

Dike Maintenance Act

[RSBC 1996] CHAPTER 95

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Definitions

1 In this Act:

"dike" means an embankment, wall, fill, piling, pump, gate, floodbox, pipe, sluice, culvert, canal, ditch, drain or any other thing that is constructed, assembled or installed to prevent the flooding of land;

"diking authority" means

- (a) the commissioners of a district to which Part 2 of the *Drainage, Ditch and Dike Act* applies,
- (b) a person owning or controlling a dike other than a private dike,
 - (b.1) if the final agreement of a treaty first nation so provides, the treaty first nation in relation to dikes on its treaty lands,
- (c) a public authority designated by the minister as having any responsibility for maintenance of a dike other than a private dike, or
- (d) a regional district, a municipality or an improvement district;

"improvement district" means an improvement district within the meaning of the *Local Government Act*;

"inspector" means the inspector of dikes referred to in section 2 and includes any acting, deputy or assistant inspectors of dikes;

"municipality" means a municipality as defined for the purposes of the *Community Charter*;

"order" includes any direction, decision or order of the inspector under this Act, including a decision to grant or

refuse an approval under section 2 (4);

"**private dike**" means a dike built on private property that protects only that property.

Inspector of dikes

2 (1) The office of the inspector of dikes is continued under this section.

(2) The inspector may

- (a) enter on any land and on a dike, with or without equipment, as necessary to carry out the purposes of this Act,
- (b) require a diking authority or a person on whose land a dike, other than a private dike, is located to repair, replace, renew, alter, add to, improve or remove a dike, or a part of a dike, or anything used in connection with a dike,
- (c) require a diking authority or a person on whose land a dike, other than a private dike, is located to construct or install a work or thing that in the opinion of the inspector is necessary to protect a dike or to increase its efficiency,
- (d) authorize and empower any diking authority or person, on conditions the inspector may impose, to
 - (i) place, construct, renew, alter, repair, maintain, operate and use any buildings, structures, machinery, ways, rails, roads, pipes, poles, towers, cables, wires, conduits, conveyors or other works on, along, across, through, over or under any dike, other than a private dike, or any land on which a dike is located, other than a private dike, and
 - (ii) enter with or without equipment onto a dike, other than a private dike, or on land on which a dike is located, other than a private dike, for the purposes set out in subparagraph (i) or section 3,
- (e) require a diking authority to provide routine or special reports on the construction or maintenance of dikes for which the diking authority is responsible,
- (f) inspect or make an order for the inspection of any books or records in connection with the construction or maintenance of dikes in the possession or control of a diking authority,
- (g) carry out or order an audit of a diking authority's program of construction and maintenance of dikes for which the diking authority is responsible, and
- (h) subject to this Act and the regulations, do any other thing or require a diking authority to do any other thing relative to the construction and maintenance of dikes, including orders respecting flood hazard planning.

(3) The inspector and those employees considered necessary may be appointed under the *Public Service Act*.

(4) A person or a diking authority must not do any of the following unless it is done either with the prior written approval of the inspector or in accordance with the regulations made under section 8 (2):

- (a) lower, or cause or allow to be lowered, the elevation of a dike or decrease, or cause or allow to be decreased, the width or cross section of a dike;
- (b) install, or cause or allow to be installed, any culvert, pipe, flood box or any structure through a dike;
- (c) construct, or cause or allow to be constructed, any works on or over a dike or dike right of way;
- (d) alter, or cause or allow to be altered, the foreshore or stream channel adjacent to a dike;
- (e) construct a new dike.

(5) In granting an approval under subsection (4), the inspector must consider the appropriateness of a standard established by regulation under section 8 (2) in relation to the dike that is the subject of the request, in light of

- (a) the condition and location of the dike,

- (b) the surrounding land and bodies of water and stream channels that are in close proximity to the dike, and
- (c) the nature and condition of works related to the dike.

Orders made by inspector

2.1 (1) In this section, "**registered mail**" includes any method of mail delivery provided by Canada Post for which confirmation of delivery to a named person is available.

(2) An order made by the inspector must be

(a) in writing, signed by the inspector, and

(b) delivered or sent by registered mail to the last known address of the person or diking authority to whom it is directed.

(3) Anything sent by registered mail for the purposes of this Act is deemed to be received by the person to whom it is addressed on the 14th day after deposit with Canada Post, unless the person received actual service before that day.

(4) The inspector may, at any time on notice to the person or diking authority to whom the order was directed, amend or revoke any order of the inspector.

Failure to carry out an order of the inspector

3 (1) If a person or diking authority fails to carry out an order of the inspector

(a) by the date specified in the order, or

(b) to the satisfaction of the inspector,

the inspector may take steps to fulfill the requirements of the order or authorize or employ another person to do so.

(2) If the inspector acts under subsection (1), any expense incurred by the inspector in fulfilling the requirements of the order or in authorizing or employing another person to do so, including any interest the inspector may have to pay, is a debt owing to the government by the person or diking authority to whom the order was directed.

(3) A debt owing under subsection (2) may be recovered in any court by the government from the person or diking authority to whom the order was directed.

(4) In an action referred to in subsection (3), the inspector's certificate as to the amount of the expense is evidence of the amount of the debt owing and of the necessity of doing the work authorized under this section.

Repealed

4 [Repealed 2003-72-3.]

Appeals

5 (1) Subject to subsection (1.1), an appeal lies to the minister from every order of the inspector.

(1.1) An appeal must not be taken

(a) from an order of the inspector requiring a person or a diking authority to comply with standards established by regulation under section 8 (2), unless the person or the diking authority to whom the order was directed is not responsible for the dike that is the subject of the order, or

(b) from a decision of the inspector refusing to grant an approval under section 2 (4).

- (2) An appeal under this section must be taken within 15 days from the date on which the inspector makes the order appealed from.
- (3) An appeal is taken within the meaning of this section when notice of intention to appeal has been delivered to the minister and a copy delivered to the inspector.
- (4) The appellant must give such further notice of the appellant's intention to appeal as may be directed by the inspector.
- (5) On an appeal under this section, the minister may confirm, quash, vary or add to the order appealed from and make any order as to costs that the minister considers just.
- (6) The minister's decision under subsection (5) is final.

Offence

- 6** (1) A person or a diking authority commits an offence if that person or diking authority does any of the following:
 - (a) injures or interferes with a dike or its operation;
 - (b) hinders a diking authority, the inspector or a person acting on behalf of either of them from protecting property from flooding;
 - (c) contravenes section 2 (4) or an order of the inspector or the minister.
- (2) A person or diking authority who commits an offence under this section is liable on conviction
 - (a) to a fine of not more than \$200 000, and
 - (b) if the offence is a continuing one, to a fine of not more than \$200 000 for each day the offence is continued or to imprisonment not exceeding 12 months, or to both a fine and imprisonment.
- (3) If a person or diking authority commits an offence under this Act, an employee, officer, director or agent of the person or diking authority who authorized, permitted or acquiesced in the offence commits the offence even though the person or diking authority is convicted.
- (4) The time limit for laying an information respecting an offence under this Act is 2 years after the facts on which the information is based first comes to the knowledge of the inspector.
- (5) A document purporting to have been issued by the inspector, certifying the day on which the inspector became aware of the facts on which an information is based, is admissible without proof of the signature or official character of the individual appearing to have signed the document and, in the absence of evidence to the contrary, is proof of the matter certified.
- (6) A proceeding, conviction or penalty for an offence under this Act does not relieve a person or diking authority from any other liability.

Additional sentencing orders

- 6.1** (1) If a person or diking authority is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:
 - (a) prohibiting the person or diking authority from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
 - (b) directing the person or diking authority to take any action the court considers appropriate to remedy or avoid any

harm that resulted or may result from the commission of the offence;

(c) directing the person or diking authority to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;

(d) directing the person or diking authority to perform community service;

(e) directing the person or diking authority to pay an amount of money the court considers appropriate to

(i) the trustee under Part 3 of the *Wildlife Act* for inclusion in the trust property, as that term is defined in section 118 of that Act, or

(ii) any other prescribed trust fund;

(f) directing the person or diking authority to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;

(g) directing the person or diking authority to submit to the minister, on application by the minister within 3 years of the date of the conviction, any information respecting the activities of the person or diking authority that the court considers appropriate in the circumstances;

(h) directing the person or diking authority to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(i) requiring the person or diking authority to comply with any other conditions that the court considers appropriate for securing the person's or diking authority's good conduct and for preventing the person or diking authority from repeating the offence or committing other offences under this Act.

(2) If a person or diking authority fails to comply with an order referred to in subsection (1) (h) directing the person or diking authority to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person or diking authority.

(3) If

(a) an order under this section or section 6.2 directs a person or diking authority to pay an amount of money as compensation or for any other purpose, or

(b) the minister incurs publication costs under subsection (2) of this section,

the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

Variation of section 6.1 orders

6.2 (1) An application for variation of an order under section 6.1 may be made to the court that made the order by

(a) the Attorney General, or

(b) the person or diking authority against whom the order under section 6.1 was made.

(2) Before hearing an application under subsection (1), the court may order the applicant to give notice of the application in accordance with the directions of the court.

(3) On an application under subsection (1), if the court considers variation appropriate because of a change in the circumstances, the court may make an order doing one or more of the following:

(a) changing the original order or any conditions specified in it;

(b) relieving the person or diking authority referred to in subsection (1) (b) absolutely or partially from compliance with all or part of the original order;

(c) reducing the period for which the original order is to remain in effect;

(d) extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.

(4) If an application under subsection (1) has been heard by a court, no other application may be made in respect of the order under section 6.1 except with leave of the court.

Repealed

7 [Repealed 2003-72-6.]

Power to make regulations

8 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(a) establishing standards of construction, operation and maintenance in respect to the matters described in section 2, including but not limited to adopting any standard devised by any other body;

(b) prescribing trust funds to which a payment under section 6.1 (1) (e) may be made, if those trust funds include as a purpose or objective

(i) the promotion of proper dike construction, maintenance or operation,

(ii) the protection or restoration of the environment from or as a result of flooding,

(iii) the protection of persons or property from flooding, or

(iv) a purpose similar to the trust purposes within the meaning of section 118 of the *Wildlife Act*.

(3) A regulation under subsection (2) (a) may make different provisions for

(a) different classes of dikes,

(b) different diking authorities, or

(c) different classes of persons or diking authorities.

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