



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 39

(2007, chapter 39)

An Act to amend the Forest Act and other legislative provisions

Introduced 6 November 2007
Passed in principle 27 November 2007
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Assented to 21 December 2007

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EXPLANATORY NOTES

The main object of this bill is to modify certain rules governing forest management activities in the domain of the State.

Firstly, the bill simplifies the rules relating to forest planning by providing more leeway in the determination of the places where the forest management activities described in the five-year program may be carried out during the period covered by the general forest management plan, and allowing activities approved during the year but not carried out during that year to be carried over to the following annual management plan without being approved again.

Secondly, the bill adds instances where the Minister may accredit the holder of a wood processing plant operating permit so that the holder may obtain a management permit for a management unit in order to supply the processing plant. The bill also specifies the rules applicable to the exercise of that power.

Thirdly, concerning the monitoring and control of forest management activities, the bill provides that the annual management plan to be presented by the holders of forest management agreements or forest management contracts must be accompanied by silvicultural prescriptions approved by a forest engineer. It also provides that the agreement and contract holders must prepare and submit to the Minister a periodic progress report on silvicultural treatments they carry out in the management area, and specifies the sanctions applicable if they fail to comply with that obligation. Furthermore, the bill establishes rules for the cash reimbursement of temporary credits and subjects the right to the credit applicable to dues to the prior payment of third parties who have carried out silvicultural treatments on behalf of an agreement holder.

Fourthly, the bill identifies certain situations where the Minister may at any time make minor changes to the boundaries of a forest management unit, in particular to correct a clerical or technical error or to include new areas acquired by the State. The bill also adds new cases to those already set out in the Forest Act where it will be possible to revise at any time the calculation of the annual allowable cut assigned to a management unit, and to make changes to the general plan and the agreement of the holders carrying out their activities in the unit concerned.

The bill reduces from one and a half years to six months the time an agreement holder's processing plant must be out of operation before the Minister may send a notice to the holder stating that the agreement will be terminated. It also sets out the applicable formalities. The bill makes minor changes to the forest protection programs covering the fires that occur while work is being carried on in the forest.

The bill grants the Minister the power to require that persons or bodies to whom the Minister allocated volumes of round timber for the supply of wood processing plants obtain certification from an independent body that has established standards for sustainable forest management applicable to Québec forests. It also provides that the Minister may establish programs to facilitate and support the obtention of forest certification.

Lastly, the bill introduces a protection plan for biological refuges. For that purpose, it provides rules relating to the designation of such refuges, the changes they undergo and their protection. Consequential amendments are also introduced.

LEGISLATION AMENDED BY THIS BILL:

- Forest Act (R.S.Q., chapter F-4.1);
- Mining Act (R.S.Q., chapter M-13.1);
- Act respecting the Ministère des Ressources naturelles et de la Faune (R.S.Q., chapter M-25.2);
- Act to amend the Forest Act and other legislative provisions (2001, chapter 6).

Bill 39

AN ACT TO AMEND THE FOREST ACT AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

- 1.** Section 14.3 of the Forest Act (R.S.Q., chapter F-4.1) is amended by replacing “according to the terms and conditions set out in section 73.1, except those set out in the sixth paragraph, and in sections 73.2 and 73.3” in the first sentence of the first paragraph by “according to the terms and conditions set out in sections 73.1 to 73.3, except those set out in the sixth paragraph of section 73.1 and the fourth paragraph of section 73.2”.
- 2.** Section 24 of the Act is amended by inserting “92.0.3.1, 92.0.3.2,” after “92.0.3,” in paragraph 3.
- 3.** The Act is amended by inserting the following division after section 24.9:

“DIVISION II.2

“PROTECTION OF BIOLOGICAL REFUGES

“**24.10.** The Minister may designate forest areas as biological refuges in order to protect certain mature or overmature forests that are representative of Québec’s forest heritage and to maintain the biological diversity of those forests.

To that end, the Minister shall establish and define the boundaries of biological refuges on all or part of the forest lands of the domain of the State and manage the biological refuges in such a way as to ensure their continued protection.

The biological refuges are entered in the land use plan provided for in the Act respecting the lands in the domain of the State (chapter T-8.1).

“**24.11.** The Minister may make any modification the Minister deems necessary to correct an error, inaccuracy or other incongruity that occurred in establishing the boundaries of a biological refuge.

The Minister may also modify the boundaries of a biological refuge or revoke its status if the area covered is no longer characterized by the biodiversity that initially warranted its preservation. If the refuge is entered in the register of protected areas kept by the Minister of Sustainable Development,

Environment and Parks, the Minister must obtain the approval of that Minister before proceeding with the modification or revocation.

“24.12. The Minister shall draw up and maintain a list of designated biological refuges.

The list is published on the department’s website and contains the following information:

- (1) the number assigned to the biological refuge;
- (2) the number of the forest management unit within which the biological refuge is located; and
- (3) the geographical coordinates and the area of the biological refuge.

The geographical boundaries of a biological refuge must also be shown on maps accessible on the department’s website.

“24.13. Forest management activities are prohibited in the area covered by a biological refuge.

However, the Minister may authorize a forest management activity, on the conditions the Minister determines, if the Minister considers it expedient and if the activity is not likely to have an adverse effect on the maintenance of biological diversity. If the refuge is entered in the register of protected areas kept by the Minister of Sustainable Development, Environment and Parks, the Minister must consult that Minister for an opinion on the impact of the proposed activity before authorizing it.”

4. The Act is amended by inserting the following section after section 35.14:

“35.14.1. Despite section 35.14, the Minister may, without being required to comply with the formalities described in the second paragraph of that section, modify the boundaries of a management unit to correct a clerical or technical error that occurred when the unit was delimited or to include within the unit forest lands acquired by the State after it was delimited.

The Minister shall make public the new delimitation for the management unit. It comes into force at that time.”

5. Section 35.15 of the Act is amended by inserting the following subparagraph after subparagraph 1 of the first paragraph:

“(1.1) the designation of a biological refuge or any modification concerning that designation;”.

6. Section 35.16 of the Act is amended

(1) by inserting “to the boundaries of a management unit or” after “following a modification” in the first sentence of the second paragraph;

(2) by adding the following at the end of the second sentence of the second paragraph: “, by reason of substantial modifications made to the standards of forest management or to forest practices that significantly affect the annual allowable cut, annual yield or objectives assigned to the management unit, or if the tools used in the calculation of the forest production assigned to the units were replaced by tools improving the precision of the calculations, and there are significant differences in the results of those calculations.”

7. Section 52 of the Act, replaced by section 42 of chapter 6 of the statutes of 2001 and amended by section 7 of chapter 45 of the statutes of 2006, is again amended

(1) by striking out paragraph 6;

(2) by replacing paragraph 7 by the following paragraph:

“(7) a map, drawn to the scale determined by the Minister, showing the sites where the main infrastructures could be established and the programmed activities carried out during the period covered by the general plan;”.

8. Section 59 of the Act, replaced by section 46 of chapter 6 of the statutes of 2001 and amended by section 16 of chapter 16 of the statutes of 2003 as amended by section 8 of chapter 3 of the statutes of 2005, is again amended by inserting the following paragraph after the first paragraph:

“If unable to submit an annual plan to the Minister before the date set in the first paragraph, the agreement holder must give the Minister notice, before that date, of the date on which the plan will be submitted.”

9. Section 59.1 of the Act, enacted by section 46 of chapter 6 of the statutes of 2001 and amended by section 17 of chapter 16 of the statutes of 2003 and by section 9 of chapter 45 of the statutes of 2006, is again amended

(1) by replacing “a description of the forest management activities to be carried out” in the first sentence of subparagraph 1 of the first paragraph by “a description of the forest management activities for which a forest management permit may be required in order to carry them out”;

(2) by replacing the second paragraph by the following paragraph:

“The annual plan must be accompanied by silvicultural prescriptions approved by a forest engineer. The prescriptions must be supported by forest inventory data that have been compiled and analyzed or by other documents or information determined or accepted by the Minister, which may vary with the silvicultural treatments to be carried out. The forest inventory data, documents or information used in preparing the prescriptions must be forwarded to the Minister on request.”

10. Section 59.2 of the Act, enacted by section 46 of chapter 6 of the statutes of 2001, is amended by striking out the third paragraph.

11. Section 59.6 of the Act, enacted by section 46 of chapter 6 of the statutes of 2001 and amended by section 18 of chapter 16 of the statutes of 2003, is again amended by replacing “in the forest inventory data having served to validate the relevance of the silvicultural treatments included in the annual management plan” in the third paragraph by “in the silvicultural prescriptions accompanying the annual management plan or the forest inventory data, documents or information used in preparing those prescriptions”.

12. Section 60 of the Act, replaced by section 47 of chapter 6 of the statutes of 2001 and amended by section 19 of chapter 16 of the statutes of 2003 and by section 10 of chapter 45 of the statutes of 2006, is again amended

(1) by replacing “provided for in the annual plan approved by the Minister” in subparagraph 1 of the first paragraph by “approved in the annual plan and authorized under the management permit”;

(2) by replacing subparagraph 2 of the first paragraph by the following subparagraph:

“(2) to apply the corrective programs established under sections 61 and 77.3, if necessary;”;

(3) by replacing “under the annual management plan” in subparagraph 5 of the first paragraph by “approved in the annual plan and authorized under the management permit”.

13. Section 70 of the Act, replaced by section 52 of chapter 6 of the statutes of 2001 and amended by section 11 of chapter 45 of the statutes of 2006, is again amended by replacing “before 1 September each year” in the first paragraph by “before 1 November each year”.

14. Section 73.2 of the Act is replaced by the following section:

“73.2. An agreement holder must prepare and submit to the Minister, in the form and tenor determined by regulation of the Government, a periodic progress report on silvicultural treatments or other activities the agreement holder carries out in the management unit. The progress report must be approved by a forest engineer in the case of forest management activities or, in any other case, by a professional designated by the Minister.

The dates on which progress reports must be submitted and the periods they must cover are set by the Minister after consultation with the agreement holder.

On receipt of a progress report, the Minister may, at the request of the agreement holder, grant a provisional credit corresponding to the value of the

silvicultural treatments or other activities which have been carried out and applicable to the payment of the prescribed dues. However, an agreement holder who has treatments or activities carried out by a third party may be granted a credit only if the agreement holder has already paid to that third party the total cost of the treatments or activities that have been carried out and are the subject of the request for credit.

If the Minister deems that at the end of a given year the credits could exceed the dues the agreement holder must pay that year for the timber harvested, the Minister may, after having granted a provisional credit under this section, reimburse to the agreement holder the sum corresponding to the amount of credits that is in excess of the dues payable. However, the Minister must reduce that sum by any contributions owed to the forestry fund or assessments owed to a forest protection organization recognized by the Minister under this Act.

Following the presentation of the annual report, the credits are adjusted, if need be, to ensure that they correspond to the value of the treatments or other activities accepted by the Minister under section 73.1.

If an agreement holder fails to comply with this section, the Minister may refuse to grant a provisional credit until the agreement holder complies with this section or until a decision on the granting of the provisional credit is made following the presentation of the annual report. The Minister may also cancel 10% of the provisional credits already granted and postpone the decision on the granting of credit to the time the annual report is presented.”

15. Section 77.4 of the Act, enacted by section 62 of chapter 6 of the statutes of 2001, is amended

(1) by inserting “of the boundaries of the management unit or a modification” after “following a modification” in the first paragraph;

(2) by inserting the following paragraph after the first paragraph:

“The same applies if the decision to reduce the annual allowable cut assigned to a management unit is made in order to take into account substantial modifications to the standards of forest management or to forest practices or following the replacement of the tools used in the calculation of forest production.”

16. Section 82 of the Act, amended by section 70 of chapter 6 of the statutes of 2001, is again amended

(1) by replacing “one-and-a-half years” in subparagraph 5 of the first paragraph by “six months”;

(2) by replacing “In such cases” in the third paragraph by “In the cases referred to in the first paragraph”;

(3) by adding the following sentences at the end of the third paragraph: “In the case referred to in subparagraph 5 of the first paragraph, the prior notice must state that the agreement holder has 60 days in which to submit a business plan for resuming operations to the Minister. If the agreement holder submits a business plan within the 60-day period, the Minister may not terminate the agreement before the expiry of 30 days after the plan is submitted.”;

(4) by adding the following paragraph after the third paragraph:

“The resumption of a wood processing plant’s operations for a continuous period of less than one month does not interrupt the six-month period referred to in subparagraph 5 of the first paragraph.”

17. Section 84.5 of the Act is amended by replacing “before 1 September each year” by “before 1 November each year”.

18. Section 85 of the Act is replaced by the following section:

“85. The Minister shall issue a forest management permit to the holder of a timber supply and forest management agreement or the holder of a forest management agreement if the activities for which the permit is requested have been approved in the annual management plan of the management unit concerned.

The Minister may, however, require that certain activities approved in the annual plan be part of the activities authorized under the management permit, particularly those for which schedules have been imposed on the agreement holder, in order to ensure that the forest management strategies adopted to reach the annual allowable cut, annual yield and objectives assigned to the management unit are applied.”

19. Section 86 of the Act, amended by section 13 of chapter 45 of the statutes of 2006, is replaced by the following sections:

“86. A forest management permit authorizes an agreement holder to harvest in the management unit, during the period covered by the annual plan and subject to the reductions made under this Act, a volume of timber of one or more species, up to the annual volume set in the agreement or the volume as increased under this Act, and to carry out the forest management activities under the agreement holder’s responsibility.

The permit states the authorized volume for each species or group of species and, if applicable, specifies the processing plant or plants to be supplied.

“86.0.1. An agreement holder may not claim the right to the total annual volume set in the agreement if all the activities approved in the annual plan and authorized under the management permit do not allow for the harvest of such a volume.

The agreement holder may not claim to be authorized, on the basis of the annual plan or the management permit, to carry out forest management activities that depart from the standards provided for in this Act or set in a regulation made under this Act unless, in accordance with the law, such a departure has been specifically authorized.

“86.0.2. The management permit may be modified at any time at the request of the agreement holder, in particular to withdraw from or add to the permit activities already approved in the annual plan. Before agreeing to the modifications, the Minister must ensure that the changes requested will not call into question any forest management strategies.

The permit expires at the end of the period covered by the plan.

“86.0.3. A forest management activity approved by the Minister for which no management permit has been issued during the period covered by the annual plan, or for which a management permit has been issued but which has not been completed during the period covered, may, at the agreement holder’s choice, be renewed in the following annual plan and be the object of a management permit without having to be approved again.”

20. Section 86.1 of the Act is amended by replacing “under the annual management plan” in subparagraph 2 of the second paragraph by “approved in the annual plan and authorized under the management permit”.

21. The Act is amended by inserting the following sections after section 92.0.3:

“92.0.3.1. Before the period covered by the general forest management plans expires, the Minister may also, if considered expedient by the Minister, accredit for the same purposes the holder of a wood processing plant operating permit where a volume of timber is made available following the cancellation of an agreement.

The volume of timber available corresponds to the volume of timber not harvested since the beginning of the period covered by the general forest management plans that could have been harvested annually under the agreement holder’s agreement had it not been cancelled, after deducting any volumes already accredited under subparagraph 1, 2 or 5 of the first paragraph of section 92.0.3.

“92.0.3.2. The Minister may also, if considered expedient by the Minister, accredit for the same purposes the holder of a wood processing plant operating permit so that degraded forest stands or stands likely to be affected by natural disasters because of their condition or their age may be harvested.

Such an accreditation may also be granted, but only before the period covered by the current general plans ends, if the volume of timber harvested in a management unit during the period covered by the previous general plans is

inferior to the estimated harvested volume used to revise the calculation of that unit's annual allowable cut.”

22. Section 92.0.11 of the Act is amended by replacing “in the case provided for in subparagraph 3 of the first paragraph of section 92.0.3” in the second paragraph by “in the cases set out in subparagraph 3 of the first paragraph of section 92.0.3 and the first paragraph of section 92.0.3.2 and, as concerns timber that became available during the years following the year an agreement is cancelled, in the case set out in section 92.0.3.1.”

23. Section 92.0.12 of the Act is amended by replacing “except as regards the sixth paragraph of section 73.1 to which” in the fourth paragraph by “except as regards the sixth paragraph of section 73.1 and the fourth paragraph of section 73.2 to which”.

24. Section 103 of the Act is amended by replacing the second sentence of the first paragraph by the following sentences: “The annual plan must be accompanied by silvicultural prescriptions approved by a forest engineer. The prescriptions must be supported by forest inventory data that have been compiled and analyzed or by other documents or information determined or accepted by the Minister, which may vary with the silvicultural treatments to be carried out. The forest inventory data, documents or information used in preparing the prescriptions must be forwarded to the Minister on request.”

25. Section 104.4 of the Act is amended by replacing “before 1 September each year” by “before 1 November each year”.

26. Section 124.10.1 of the Act is amended by replacing “by all the board members” in the second sentence of the second paragraph by “by the assembly of members”.

27. Section 143 of the Act is amended

(1) by adding “from it, if the organization deems it expedient” at the end of the first sentence of the first paragraph;

(2) by adding the following sentence at the end of the first paragraph: “If the work is to be carried on outside the intensive protection zone, the costs incurred to determine the necessity of obtaining a plan and, where applicable, those relating to the preparation of the plan are to be met by the person who carries on work in the forest or causes work to be carried on in the forest.”

28. Section 172 of the Act is amended by replacing “the fire protection program” in subparagraph 14 of the first paragraph by “any fire protection program”.

29. Section 176 of the Act, amended by section 21 of chapter 45 of the statutes of 2006, is again amended by replacing “or that exceeds the volume determined in the agreement” in the second paragraph by “or that exceeds the volume determined in the permit”.

30. Section 184 of the Act, amended by section 47 of chapter 16 of the statutes of 2003, is again amended

(1) by inserting “, 92.0.3.1 or 92.0.3.2” after “of an accreditation under section 92.0.3” in subparagraph 3 of the second paragraph;

(2) by replacing everything after “under section 92.0.3 or” in subparagraph 5 of the second paragraph by “92.0.3, 92.0.3.1 or 92.0.3.2, or of a management permit issued under section 92.0.11, who fails to submit to the Minister within the time set in section 70 the annual activities report referred to in that section.”

31. Section 186.7 of the Act is amended by replacing “accreditation under section 92.0.3 or forest management contract who submits an annual management plan or accompanying forest inventory data to the Minister which contains an entry which the holder knows to be false or misleading” in subparagraph 2 of the first paragraph by “forest management contract or accreditation under section 92.0.3, 92.0.3.1 or 92.0.3.2 who submits to the Minister an annual management plan or accompanying silvicultural prescriptions which contains an entry the holder knows to be false or misleading, or who submits to the Minister forest inventory data, documents or information used in the preparation of the prescriptions which contain such an entry”.

32. Section 186.10 of the Act is amended by replacing “by the Minister as an exceptional forest ecosystem” in the first paragraph by “as an exceptional forest ecosystem under section 24.4, or in a biological refuge created under section 24.10”.

AMENDING PROVISIONS

MINING ACT

33. Section 304 of the Mining Act (R.S.Q., chapter M-13.1) is amended

(1) by replacing the information following the last dash in subparagraph 1 of the first paragraph by the following information:

“— classification as an exceptional forest ecosystem under sections 24.4 to 24.9 of the Forest Act (chapter F-4.1) or designation of biological refuges under sections 24.10 to 24.13 of that Act;”;

(2) by adding the following paragraphs at the end:

“An order made by the Minister under subparagraph 1 of the first paragraph, concerning the designation of a biological refuge, must refer to the number assigned the biological refuge appearing in the list referred to in section 24.12 of the Forest Act, and is valid without further formality.

The order is published on the department's website and comes into force on the date given on that website."

ACT RESPECTING THE MINISTÈRE DES RESSOURCES
NATURELLES ET DE LA FAUNE

34. The Act respecting the Ministère des Ressources naturelles et de la Faune (R.S.Q., chapter M-25.2) is amended by inserting the following sections after section 12:

"12.0.1. In order to encourage the recognition and development of sound forest practices in Québec, the Minister may require that persons or bodies to whom the Minister allocated volumes of round timber for the supply of wood processing plants obtain certification from an independent body that has established standards of sustainable forest management applicable to Québec forests. For that purpose, the Minister shall determine the type of certification the persons or bodies must obtain, the time within which they must obtain the certification and the cases where an exemption may be granted.

The Minister may establish programs to facilitate and support the obtaining of certification and extend them to persons or bodies wishing to obtain certification in respect of a private forest.

"12.0.2. The Government may determine for which programs or parts of programs certification must be obtained and maintained."

35. Section 17.1.2 of the Act is amended by replacing subparagraph 2 of the first paragraph by the following subparagraph:

"(2) preparing, publishing and updating the forest management manual referred to in section 29 of the Forest Act (chapter F-4.1);"

36. Section 17.1.3 of the Act is amended

(1) by inserting the following paragraph after the first paragraph:

"Such power is exercised every five years, in accordance with the first paragraph of section 35.16 of the Forest Act and, in the cases referred to in the second paragraph of that section, whenever the Minister decides, in accordance with that section, to revise the annual allowable cuts.";

(2) by replacing the second paragraph by the following paragraph:

"The chief forester shall make public the annual allowable cuts and the reasons for determining or revising them."

37. The Act is amended by inserting the following section after section 17.1.3:

“17.1.3.1. For the purposes of section 92.0.3.2 of the Forest Act (chapter F-4.1), the chief forester shall determine, for each forest management unit, the available volume of round timber that may be accredited under that section.

The chief forester must ensure, when determining the available volume referred to in the first paragraph of section 92.0.3.2 of that Act, that the harvesting of the timber will not affect the annual allowable cuts assigned to the management units and, when determining the available volume referred to in the second paragraph of that section, that the harvesting of the timber will have no significant impact on the annual yields and the objectives for forest protection or forest development assigned to a management unit.”

OTHER AMENDMENTS

38. Section 57 of the Act to amend the Forest Act and other legislative provisions (2001, chapter 6) is repealed.

39. Section 72 of the Act is repealed.

40. Section 73 of the Act, amended by section 26 of chapter 45 of the statutes of 2006, is repealed.

41. Section 179 of the Act is repealed.

TRANSITIONAL PROVISIONS

42. Section 16 of this Act applies to current situations, but with the six-month period running from 21 December 2007.

However, the one-and-a-half year period prescribed in subparagraph 5 of the first paragraph of section 82 of the Forest Act (R.S.Q., chapter F-4.1) as it read prior to 21 December 2007 is maintained where it would in fact be extended if the new period applied.

43. Sections 1, 4 to 15, 17 to 20, 23 to 25 and 36 apply to forest management activities carried out after 31 March 2008.

44. This Act comes into force on 21 December 2007, except

(1) section 1, paragraph 2 of section 6, sections 12 and 14, paragraph 2 of section 15, sections 18 to 20, 23 and 38, which come into force on 1 April 2008;

(2) sections 13, 17 and 25, which come into force on 31 August 2009;

(3) section 29, which comes into force on the date of coming into force of section 21 of chapter 45 of the statutes of 2006; and

(4) section 34, which comes into force on the date or dates to be set by the Government.