

Department of Communities, Land and Environment

Inside the Water Act

What is in the Act?

The *Water Act* demonstrates the Province's commitment to protecting the Island's water resources and the ecosystems that support them. There are sections in the Act that are transferred from the *Environmental Protection Act* and designed to consolidate, simplify and streamline existing legislation. Other sections are new and address Islanders' specific concerns.

The draft Act has 11 parts, as follows:

Part I Interpretation, Purpose and Application –

Definitions -To ensure consistent interpretation, this section provides a list of specific meanings for important terms used in the Act.

Key Definitions

- aquatic ecosystem
- environmental flow needs
- hydraulic fracturing
- geothermal purpose
- person responsible
- water protection order
- water resources

Purpose of the Act - This section is intended as a series of short, high-level statements explaining the core beliefs and rationale for the development of the Act. It provides insight into the context and spirit in which the Act and its regulations are being developed.

Key Statements

- Government has a guardianship role
- Access to a sufficient quantity and safe quality of water
- Water withdrawals subject to a transparent evaluation and approval process
- Everyone has a duty to protect water
- Application of the precautionary principle

Stated Goals

- Provision of sufficient, safe, accessible water for domestic purposes
- Provide protection to ecosystems
- Required public reporting and consultation
- Water allocation decisions subject to science-based decision

Control of Water – Authority to control water resources in the province is declared in this section to rest with the Government of Prince Edward Island.

Part II

Authority and Administration – Part II addresses boundaries or scope of the Act. The components of the water environment that the Act has authority over are established. This section also identifies the powers and obligations government has to the residents of the province.

The tools available to the Minister to fulfill the mandate to manage the province’s water resources are specified in this subsection - most being from the existing *Environmental Protection Act*. Additional provisions have been added, such as the Minister’s clear authority to adjust or cancel permits for water withdrawals in the event of water limiting events. There are also new provisions in the Act allowing the Minister to hold water ‘in reserve’. Accordingly, the Minister is not obliged to approve water withdrawals simply because water is ‘available’. This allows for the setting aside of some portion of available water for the needs of future generations. Where water withdrawal poses a conflict between various water uses and users, priorities for water use will emphasize the prime importance of domestic water use and ecosystem health ahead of industrial and commercial use.

This part of the Act also reflects government’s commitment to transparency regarding the state of the province’s water resources. To accomplish this, the Minister will establish a program to monitor and publically report on the province’s water resources for the purposes of tracking the quantity or quality of groundwater and surface water and other aspects of the hydrologic regime. Water resource monitoring will ensure that regulators and policy makers have sufficient and timely information to make science-based decisions.

While it is important to ensure government monitors and reports on the state of provincial water resources in legislation, specific monitoring programs and the way data is reported will be met through regulation and policy. A report on the status of the province’s water resources for the previous 12-month period will be available online. Information on approvals; copies of reports tabled in the Legislative Assembly; information or documents considered appropriate by the Minister, or prescribed by the regulations; or information collected in a registry, will be made available to the public online.

Key New Authorities

- Right to amend, suspend, revoke, or refuse an approval not in the public interest under the Act
- Provide greater protection for domestic water and environmental flows
- Hold water in reserve for distribution or use in the future
- Introduce timelines for approvals and provide rationale for refusals
- Establish a public reporting system through an online registry showing the status of water resources and water resource monitoring information

Part III

Protection of Water - This part of the Act provides an overall protection of the province’s water resources. Sections are taken mainly from the existing *Environmental Protection Act* and from provincial government policies regarding water in wetlands and watercourses. It deals specifically with the discharge of contaminants onto or into a watercourse, wetland or groundwater. A new provision is the prohibition on hydraulic fracturing for oil and natural gas. Part III also provides authority to Environment Officers to investigate possible contamination events and order remedial actions through water

protection or emergency field orders. Furthermore, it requires those responsible for causing contamination to repair, restore, and remedy the affected watercourse, wetlands or watercourse at their own cost. It also requires those responsible for causing contamination to confine or contain the effects of the contaminant.

Key New Powers

- Water Protection Order requiring a person, at their cost, to remedy any damage they have caused to a water resource
- Prohibition on hydraulic fracturing for oil and natural gas
- Emergency Field Orders to immediately cease an activity that may cause damage to the water resource and remedy whatever damage has been caused to the water resource
- Order the repair, restoration, and remedy of a water resource to the minimum standards required by regulation, or higher

Part IV

New Water Management Areas - A reasonable balance between competing interests for water resources is not always possible. There are cases where an attempt to find an acceptable compromise between two different interests may result in a solution that meets neither party's needs. To address this reality, some 'exceptional' provisions will allow the Act to target specific concerns in certain geographic areas. Within each of these areas, special provisions can be applied - these provisions are accompanied by requirements for consultation, monitoring, review of the status of water resources and any subsequent ministerial action. Four types of area have been created:

- *Water Sustainability Plan Areas*
- *Aquatic Ecosystem Protection Areas*
- *Municipal Water Supply Areas, and*
- *Well-Field Protection Areas.*

Water Sustainability Plan Areas will be created to allow for the development of plans to target water quality or quantity issues. Aquatic Ecosystems Protection Areas will be recognized for their importance in maintaining the integrity of populations of specific aquatic species. Municipal Water Supply Areas will protect part or entire watersheds that are critical in their role in supplying the needs of large urban populations. Finally, Well Field Protection Areas will be designated specifically for the source protection of municipal drinking water supplies.

Part V

Water Withdrawals and Wastewater Discharges - There is public concern regarding agricultural irrigation, high capacity wells in general, and the export of water by bottling facilities.

This section will create a single regulation to replace current provisions for groundwater extraction found under the Water Well Regulations, and the procedures for water withdrawals from surface water under the Watercourse and Wetland Protection Regulations. New limits will be placed on the capacity to withdraw large amounts of water, and the process for approvals, permitting, amending permits, and monitoring have been tightened. Future approvals will be required for all water use exceeding 25 m³ per day. The current water limit to trigger the approvals process is 346 m³ per day. The new limit is among

the lowest in Canada and similar to Nova Scotia and Manitoba. New regulations will detail various water withdrawal capacity levels that will require approval, such as:

- Domestic capacity : 0 < 25 m³ per day (0 - 4 igpm) no approval
- Low capacity: 25 - 346 m³/day (5 - 50 igpm) require approval
- High capacity: > 346 m³/day (> 50 igpm) require approval

Furthermore, groundwater, surface water, or water obtained from a water supply system, may not be stored or transported for the purpose of removal from the province, except for humanitarian purposes, and or the ordinary carrying of water necessary for travel.

Finally, the inclusion of an approval process for wastewater discharges is entirely new for Prince Edward Island. Simply put, if an approval is required to remove water from the environment, then it makes sense to have some control in what manner, and what state the water is when subsequently returned to the environment.

Part VI

Water Supply and Wastewater Systems

Part VI is taken primarily from the *Environmental Protection Act*, and deals with the approval process for the construction, operation, modification, decommissioning, and abandonment of infrastructure used to make water withdrawals, or discharges of wastewater. Regulations for specific types of infrastructure including central drinking water and wastewater treatment facilities, on-site sewage disposal systems, and wells are enabled by the Act.

Part VII

General, Appeals, Offences and Penalties - Part VII is taken from the *Environmental Protection Act* and deals with such issues as orders, enforcement, inspections, investigations, permits, offences, penalties, and appeals. Provisions in this part of the Act will also improve public access to government research information and assessments on water quality and quantity issues.

New provisions include an ability to eliminate financial advantage by committing an offence. Alternative penalties options include community service; payments to environmental organizations, or an educational institution; reimbursing government for costs of investigation; and bearing the cost of any remedial action.

Part VIII

Regulations - Part VIII is the enabling piece for the majority of regulations (existing, new, and future) that will support the Act. A new requirement will be an enhanced public consultation process prior to any substantial changes in regulations, old and new.

Part IX

Transitional Provisions - Part IX outlines the steps required to bring the Act into effect.

Part X

Consequential Amendments - Before the Act can come into force (commence), the parts of the old legislation that have been replaced need to be updated or removed.

When an Act is amended as a result of changes to - or the enactment of - another Act, it is called a consequential amendment. When laws are repealed they are no longer in force. Statutes and regulations can be repealed; repealed and replaced by another statute or regulation with a different title; or renamed. They can also have built-in expiry provisions or be enacted for a specific period, after which they are considered defunct, without the need for repeal.

Part XI

Commencement - The commencement section details how and when the Act (or different provisions of the Act) come into effect.