



BILL NO. 106

Government Bill

*2nd Session, 63rd General Assembly
Nova Scotia
68 Elizabeth II, 2019*

An Act Respecting Coastal Protection in Nova Scotia

CHAPTER 3
ACTS OF 2019

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
APRIL 12, 2019**

The Honourable Margaret Miller
Minister of Environment

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

This page is intentionally blank.

An Act Respecting Coastal Protection in Nova Scotia

Be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Coastal Protection Act*.

2 The purpose of this Act is to protect the Province's coast for future generations by preventing development and activity in locations adjacent to the coast that

(a) damage the environment by interfering with the natural dynamic and shifting nature of the coast; or

(b) put residences and buildings at risk of damage or destruction from sea-level rise, coastal flooding, storm surges and coastal erosion.

3 In this Act,

(a) "agricultural marshlands" means land designated under the *Agricultural Marshland Conservation Act*;

(b) "cemetery" has the same meaning as in the *Cemeteries and Monuments Protection Act*;

(c) "coast" means the maritime shoreline of the Province wherever the land meets a body of salt water and includes the shoreline of an estuary and a maritime island;

(d) "Coastal Protection Zone" means the area described in Section 8;

(e) "designated professional" means a person who is qualified under the regulations to certify whether a structure proposed to be located in the Coastal Protection Zone is compliant with this Act and the regulations;

(f) "enactment" has the same meaning as in the *Interpretation Act* and includes a municipal resolution, policy or by-law;

(g) "estuary" means a watercourse that meets a body of salt water, where the water is a mixture of salt and fresh water;

(h) "existing approval" means a prescribed approval granted for an activity before the date on which this Act came into effect;

(i) "existing permit" means a building or development permit or agreement issued or entered into by a municipality, or a permit, licence or other approval issued under the *Beaches Act* or the *Crown Lands Act*, before the date on which this Act came into effect and for which the expiry date or extensions of the expiry date do not exceed such period of time as is prescribed;

(j) "existing project approval" means a prescribed approval granted for a project prior to the date on which this Act came into effect;

(k) "existing structure" means a structure that was complete, or for which construction was substantially underway, and, where required at the time of construction, permitted under

- (i) a municipal building or development permit or agreement, or
- (ii) a permit issued under the *Beaches Act* or *Crown Lands Act*,

by the appropriate authority before the date on which this Act came into effect;

- (l) “federal Crown lands” means property of Her Majesty in right of Canada;
- (m) “footprint” means the area, location and dimensions of the parts of a structure including a foundation that extends below grade or the natural contour of the land;
- (n) “Minister” means the Minister of Environment;
- (o) “modification” means, in relation to a structure, alteration and includes replacement;
- (p) “municipality” has the same meaning as in the *Municipal Government Act*;
- (q) “prescribed” means prescribed by the regulations;
- (r) “shore-stabilizing structure” means an installation that has the effect of altering or interfering with coastal ecosystems or the natural movement of coastal areas and processes, including coastal erosion;
- (s) “structure” includes a building, residence, facility, road, wharf, pier, boat slip, shore-stabilizing structure or other installation;
- (t) “watercourse” has the same meaning as in the *Environment Act*;
- (u) “wetland” has the same meaning as in the *Environment Act*.

4 Where a provision of this Act or the regulations conflicts with a provision of another enactment, the provision of this Act or the regulations prevails unless the provision of the other enactment provides a higher level of protection for coastal ecosystems.

5 The Minister has the general supervision and management of this Act and the regulations.

6 The Minister may

- (a) conduct, commission, fund or enter into agreements with any person to facilitate research into coastal protection and related management issues;
- (b) appoint any person, establish advisory committees and retain experts to advise the Minister on coastal protection and related management issues; and
- (c) undertake promotional and educational initiatives to inform the public about sea-level rise, coastal flooding, storm surges, coastal erosion, environmental protection of coastal areas and other related issues.

7 This Act is based on the following principles:

- (a) portions of the Province’s coast are dynamic and naturally migrate landward and seaward as a result of the interaction of natural forces such as tides, winds, currents and wave action with varying geological conditions;

(b) preservation of the dynamic nature of the coast is important in order to protect and allow for the natural adaptation of coastal ecosystems that provide fish, wildlife and plant habitat and perform important ecological functions that Nova Scotians value;

(c) human-made structures designed to delay or obstruct the natural migration and shifting of coastal features may accelerate the effects of coastal erosion and may accelerate these effects on adjacent properties that do not contain similar structures;

(d) coastal features such as beaches, dune systems, barrier beaches, coastal lagoons, barachois ponds, coastal wetlands and salt marshes provide valuable habitat and provide other valuable ecological functions and services important to the health and well-being of Nova Scotians;

(e) sea-level rise, coastal flooding, storm surge and coastal erosion pose significant threats to the safety of future development in coastal areas;

(f) there is a link between economic and environmental issues and a recognition that long-term economic prosperity depends upon sound environmental management and that effective environmental protection depends upon a strong economy; and

(g) risk-informed decisions regarding development in coastal areas are an important part of climate change adaptation given the inevitability of relative sea-level rise, coastal flooding, storm surge and coastal erosion and their related impacts on the Province.

8 (1) The Coastal Protection Zone is the prescribed area of land, including land covered by water, on the coast

(a) lying to the seaward of the ordinary high-water mark; and

(b) lying to landward immediately adjacent to the land described in clause (a).

(2) The Coastal Protection Zone does not include

(a) federal Crown lands including First Nations reserves, lands used for national defence, marine terminals and lands and structures used for transportation and other infrastructure; or

(b) lands exempted by the regulations.

9 No person may construct, modify or locate a structure in the Coastal Protection Zone unless the construction, modification or location of the structure is in compliance with this Act and the regulations.

10 No person may carry on any activity in the Coastal Protection Zone that interferes with the natural dynamic and shifting nature of the coast unless the activity is done in compliance with this Act and the regulations.

11 No person may alter a wetland in the Coastal Protection Zone unless it is done in compliance with this Act and the regulations.

12 (1) Subject to subsection (2), a municipality may not issue a building or development permit or enter into an agreement for

(a) the construction of a structure; or

(b) the modification of an existing structure that materially extends its footprint or height,

in the Coastal Protection Zone unless the application for the permit is accompanied by a recommendation from an independent designated professional certifying that the proposed structure or modification and its location are in compliance with this Act and the regulations.

(2) A municipality may issue a building or development permit or enter into an agreement for a structure in the Coastal Protection Zone without the recommendation required under subsection (1) for

- (a) a structure that is exempted under this Act or the regulations; or
- (b) a structure for which the proposed location is exempted under the regulations.

13 A permit issued under the *Beaches Act* or the *Crown Lands Act* for the construction or modification of a structure in the Coastal Protection Zone must comply with this Act and the regulations.

14 (1) A person may construct a structure in the Coastal Protection Zone in accordance with an existing permit.

(2) A person may act, including construct a structure, in accordance with an existing project approval.

(3) A person may undertake or continue an activity in the Coastal Protection Zone in accordance with an existing approval.

15 (1) Subject to subsection (2), construction or modification of a structure in the Coastal Protection Zone for the purpose of operating a commercial or industrial operation is permitted if

- (a) direct access to the seaward side of the ordinary high-water mark is essential to the operational requirements of the commercial or industrial operation; and
- (b) the construction or modification of the resulting structure is consistent, wherever possible, with the purpose and principles of this Act.

(2) A structure referred to in subsection (1) does not include a private residence, even where the structure is used in connection with the commercial or industrial operation.

16 Nothing in this Act prevents the construction, repair, maintenance or modification of federal, provincial or municipal public infrastructure in the Coastal Protection Zone if it is done in a manner that is consistent, wherever possible, with the purpose and principles of this Act.

17 (1) Nothing in this Act prevents commercial fishing, aquaculture, harvesting or processing activity conducted legally under a permit, lease, licence or other approval pursuant to federal or Provincial fisheries legislation.

(2) Nothing in this Act affects the requirement to comply with the terms and conditions of a permit, lease, licence or other approval pursuant to federal or Provincial fisheries legislation.

(3) The positioning, siting, construction, repair, maintenance or modification of a structure related to a commercial fishery, aquaculture or harvesting operation in the Coastal Protection Zone must be done in a manner that is consistent, wherever possible, with the purpose and principles of this Act.

18 (1) Nothing in this Act prevents the construction and operation of a marine renewable energy project under a permit, lease, agreement or other approval issued under the *Marine Renewable-energy Act* or other federal or Provincial legislation.

(2) Nothing in this Act affects the requirement to comply with the terms and conditions of a permit, lease, agreement or other approval issued under the *Marine Renewable-energy Act* or other federal or Provincial legislation.

(3) The positioning, siting, construction, repair, maintenance or modification of a structure related to a marine renewable energy project in the Coastal Protection Zone must be done in a manner that is consistent, wherever possible, with the purpose and principles of this Act.

19 (1) Nothing in this Act prevents the construction, repair, maintenance or modification of structures intended to protect the physical integrity of agricultural marshlands or agricultural activity conducted on those marshlands.

(2) The construction, repair, maintenance or modification of a structure protecting parts of an agricultural marshland in the Coastal Protection Zone must be done in a manner that is consistent, wherever possible, with the purpose and principles of this Act.

20 An approval issued under the *Environment Act* for an activity designated under that Act and proposed for the Coastal Protection Zone must take into consideration the purpose and principles of this Act and require that the activity is carried out in accordance with the regulations under this Act.

21 Activities undertaken for the purpose of conserving, preserving, restoring or reclaiming beaches, salt marshes, coastal wetlands and fish, wildlife and plant habitat in the Coastal Protection Zone that are authorized under the *Beaches Act* or the *Environment Act* must be done in a manner that is consistent with the purpose and principles of this Act and in compliance with the regulations.

22 (1) Nothing in this Act prevents the construction, repair, maintenance or modification of a structure intended to protect the physical integrity of or public access to lands in the Coastal Protection Zone if the lands are designated as

- (a) a protected site or ecological site under the *Special Places Protection Act*;
- (b) a wilderness area under the *Wilderness Areas Protection Act*;
- (c) land designated or continued as a provincial park under the *Provincial Parks Act*; or

(d) Crown land determined to be a beach under the *Beaches Act*.

(2) Activities permitted under subsection (1) must be done in a manner that is consistent, wherever possible, with the purpose and principles of this Act.

23 Nothing in this Act prevents construction, repair, maintenance and other activities that are necessary to restore, preserve and protect a cemetery located in the Coastal Protection Zone if such construction and activities are done in a manner that is consistent, wherever possible, with the purpose and principles of this Act.

24 (1) No action lies against Her Majesty in right of the Province, the Minister or any other persons acting under the authority of this Act and the regulations for any loss or damages suffered by any person by reason of anything done in good faith or omitted to be done in the purported exercise of any powers given by this Act or the regulations.

(2) Her Majesty in right of the Province is not liable or required to pay compensation to any party as a result of the enactment of this Act or the regulations, including as a result of

(a) changes in land values related to part or all of a parcel of land as a result of inclusion in or being adjacent to the Coastal Protection Zone;

(b) changes in the suitability of a parcel of land for the construction of a structure due to its inclusion in the Coastal Protection Zone or restrictions applicable to the Zone;

(c) damage to a parcel of land, an existing structure or a structure constructed subsequent to a parcel of land being included in the Coastal Protection Zone resulting from or related to sea-level rise, coastal flooding, storm surge, coastal erosion or similar events; or

(d) changes in the availability or cost of insurance or financing for an existing or proposed structure located in the Coastal Protection Zone.

25 A person who contravenes this Act or the regulations is guilty of an offence.

26 The regulations made under this Act must take into account the purpose and principles of this Act.

27 (1) The Minister may make regulations respecting standards to be adhered to in constructing, modifying, repairing and maintaining structures and carrying out permitted activities in the Coastal Protection Zone.

(2) The exercise by the Minister of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

28 (1) The Governor in Council may make regulations

(a) defining the boundary of the Coastal Protection Zone, including sub-zones within the Coastal Protection Zone;

(b) respecting exemptions for areas of land, types of structures and activities from provisions of this Act;

(c) respecting the types of and requirements for an approval to be considered an existing approval;

(d) respecting the types of and requirements for an approval to be considered an existing project approval;

(e) authorizing the Minister to grant exemptions for areas of land, structures or activities and setting out the criteria under which such exemptions may be granted;

(f) designating professions the members of which may be a designated professional;

(g) respecting the requirements for a person to be qualified as a designated professional;

(h) respecting the conditions and standards, for the construction, modification and location, for proposed structures in the Coastal Protection Zone;

(i) permitting or prohibiting activities in the Coastal Protection Zone;

(j) respecting the issuance or entering into by a municipality of building and development permits and agreements for structures in the Coastal Protection Zone;

(k) requiring municipalities to report to the Minister and provide information and data regarding the issuance or entering into of a building or development permit or agreement on land in the Coastal Protection Zone;

(l) respecting the maximum extension period from the original date of issue of a permit to still be an existing permit;

(m) respecting the modification of existing structures;

(n) respecting the construction of erosion control structures, including shore-stabilizing structures, to protect existing structures;

(o) respecting infilling and the alteration, modification or destruction of sensitive coastal features in the Coastal Protection Zone;

(p) defining any word or expression used but not defined in this Act;

(q) further defining any word or expression defined in this Act;

(r) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

29 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.
