bill stipulates that the Commission de protection du territoire agricole du Québec must authorize a non-resident who applies therefor to make the acquisition of farm land having an area of more than four hectares,

(a) where the non-resident is a natural person who settles in Québec;

(b) where it considers that the land contemplated by the application is not suitable for the cultivation of the soil or the raising of livestock.

In all other cases, the Commission has the power to decide the applications on the basis of certain criteria of evaluation enumerated in the bill.

Finally, the bill provides that the unlawful acquisition of farm land by a non-resident renders the offenders liable to

penalties and the acquisition cancellable at the request of any interested person.

Bill 41

An Act governing the acquisition of farm land by non-residents

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

DIVISION I

INTERPRETATION

Interpre-
tation:
"acquisi-
tion";

1. In this act, unless the context indicates otherwise, "acquisition" means the act of becoming the owner of property by conveyance of ownership, including sale with a right of redemption, emphyteutic lease, alienation for rent, forced sale within the meaning of articles 1585 to 1591 of the Civil Code and sale for unpaid taxes except by

(1) transmission owing to death;

(2) the exercise of the right of redemption following a sale for unpaid taxes and any conveyance resulting from the Expropriation Act (R.S.Q., c. E-24);

(3) transfer of a right contemplated in section 3 of the Mining Act (R.S.Q., c. M-13);

(4) transfer of cutting rights or timber limits under the Lands and Forests Act (R.S.Q., c. T-9);

"agricul-
ture",
"public
road",
"commis-
sion",
"lot";
"farm
land";

"agriculture", "public road", "commission" and "lot" have the same meaning as in the Act to preserve agricultural land (1978, c. 10);

"farm land" means land used for agricultural purposes having an area of not less than four hectares, consisting of one lot or several contiguous lots or several lots that would be contiguous were they not separated by a public road.

Resident
natural
person.

2. For the purposes of this act, a natural person is resident in Québec if he has lived in Québec for not less than three hundred and sixty-six days during the twenty-four months immediately preceding the date of acquisition of farm land.

Presump-
tion.

3. Notwithstanding section 2, a natural person is deemed to be resident in Québec if he lived in Québec for not less than three hundred and sixty-six days during the twenty-four months immediately before leaving, and

(1) is a member of the Canadian Armed Forces;

(2) is an ambassador, minister, commissioner, civil servant or agent of Québec or of Canada;

(3) holds an office within the framework of a programme sponsored by the Government of Canada or of Québec, or an agency of one of these;

(4) is pursuing a course of studies or a training programme;

(5) is the spouse or the minor child of a person contemplated in paragraph 1, 2, 3 or 4.

Resident
artificial
person.

4. For the purposes of this act, an artificial person is resident in Québec if it is validly incorporated, regardless of the manner or place of its incorporation, and

(1) in the case of a corporation with share capital, more than 50% of the voting shares of its capital stock are owned by one or more persons resident in Québec and more than one-half of its directors are natural persons resident in Québec;

(2) in the case of a corporation without share capital, more than one-half of its members are resident in Québec; and

(3) it is not directly or indirectly controlled by one or more non-residents.

DIVISION II

TERRITORIAL APPLICATION

Applica-
bility.

5. This act applies to that part of the territory of Québec situated south of the Fiftieth Parallel of North Latitude.

Restriction.

6. Notwithstanding section 5, in a territory under a designated agricultural region decree passed under the Act to preserve agricultural land, this act applies only to farm land situated in a reserved area or in an agricultural zone.

Acquired
rights.

However, subject to sections 21 to 24, this act does not apply to the acquisition of an area of farm land which, by virtue of sec-

tions 101 to 105 of the Act to preserve agricultural land, may be used for a purpose other than agriculture without the authorization of the commission.

Government use.

7. In a territory not subject to a designated agricultural region decree passed under the Act to preserve agricultural land, this act does not, subject to sections 21 to 24, apply to the acquisition of farm land if, at the time of its acquisition by a non-resident, authorization has already been given by order in council of the Government or a municipal by-law for its use or acquisition for public utility by the Government, a government minister, an agency within the meaning of paragraph 12 of section 1 of the Act to preserve agricultural land, or an authorized expropriator.

Public use.

The same rule applies in respect of farm land which,

(1) before its acquisition by a non-resident, had been acquired through an industrial fund established under the Industrial Funds Act (R.S.Q., c. F-4);

(2) at the time of its acquisition by a non-resident, is adjacent to a public road on which water and sewer services were authorized by a municipal by-law passed before the date of the acquisition and lawfully approved.

Limits.

The right set forth in subparagraph 2 of the second paragraph does not extend, however, beyond the bounds described in the third paragraph of section 105 of the Act to preserve agricultural land.

DIVISION III

CONTROL OF THE ACQUISITION OF FARM LAND

Control.

8. Non-residents shall not, directly or indirectly, make an acquisition of farm land except with the authorization of the commission.

Presumption.

9. The acquisition of any piece of land causing a non-resident to become the owner of farm land is deemed to be an acquisition of farm land.

Presumption.

10. A non-resident is deemed to make an acquisition of farm land if he acquires shares in a company whose principal asset is farm land and if, through that transfer of shares, that company becomes a non-resident artificial person.

Indirect acquisition. **11.** A person resident in Québec shall not make an acquisition of farm land in the name or on behalf of a non-resident, except with the authorization of the commission.

Application. **12.** A non-resident who wishes to obtain an authorization under this act must submit an application to the commission together with all the documents and information prescribed by government regulation and, where applicable, payment of the duties prescribed for that application.

Affidavit. **13.** The application must be accompanied with an affidavit declaring the reasons for the acquisition of the farm land, the intended use of the land, and, where such is the case, that the applicant intends to settle in Québec.

Representations. **14.** The commission must give the applicant and every interested person the opportunity to make written representations to it. It may also hold a public hearing.

Information. It may, furthermore, require from these persons, who must comply with this requirement, all such information and documents as it may consider relevant to the examination of the application.

Criteria. **15.** The commission, when it receives an application for authorization under this act, shall, taking into consideration the biophysical conditions of the soil and of the environment, determine whether the area contemplated in the application is suitable for the cultivation of the soil or the raising of livestock.

Decision. If the commission considers that the land in question is not suitable for the cultivation of the soil or the raising of livestock, it shall grant its authorization.

Decision. In the opposite case, it shall, in examining the application, take into consideration the possible uses of the land in question for agricultural purposes and the economic consequences thereof, the repercussions that the granting of the application would have on the preservation of agricultural land in the municipality and the region and on the homogeneity of the farming community and farming operations.

Conditional authorization. **16.** Where the applicant is a natural person and declares that he intends to settle in Québec, the commission shall authorize the acquisition on the condition that he lives in Québec for not less than three hundred and sixty-six days in the twenty-four months following the date of acquisition.

Ratification. If, after that time has expired, the authorized person satisfies the commission that he is resident in Québec, he may obtain a certificate from the commission that the condition has been

fulfilled, and the acquisition is thereby ratified for all legal purposes.

Substantiated decision.

17. The commission shall render a substantiated decision and send it by registered mail to the non-resident, to the owner of the immoveable concerned and to every other interested person.

Final decision.

18. Subject to the right of review referred to in section 34, the decisions of the commission are final and without appeal.

Filing.

19. The commission's decisions shall be filed in its record office in conformity with section 15 of the Act to preserve agricultural land.

Withdrawal of jurisdiction.

20. The Government may, by a written notice to the commission, withdraw any non-resident's application from its jurisdiction and take it up itself.

Referral of record.

Where the Government avails itself of the powers conferred on it by this section, the secretary of the commission must transmit to it a copy of the record and notify the interested persons in writing that the application has been withdrawn from the commission's jurisdiction. The Government shall then decide the application, after obtaining the commission's advice.

Decision.

The decision of the Government shall be filed in the record office of the commission, which shall notify the interested persons in writing.

DIVISION IV

DECLARATION REQUIRED IN THE DEED OF ACQUISITION

Deed of acquisition.

21. The deed of acquisition of any farm land by a non-resident must bear the following information:

(1) the declaration of the acquirer that he is not resident in Québec;

(2) the name of the municipal corporation or unorganized territory in which that farm land is situated;

(3) the area of the farm land so acquired;

(4) the authorization granted by the commission or, in the cases provided for in the second paragraph of section 6 and in section 7, the ground on which it is not required.

Registration.

22. On the presentation for registration of a deed of acquisition contemplated in section 21, the registrar must require, in addition to the documents required for registration, an original or

a copy of the deed of acquisition, even if the registration is made by way of a memorial.

Deeds of acquisition sent to the commission.

23. The registrar shall transmit the original or the copy of the deeds of acquisition contemplated in section 22 to the commission at such intervals as may be prescribed by government regulation.

Registration requirements.

24. The registrar must refuse to register the deed of acquisition of farm land by a person who, as it appears from the deed, is a non-resident, if the deed does not bear the information required under section 21 or if the original or the copy of the deed of acquisition is not submitted at the time of the registration of the deed.

DIVISION V

PENALTIES

Order.

25. Where the commission becomes aware that a person is contravening any provision of this act, or the conditions of an order or of an authorization to acquire farm land, it may issue an order enjoining that person to cease the alleged contravention within a prescribed time.

Service.

The order shall be served on the contravener in accordance with the Code of Civil Procedure.

Court order.

26. If a person fails to comply with an order of the commission issued under section 25, the Attorney-General or the commission may, by a motion, obtain an order from a judge of the Superior Court enjoining that person to comply with the order of the commission, and ordering that on his default it may be carried out at his expense.

Annulment.

27. Any acquisition of farm land made in contravention of sections 8 to 11 may be annulled.

Declaration of annulment.

The Attorney-General, the commission or any other interested person may apply to the Superior Court to have such nullity declared.

Cancellation of rights.

In such a case, the Superior Court may order the cancellation of all rights, privileges and hypothecs created by or resulting from any deed of acquisition effected in contravention of this act.

Exception.

However, that nullity shall not be set up against a person resident in Québec who acquired the immovable by a deed of conveyance of ownership.

Unauthorized acquisition.

28. Where a person has made an acquisition of farm land in contravention of sections 8 to 11, the commission may, by order,

to the extent that the right of action contemplated in section 27 is not exercised, enjoin that person to divest himself of that farm land within six months of the service of that order.

Judicial
sale.

If that person fails to comply with the order within the allotted time, the commission may, by motion, apply to a judge of the Superior Court to obtain authorization for the judicial sale of the immovable. In such a case, articles 660 and following of the Code of Civil Procedure apply, *mutatis mutandis*.

Proceeds.

The proceeds of the sale, after payment of the costs, the claims of the holders of real rights, and the fines, if any, due under section 31, shall be remitted to the contravener.

Offences.

29. Every person is guilty of an offence who

(1) contravenes this act or the regulations;

(2) knowingly acquires or sells farm land or other land in contravention of sections 8 to 11;

(3) knowingly alienates farm land or other land to a non-resident in contravention of sections 8 to 11;

(4) knowingly hinders or misleads a person empowered to make an investigation under this act or gives him false information; or

(5) hinders the application of this act, fails to comply with an order of the commission or refuses to comply with one of its decisions.

Party to
an offence.

30. Every person who knowingly does or omits to do a thing with the object of aiding a person to commit an offence against this act, or who knowingly advises, encourages or incites a person to commit an offence, is himself a party to the offence.

Fines.

31. Every person who commits an offence described in paragraph 1, 4 or 5 of section 29 is liable, in addition to costs,

(1) in the case of a natural person, to a fine of not less than \$200 nor more than \$5 000;

(2) in the case of an artificial person, to a fine of not less than \$600 nor more than \$30 000.

Fines.

Every person who commits an offence described in paragraph 2 or 3 of section 29 is liable, in addition to costs,

(1) in the case of a natural person, to a fine of at least 10% of the actual value of the farm land in question;

(2) in the case of an artificial person, to a fine of at least 20% of the actual value of the farm land in question.

Proceed-
ings.

Proceedings instituted under this section are brought by the Attorney-General or by any person specially or generally authorized by the Attorney-General and are governed by the Summary Convictions Act (R.S.Q., c. P-15).

Presump-
tion.

32. Where an artificial person commits an offence against this act, every director, officer, functionary, employee or agent of that artificial person who has prescribed or authorized the commission of the offence or who has consented thereto is deemed to be a party to the offence and is liable to the penalty provided in section 31 for natural persons.

DIVISION VI

GENERAL PROVISIONS

Excep-
tions.

33. This act does not apply where a non-resident becomes the owner of farm land by a giving in payment if

- (1) his principal business is making loans on real security;
- (2) the farm land is repossessed under a clause in the deed of security; and
- (3) the farm land is not repossessed following one or more operations mainly intended to elude the application of this act.

Applicable
provisions.

34. The commission is responsible for supervising the application of this act, and, to that end, sections 7, 8, 11, 13, 14, 16, 17, 18 and 19 of the Act to preserve agricultural land apply, *mutatis mutandis*.

Regulation.

35. The Government may, by regulation,

- (1) prescribe the inclusion of certain declarations in deeds or other documents contemplated in this act;
- (2) determine the manner in which the declarations required under this act and the regulations must be made;
- (3) determine the manner of submitting an application for authorization and the form and content of any document, notice or form required for the application of this act;
- (4) prescribe the tariff of duties, fees and costs for applications to the commission under this act;
- (5) prescribe the intervals at which the registrar must transmit the documents referred to in section 23 to the commission.

Coming
into force.

Regulations made under this act come into force on their date of publication in the *Gazette officielle du Québec* or on a later date fixed therein.

Minister. **36.** The Ministre de l'agriculture et de l'alimentation is responsible for the application of this act.

**Coming
into force.** **37.** This act comes into force on the day of its sanction.