



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

PUBLIC WORKS ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to May 6, 2022. It is intended for information and reference purposes only.

This document is ***not*** the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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PUBLIC WORKS ACT

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PUBLIC WORKS ACT

CHAPTER P-34

1. Definitions

In this Act, unless the context otherwise requires

- (a) “**Minister**” means the Minister of Transportation and Infrastructure of the province;
- (b) “**public work**” or “**public works**” includes all public buildings and all other property belonging to the province, or acquired, constructed, extended, enlarged, repaired or improved at the expense of the province, or for the acquisition, construction, repairing, extending, enlarging or improving of which any public money is expended, and every work required for any such purpose. *R.S.P.E.I. 1974, Cap. P-32, s.1; 1976, c.24, s.1; 1980, c.2, s.3; 1983, c.1, s.6; 2010, c.31, s.3; 2015, c.28, s.3; 2021, c.8, s.3.*

2. Administration of Act

The Minister shall have the general supervision and control of all public works and all work done and moneys expended by the province in making or repairing the same. *R.S.P.E.I. 1974, Cap. P-32, s.2.*

3. Care of buildings and land

The Minister shall have the care and management of all buildings belonging to the Crown in right of the province, and of the lands annexed thereto, or used in connection therewith, and he may appoint a person to look after such lands and buildings, or any of them, and that person shall, during his continuance in office, be deemed to be in lawful and exclusive occupation and possession of the lands and buildings for the protection thereof, as agent of the Crown. *R.S.P.E.I. 1974, Cap. P-32, s.3*

4. Repairs to buildings

All repairs, improvements, extensions, additions and alterations made in any provincial buildings shall be made by order of the Minister. *R.S.P.E.I. 1974, Cap. P-32, s.4*

5. Contracts

All contracts made by the Minister shall be made in the name of the Government. *R.S.P.E.I. 1974, Cap. P-32, s.5; 2022, c.62, s.56.*

6. Action in name of Minister

Any action or other proceeding for the enforcement of a contract, for the recovery of damages for a tort or breach of contract or for the trial of any right in respect of property, real or

personal, under the control of the Minister may be instituted by the Minister in his name of office. *R.S.P.E.I. 1974, Cap. P-32, s.6.*

7. Action by Minister

Nothing in section 6 alters, lessens, or impairs any right of the Crown to institute or maintain an action, suit or proceeding by the Department of Justice and Public Safety or otherwise, to prevent, punish or recover damages for any trespass, injury or breach of contract. *R.S.P.E.I. 1974, Cap. P-32, s.7; 1993, c.29, s.4; 1997, c.20, s.3; 2000, c.5, s.3; 2010, s.14, s.3; 2012, c.17, s.2; 2015, c.28, s.3.*

8. Annual report of Minister

The Minister shall make annually a report to the Lieutenant Governor in Council of all public works upon which public money is expended, with a detailed account of the expenditure of the past fiscal year, and the report shall be laid before the Legislative Assembly. *R.S.P.E.I. 1974, Cap. P-32, s.8.*

9. Power of Minister to hold inquiry

The Minister may require the attendance of any person as a witness and examine him under oath touching any matter over which he has control or relating to the expenditure of public money and may require the production of books and papers and if any person, on being tendered his reasonable expenses, neglects or refuses to attend upon the summons of the Minister, or attending neglects or refuses to produce such books, papers or things, or to answer any questions that may be put to him by the Minister, touching any such matter, he is guilty of an offence. *R.S.P.E.I. 1974, Cap. P-32, s.9.*

10. Minister, powers of

The Minister may, by himself, his engineers, agents and workers

- (a) enter upon any land, survey and take levels of the same as he considers necessary for any purpose relative to a public work;
- (b) take possession of any land, streams, waters and water-courses, the expropriation of which is in his judgment necessary for the use, construction, maintenance or repair of a public work, or for obtaining better access thereto;
- (c) enter with workers, vehicles and horses upon any land, and deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood, or other material found on land required for a public work, or for the purpose of digging up, quarrying and carrying away earth, stone, gravel or other material, and cutting down and carrying away trees, bushes, logs, poles and brushwood therefrom, for constructing, maintaining or repairing a public work and make and use all such temporary roads to and from the timber, stones, clay, gravel, sand or gravel pits as are required for the convenient passing to and from the work during its construction and repair;
- (d) enter upon any land for the purpose of making proper drains to carry off the water from a public work, or for keeping the drains in repair;
- (e) alter the course of any river, canal, stream, watercourse, road or street, or raise or sink the level of the same in order to carry them over or under, on the level of, or by the side of, a public works; and
- (f) contract for the purchase of any land or other property necessary for the construction, maintenance and use of a public work, and as to the compensation to be paid for any

damage sustained by reason of anything done under the authority of this Act, or of any other Act respecting public works. *R.S.P.E.I. 1974, Cap. P-32, s.10.*

11. Power to convey to Crown

All persons and corporations, tenants for life, guardians, executors, administrators and trustees, not only for and on behalf of themselves, their heirs and successors, but also for and on behalf of those whom they represent, whether infants, issue unborn, mentally incompetent persons, or other persons, seized, possessed of or interested in any lands, may contract for, sell and convey unto the Government, all or any part thereof which may be required by the Minister for a public work. *R.S.P.E.I. 1974, Cap. P-32, s.11; 2022,c.62,s.56.*

12. Replacement of fences or walls removed to make repairs

When it is necessary in the building, maintaining or repairing of a public work to take down or remove a wall or fence of any owner or occupier of land or premises adjoining the public work, or to construct any back ditches or drains for carrying off water, the wall or fence shall, if so ordered by the Minister, be replaced as soon as the necessity which caused its taking down or removal has ceased; and when replaced, or when the drain or back ditch is completed, the owner or occupier of the land or premises shall maintain the wall or fence, drain or back ditch, to the same extent as he would have been required to do if the wall or fence had never been taken down or removed, or the drain or back ditch had always existed. *R.S.P.E.I. 1974, Cap. P-32, s.12.*

13. Definitions

(1) In this section

- (a) “**acquire**” includes leases and agreements respecting the use of real property;
- (b) “**dispose of**” includes leases and agreements respecting the use of real property.

Exclusive right of Minister to purchase, acquire & dispose of

- (2) Notwithstanding any Act to the contrary, the Minister shall purchase, acquire and dispose of all real property for all Ministers of the Crown, and all departments referred to in the *Public Departments Act* R.S.P.E.I. 1988, Cap. P-29, and the right to do so is an exclusive right of the Minister.

Request for purchase, acquisition or disposal

- (3) Where an Act vests authority in a Minister or a department to purchase, acquire or dispose of real property, and a Minister or a department wishes to purchase, acquire or dispose of real property, that Minister or department, after obtaining any approval required under that Act, shall request the Minister of Transportation and Infrastructure, in writing, to purchase the real property; the request shall set forth the purpose for which the real property is required and any suggestions as to specific or general locations preferred for the purchase or acquisition of the real property.

Purchase, etc. by Minister, when

- (4) The Minister, upon receipt of the notice, shall purchase, acquire, or dispose of the real property; but in purchasing, acquiring or disposing of real property the Minister is not bound by any suggestions of the requesting Minister.

Agreements between Ministers *re* real property

- (5) The Minister shall enter an agreement
- (a) with the requesting Minister, upon acquisition or purchase of the real property requested by the Minister; or
 - (b) where it is considered advisable by Executive Council that Crown land be held for the benefit and use of a Minister or department, with that Minister,

setting forth the uses, rights, obligations and liabilities of both Ministers respecting the real property; the Lieutenant Governor in Council has the final interpretation of agreements entered hereunder, and such interpretations are binding on all persons interested in the agreements.

Inventory of all real property

- (6) The Minister shall establish and maintain an inventory of all real property purchased, acquired or disposed of by the Minister.

Disposal of real property

- (7) Notwithstanding an agreement entered under subsection (5), the Minister may, in accordance with this Act and applicable regulations, dispose of any real property.

Vesting of real property in Minister

- (8) All real property purchased or acquired under this Act after this section comes into force shall be vested in the “Government of Prince Edward Island as represented by the Minister of Transportation and Infrastructure.”

Acquisition of real property

- (8.1) Where real property is purchased or acquired under this Act or is otherwise conveyed to the Government of Prince Edward Island as represented by the Minister of Transportation and Infrastructure, the instrument of conveyance is void and shall not be registered under the *Registry Act* R.S.P.E.I. 1988, Cap. R-10 unless
- (a) the Minister has signed the instrument; or
 - (b) the Minister has acknowledged acceptance of the transfer of the real property in such form as the Minister may determine.

Proclamation

- (9) This section does not apply to Crown corporations or agencies. *R.S.P.E.I. 1974, Cap. P-32, s.13; 1975, c.22, s.1; 1980, c.2, s.3; 1983, c.1, s.6; 1984, c.32, s.8; 1996, c.34, s.1; 1998,c.99,s.1; 2010,c.31,s.3; 2015,c.28,s.3; 2021,c.8,s.3.*

14. Expropriation

When any lands are required for the purpose of any public work, the *Expropriation Act* R.S.P.E.I. 1988, Cap. E-13 regarding expropriation applies with the necessary changes to any expropriation for the purpose of public works under this Act. *R.S.P.E.I. 1974, Cap. P-32, s.14; 1976, c.24, s.2.*

15. Appointment of engineers and other officers

- (1) The Lieutenant Governor in Council may appoint an engineer, and such other officers as may be necessary for the proper conduct of the business of the Department, and may also appoint, from time to time, as many superintendents and other officers as he may consider necessary

for the construction, maintenance, use and repair of public works and buildings; all of whom shall hold office during pleasure.

Prohibition from sharing in contract

- (2) No person appointed under the provisions of subsection (1) shall, directly or indirectly, alone, or with any other person, by himself or by the interposition of any trustee or third party have any share or interest whatsoever in any contract let under this Act. *1956, c.32, s.15*

16. Limitation of liability

Neither the Minister nor any official or employee of the Department of Transportation and Infrastructure is personally liable for any damages occasioned by the performance in good faith of his duty or by his carrying out of orders or instructions received by him from a superior. *R.S.P.E.I. 1974, Cap. P-32, s.16; 1980, c.2, s.3; 1983, c.1, s.6; 2010, c.31, s.3; 2015, c.28, s.3; 2021, c.8, s.3.*

17. Regulations

The Lieutenant Governor in Council may make regulations

- (a) prescribing the duties and functions of all officers or other persons appointed or employed under this Act;
- (b) prescribing the form of returns to be made, the particulars to be set forth therein and the persons by whom and the time when or within which the returns shall be made, and all other such documents, forms and returns as may be considered necessary to give effect to this Act;
- (c) for any purpose whether general or to meet particular cases that may be desirable in order to carry out the object and purposes of this Act, or to give effect to anything for which regulations are contemplated or required by this Act;
- (d) extending or shortening the time for making any report or return required under this Act. *R.S.P.E.I. 1974, Cap. P-32, s.17.*

18. Offences

- (1) Every person who violates this Act or the regulations is guilty of an offence against this Act, whether otherwise so declared or not.

Injunction

- (2) Any act done or commenced contrary to this Act or the regulations may be restrained by injunction in the Supreme Court in an action at the suit of the Minister.

Penalties

- (3) Any person who violates or attempts to violate this Act or the regulations is guilty of an offence, and upon summary conviction is liable
- (a) in the case of a first offence, to a fine not exceeding \$50; and
 - (b) in the case of a second or subsequent offence, a fine not exceeding \$200. *R.S.P.E.I. 1974, Cap. P-32, s.18; 1994, c.58, s.6.*