

BILL

No. 44

An Act to amend *The Water Security Agency Act*

(Assented to)

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

Short title

1 This Act may be cited as *The Water Security Agency Amendment Act, 2016*.

SS 2005, c W-8.1 amended

2 *The Water Security Agency Act* is amended in the manner set forth in this Act.

New section 70.1

3 **The following section is added after section 70:**

“Corporation may make orders re certain drainage works

70.1(1) In this section:

(a) **‘cause of action’** means any cause of action or right to relief, including, without restricting the generality of the foregoing, any right to obtain damages, compensation or other pecuniary relief, or non-pecuniary relief, or any other remedy or order of any kind or nature, whether arising out of or imposed by law, equity, statute or otherwise;

(b) **‘pre-1981 drainage works’** means drainage works, as defined in the regulations, that were in existence on January 1, 1981 and that were previously exempt from obtaining a permit or approval pursuant to this Act, *The Saskatchewan Watershed Authority Act, 2005*, *The Saskatchewan Watershed Authority Act*, *The Water Corporation Act*, *The Drainage Control Act* or any regulations made or continued pursuant to this Act or any of those Acts.

(2) Notwithstanding any other Act or law or any other provision of this Act, the corporation may make any order that it considers appropriate requiring the alteration or closure of all or any part of a pre-1981 drainage works without compensation to the owner of the drainage works or of the land on which the drainage works are situated for any losses or expenses sustained as a result of the alteration or closure.

(3) No person against whom an order pursuant to this section is directed shall fail to comply with the order.

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(4) No action or proceeding lies or shall be instituted or continued against the Government of Saskatchewan, the corporation, any present or former member of the Executive Council, or any present or former employee of the Government of Saskatchewan or the corporation based on any cause of action arising from, resulting from or incidental to the enactment or application of this section.

(5) Every cause of action against the Government of Saskatchewan, the corporation, any present or former member of the Executive Council, or any present or former employee of the Government of Saskatchewan or the corporation arising from, resulting from or incidental to the enactment or application of this section is extinguished”.

New sections 79 and 80

4 Sections 79 to 82 are repealed and the following substituted:

“Definitions for Division

79 In this Division:

- (a) **‘drainage works’** means drainage works as defined in the regulations;
- (b) **‘investigation’** means a determination by the corporation of:
 - (i) whether the drainage works mentioned in a request exist;
 - (ii) whether a drainage approval has been issued for the drainage works mentioned in a request; and
 - (iii) in the case of a drainage approval being issued, whether the drainage works are impacting or could impact the petitioner’s land;
- (c) **‘petitioner’** means a person who requests the corporation’s assistance in resolving an issue related to damage or potential damage that the person believes has been or may be caused to that person by drainage works;
- (d) **‘request’** means a written request made pursuant to section 80;
- (e) **‘respondent’** means the registered owner of the land on which the drainage works mentioned in the request are located.

“Request for corporation’s assistance

80(1) A petitioner who wishes to obtain the corporation’s assistance to resolve an issue related to drainage works shall submit a written request to the corporation.

(2) A request must include the following information:

- (a) the name of the respondent;
- (b) the location of the drainage works mentioned in the request;
- (c) the issue the petitioner would like resolved;
- (d) any other information that the corporation may require.

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- (3) The corporation shall provide a copy of the request submitted pursuant to subsection (1) to the respondent.
- (4) On receipt of a request, the corporation shall conduct an investigation of the issue and shall:
 - (a) issue a written recommendation for resolving the issue; or
 - (b) dismiss the request for assistance.
- (5) The corporation shall provide a copy of the recommendation or the decision to dismiss made pursuant to subsection (4) together with written reasons to the following persons:
 - (a) the petitioner;
 - (b) the respondent;
 - (c) any other persons that the corporation considers appropriate”.

New sections 83 and 83.01

5 Section 83 is repealed and the following substituted:

“Order relating to unapproved drainage works

- 83(1)** If the corporation determines that the drainage works that are the subject of a request have been constructed, extended, altered or operated without an approval and makes a recommendation to obtain an approval or render the drainage works inoperable, the corporation may make any order it considers appropriate pursuant to section 62.
- (2) If an order is made pursuant to section 62, the corporation may register an interest based on the order against the title to or abstract record for the land on which the drainage works subject to the order are located.
- (3) On registration of the interest in accordance with subsection (2):
 - (a) the terms and conditions of the order are binding on any person who at any time subsequent to the registration of the notice is the registered owner of the land with respect to which the notice is registered; and
 - (b) the provisions of this Act apply to any subsequent owner of the land as if that person were the person to whom the order was originally made.

“Order relating to approved drainage works

- 83.01(1)** In this section, **‘approved drainage works’** means drainage works that are constructed, extended, altered or operated:
 - (a) pursuant to an approval; and
 - (b) in compliance with all terms and conditions of the approval.
- (2) If the corporation determines that approved drainage works are causing loss or damage, the corporation may make any order that the corporation considers appropriate requiring the alteration or temporary closure of all or any part of the drainage works to mitigate the loss or damage being caused, without compensation to the approval holder”.

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New section 84

6 Section 84 is repealed and the following substituted:**“Appeal to Court of Queen’s Bench re orders**

84(1) Any person aggrieved by an order made pursuant to section 62, 69, 70.1, 83 or 83.01 may appeal the order on a question of law to a judge of the Court of Queen’s Bench within 30 days after the date of service of the order.

- (2) The record of an appeal pursuant to subsection (1) consists of:
- (a) the order;
 - (b) the written representations made to the corporation by the person named in the order;
 - (c) the corporation’s written recommendation pursuant to clause 80(4)(a);
 - (d) any other prescribed documents or materials; and
 - (e) any other material that the Court of Queen’s Bench may require.
- (3) On hearing an appeal pursuant to this section, the judge of the Court of Queen’s Bench may issue an order:
- (a) confirming the order against the appellant;
 - (b) amending the order;
 - (c) quashing the order; or
 - (d) doing any other thing that the judge considers appropriate”.

Section 85 amended

7 Subsection 85(1) is amended in the portion preceding clause (a) by striking out “83” and substituting “62, 69, 70.1, 83 or 83.01”.

Section 86 amended

8 Subsection 86(1) is amended in the portion preceding clause (a) by striking out “the corporation undertakes any work for the purposes of section 85 and incurs any costs as a result,” and substituting “a debt is due to the corporation pursuant to section 85 or 93,”.

New sections 87 and 88

9 Sections 87 and 88 are repealed and the following substituted:**“Appeal to Court of Queen’s Bench re certificate**

87(1) A person with respect to whom a certificate has been entered as a judgment pursuant to section 86 may appeal against the amount of the costs set out in the certificate to a judge of the Court of Queen’s Bench:

- (a) within 30 days after the date on which the certificate was filed; or
- (b) if the person made representations to the corporation pursuant to section 86, within 30 days after the date on which the corporation notified the person of its decision pursuant to subsection 86(7).

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(2) On hearing an appeal pursuant to this section, the judge of the Court of Queen's Bench may issue an order:

- (a) confirming the amount of the costs set out in the certificate;
- (b) amending or varying the amount of the costs set out in the certificate;
- (c) quashing the certificate; or
- (d) doing any other thing that the judge considers appropriate.

“Limit on corporation's power re damages

88 The corporation has no power to determine liability or award damages or other compensation to any impacted party with respect to drainage works that have been constructed, extended, altered or operated without an approval”.

Section 90 amended

10 Subsection 90(2) is amended by striking out “of not more than \$10,000 and not more than \$1,000” and substituting “not exceeding \$1,000,000”.

New section 93

11 Section 93 is repealed and the following substituted:

“Powers of entry re removal of unapproved dam or works

93(1) The corporation or any person acting under the corporation's instructions may enter on any land with any equipment, machinery or other articles that it considers necessary for the purpose of opening up, taking down, removing or destroying:

- (a) any unapproved works; or
- (b) any dam constructed by a beaver or any natural obstruction whether formed by blown dirt, debris or otherwise, in any lake, river, stream or other water body.

(2) The corporation and any persons acting under the corporation's instructions are not liable for any damage done to the land that is necessarily incidental to the exercise of the powers granted by subsection (1).

(3) The amount expended by the corporation and any person acting under its instructions in opening up, taking down, removing or destroying unapproved works pursuant to clause (1)(a) may be recovered as a debt due to the corporation from the person who constructed the works in the same manner as that mentioned in section 86 and, for that purpose, section 86 applies with any necessary modification, to that recovery”.

Transitional

12 Any request for assistance or formal complaint that was filed with the corporation pursuant to *The Water Security Agency Act*, as that Act existed before the coming into force of this Act, and that has not been resolved or fully dealt with on the day on which this Act comes into force is deemed to be a request as defined in clause 79(d) of *The Water Security Agency Act* and may be dealt with pursuant to that Act as if submitted in accordance with that Act.

Coming into force

13 This Act comes into force on assent.

