

2016 Bill 19

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 19

REFORM OF AGENCIES, BOARDS, AND COMMISSIONS COMPENSATION ACT

THE PRESIDENT OF TREASURY BOARD, MINISTER OF FINANCE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 19

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REFORM OF AGENCIES, BOARDS AND COMMISSIONS COMPENSATION ACT

(Assented to , 2016)

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Schedule

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Interpretation

1(1) In this Act,

- (a) “chief executive officer” means the highest ranking executive of a public agency who has primary responsibility for overseeing the day-to-day operations of the public agency;
- (b) “compensation” means any consideration or remuneration, regardless of its nature or form, including, without limitation, salary, retainers, benefits, bonuses, allowances, travelling and living expenses, honorariums and severance pay, paid or payable or provided, directly or indirectly, to or for the benefit of a person who performs duties and functions that entitle the person to be paid;
- (c) “compensation framework” means a compensation framework established by the regulations under section 5;
- (d) “compensation plan” means the provisions, however established, for the determination and administration of a person’s compensation;
- (e) “designated executive” means
 - (i) the chief executive officer of a public agency listed in the Schedule,
 - (ii) any other officer or employee of a public agency listed in the Schedule whose position is designated as an executive position by the regulations, or
 - (iii) a member of a public agency listed in the Schedule whose position is designated as an executive position by the regulations;

- (f) “designated member” means a member whose position is designated by the regulations;
- (g) “directive” means a directive made under this statute;
- (h) “member” means
 - (i) in respect of a public agency that is a corporation, a member of the public agency or of its board, council or other governing body, and
 - (ii) in respect of a public agency that is an unincorporated body, a member of the public agency;
- (i) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (j) “public agency” means a public agency to which the *Alberta Public Agencies Governance Act* applies;
- (k) “this Act” includes the regulations and directives made under this Act.

(2) Despite the definition of “designated executive” in subsection (1)(e), “designated executive” does not include a person represented by a bargaining agent under the *Labour Relations Code* or the *Public Service Employee Relations Act* in respect of the person’s position with the public agency.

(3) The Lieutenant Governor in Council may, by order, amend the Schedule by adding or removing a reference to a public agency or a class of public agency.

Paramountcy

2(1) The provisions of this Act prevail to the extent of any inconsistency or conflict with one or more provisions of any other enactment except the *Freedom of Information and Protection of Privacy Act* and the *Health Information Act*.

(2) Without limiting the generality of subsection (1), any enactment that authorizes

- (a) a public agency, or

- (b) a person or body, including, without limitation, a Minister of the Crown and the Lieutenant Governor in Council, on behalf of the Crown,

to prescribe, set, approve or otherwise fix compensation, by regulation or otherwise, in respect of a designated executive or designated member is subject to this Act.

Crown bound

3 This Act binds the Crown.

Compensation information

4(1) The Minister may issue a directive to a public agency requiring the public agency to provide to the Minister information, including personal information, as the Minister considers appropriate relating to compensation provided to or in respect of its officers, employees and members.

(2) Without restricting the generality of subsection (1), a directive may require a public agency to provide information with respect to

- (a) agreements between the public agency and one or more of its officers, employees or members relating to compensation, and
- (b) compensation policies, plans, guidelines, programs and studies.

(3) Subject to subsection (4) and the regulations, where a public agency has provided information under subsection (1), the Minister and any other person in receipt of the information shall maintain confidentiality in respect of the information.

(4) The Minister may use and disclose information, including personal information, provided under this section as the Minister considers appropriate for the administration of this Act.

Compensation frameworks

5(1) The Lieutenant Governor in Council may make regulations establishing one or more compensation frameworks governing

- (a) public agencies,

- (b) designated executives,
- (c) designated members, and
- (d) the Crown.

(2) Without limiting the generality of subsection (1), regulations under this section may be general or specific in application.

(3) A compensation framework may govern the compensation that may be provided to a designated executive or designated member and, without limitation, may provide for and limit the compensation and elements of that compensation that may be provided to a designated executive or designated member.

Effect of frameworks

6(1) A compensation framework is effective as of the date or dates provided for in the regulations.

(2) Subject to sections 7 and 8,

- (a) where a public agency or the Crown is subject to a compensation framework, the public agency or the Crown, as the case may be, shall comply with the terms of the compensation framework and, without limitation, shall not, with respect to any element of compensation addressed in the framework, provide compensation to a designated executive or designated member to whom the compensation framework applies that is greater than that authorized under the compensation framework;
- (b) a designated executive or designated member to whom a compensation framework applies is not entitled to receive compensation that is greater than the amount authorized under, or that is otherwise inconsistent with, the compensation framework;
- (c) any provision in an agreement between a public agency or the Crown and a designated executive or designated member that authorizes or requires an amount to be paid that is greater than the amount authorized under, or that is otherwise inconsistent with, the applicable compensation framework is void and unenforceable to the extent that it is not in accordance with the compensation framework.

Existing designated executive

7(1) In this section, “relevant date” means, with respect to a designated executive, the date referred to in subsection (2)(a) or (b) that pertains to the designated executive.

(2) Where a person

- (a) is a designated executive on the effective date of an applicable compensation framework, or
- (b) is a designated executive on the date that an existing compensation framework becomes applicable to that designated executive,

and continues in the same position under the same contract, agreement or appointment, the following applies:

- (c) subject to clause (d), the designated executive’s compensation plan that is in effect immediately before the relevant date remains in effect, even if an element of compensation is greater than that authorized under, or is otherwise inconsistent with, the applicable compensation framework;
- (d) any increase in an element of compensation that is provided for in the compensation plan but that has not been implemented on or before the relevant date is not valid or payable to the extent that it is inconsistent with the applicable compensation framework.

(3) Despite subsection (2)(c), on and after the 2nd anniversary of the relevant date, any element of compensation in the compensation plan of a designated executive described in subsection (2) that is greater than that authorized under, or that is otherwise inconsistent with, the applicable compensation framework is not valid or payable to the extent that it is inconsistent with the applicable compensation framework.

(4) If a compensation framework that applies to a designated executive is amended to reduce an element of compensation provided for in the designated executive’s compensation plan that is in effect on the effective date of the amendment and the designated executive continues in the same position under the same contract, agreement or appointment, that amendment does not apply to the designated executive until the 2nd anniversary of the effective date of that amendment, but any increase in an element of

compensation that is provided for in the designated executive's compensation plan that has not been implemented on or before the effective date of that amendment is not valid or payable to the extent that it is inconsistent with the amended compensation framework.

Existing designated member

8(1) In this section, "relevant date" means, with respect to a designated member, the date referred to in subsection (2)(a) or (b) that pertains to the designated member.

(2) Where a person

- (a) is a designated member on the effective date of an applicable compensation framework, or
- (b) is a designated member on the date that an existing compensation framework becomes applicable to that designated member,

and continues in the same position under the same appointment, the following applies:

- (c) subject to clause (d), the designated member's compensation plan that is in effect immediately before the relevant date remains in effect, even if an element of compensation is greater than that authorized under, or is otherwise inconsistent with, the applicable compensation framework;
- (d) any increase in an element of compensation that is provided for in the compensation plan but that has not been implemented on or before the relevant date is not valid or payable to the extent that it is inconsistent with the applicable compensation framework.

(3) Despite subsection (2)(c), after the period of time prescribed by the regulations, any element of compensation in the compensation plan of a designated member described in subsection (2) that is greater than that authorized under, or that is otherwise inconsistent with, the applicable compensation framework is not valid or payable to the extent that it is inconsistent with the compensation framework.

(4) If a compensation framework that applies to a designated member is amended to reduce an element of compensation provided for in the designated member's compensation plan that is in effect on the effective date of the amendment and the designated member continues in the same position under the same appointment, that amendment does not apply to the designated member until after the period of time prescribed by the regulations, but any increase in an element of compensation that is provided for in the designated member's compensation plan that has not been implemented on or before the effective date of that amendment is not valid or payable to the extent that it is inconsistent with the amended compensation framework.

New appointment, change in position or renewal or extension

9 For greater certainty, a person's compensation plan must not provide for compensation greater than that authorized in the applicable compensation framework if

- (a) the person begins a position to which a compensation framework applies after the effective date of that compensation framework, or
- (b) the person's contract, agreement or appointment is extended or renewed effective after the effective date of the applicable compensation framework or, in the case of an existing compensation framework becoming applicable to that person, after the date on which the compensation framework becomes applicable to that person.

Prohibitions

10(1) Neither a public agency nor the Crown shall

- (a) alter the title of a position or carry out any other restructuring,
- (b) amend any compensation plan, or
- (c) renew or extend a contract, agreement or appointment

for the purposes of circumventing any of the parameters or limits set out in this Act or so that a compensation framework will not apply to one or more designated executives or designated members to whom the compensation framework would otherwise apply.

(2) Subsection (1) does not apply if the title alteration or other restructuring, the amendment to the compensation plan or the renewal or extension is carried out solely for a bona fide purpose.

(3) Neither a public agency nor the Crown shall provide new or additional compensation to a designated executive or designated member to offset any compensation not received as a result of this Act.

Compliance reports

11(1) The Minister may issue directives

- (a) requiring public agencies to submit to the Minister reports concerning compliance with compensation frameworks, and
- (b) providing for the information, including personal information, to be contained in those reports.

(2) Each report must include a statement signed by the chief executive officer attesting to whether the public agency has complied with any applicable compensation framework.

Audit

12(1) The Minister may audit or appoint an auditor to audit the records of a public agency to determine whether the public agency is complying with this Act.

(2) A public agency shall

- (a) co-operate fully with the person performing an audit under this section, and
- (b) disclose to the person performing the audit information, including personal information, required for the purpose of determining whether the public agency is complying with this Act.

(3) An auditor appointed under subsection (1) shall submit the results of the audit to the Minister within the time specified by the Minister in the appointment.

Obligation of public agency

13 Every obligation or prohibition of a public agency under this Act is deemed to be an obligation that it is required to comply with under the terms of every agreement or other funding arrangement between the public agency and the Crown or between the public agency and another public agency.

Overpayments by public agency

14(1) Every payment by a public agency or the Crown to a designated executive or designated member in excess of what is authorized under this Act is an overpayment.

(2) An overpayment to which this section applies is a debt due to the public agency that made the overpayment or the Crown, as the case may be, from the designated executive or designated member to whom it was made, and may be recovered by the public agency or the Crown by any remedy or procedure available to it by law to enforce the payment of a debt, including deducting that overpayment from any compensation payable to the designated executive or designated member.

(3) The Minister may give a public agency notice in writing stating that it has been determined that the public agency has made an overpayment and requiring the public agency to pay an amount not exceeding the amount of the overpayment to the Crown in the time period specified in the notice.

(4) If a public agency fails to pay to the Crown the amount specified in the notice under subsection (3) within the time period specified in the notice, the amount is deemed to be a debt due to the Crown.

(5) The Minister may recover the debt due to the Crown created by subsection (4) from the public agency

- (a) by reducing the amount of any future grant or transfer payment from the Crown to the public agency or the amount payable under any other funding arrangement between the Crown and the public agency, or
- (b) by any remedy or procedure available to the Crown by law to enforce the payment of a debt.

(6) A public agency shall endeavour to minimize any impact of the application of this section on its provision of services to the public.

Prohibitions, offences and penalties

15(1) No person who is required under this Act to provide a report or statement shall

- (a) fail to provide a report or statement, or
- (b) make a false report or statement.

(2) No person shall interfere or attempt to interfere with a person performing an audit under section 12 in the performance of the audit.

(3) No person shall authorize the provision of compensation to a designated executive or designated member that is inconsistent with this Act.

(4) Every person, other than a person referred to in subsection (5), who contravenes subsection (1) or (2) is guilty of an offence and liable

- (a) in the case of an individual, to a fine not exceeding \$5000, or
- (b) in the case of a corporation, to a fine not exceeding \$25 000.

(5) Every person who wilfully contravenes subsection (1), (2) or (3) is guilty of an offence and liable

- (a) in the case of an individual, to a fine not exceeding \$10 000, or
- (b) in the case of a corporation, to a fine not exceeding \$50 000.

Due diligence defence

16 No person shall be convicted of an offence referred to in section 15(4) if that person establishes on a balance of probabilities that the person took all reasonable steps to prevent its commission.

Rights preserved

17 Nothing in this Act prevents the Minister of Justice and Solicitor General from bringing an application or commencing

proceedings to require a public agency to comply with this Act, or from commencing a prosecution under section 15.

No constructive dismissal or breach of contract

18 Neither the enactment or application of this Act nor changes to the compensation that is payable to a designated executive or designated member as a result of this Act shall be considered constructive dismissal or breach of contract.

No cause of action

19(1) No cause of action or proceeding, either in law or in equity, lies or shall be commenced against the Crown or any of its ministers, agents, appointees or employees or against a public agency or any of its officers, employees or members

- (a) as a direct or indirect result of the enacting, amending or repealing of any provision of this Act, or
- (b) as a direct or indirect result of anything done or omitted to be done in order to comply with this Act, including any denial or reduction of compensation that would otherwise have been payable to any person.

(2) Without limiting the generality of subsection (1), that subsection applies to an action or proceeding in contract, restitution, tort, trust, fiduciary obligation or otherwise claiming any remedy or relief, including

- (a) specific performance, injunction or declaratory relief, and
- (b) any form of damages or a claim to be compensated for any losses, including loss of earnings, loss of revenue or loss of profit.

No entitlement to compensation

20 Despite any other Act or law, no person is entitled to be compensated for any loss or damages, including loss of expected earnings or denial or reduction of compensation that would otherwise have been payable to any person, arising from the enactment or application of this Act or anything done in accordance with this Act.

No deemed employment relationship

21 Nothing in this Act makes a person an employee of the Crown who is not otherwise an employee of the Crown.

Directives

22(1) Every public agency to which a directive under this statute applies shall comply with it.

(2) A directive may be general or particular in its application.

(3) A directive may provide for the form and manner in which it is to be complied with and the time within which it is to be complied with.

(4) The *Regulations Act* does not apply with respect to directives.

Regulations

23 The Lieutenant Governor in Council may make regulations

- (a) designating positions in public agencies listed in the Schedule as executive positions for the purposes of section 1(1)(e)(ii);
- (b) designating the positions of members of public agencies listed in the Schedule as executive positions for the purposes of section 1(1)(e)(iii);
- (c) designating the positions of members for the purposes of section 1(1)(f);
- (d) providing for the exemption of a person or a class of persons from the application of a compensation framework or for the modification of a compensation framework in respect of a person or class of persons;
- (e) respecting the collection, use and disclosure of information, including personal information;
- (f) prescribing a period of time for the purposes of section 8(3) and (4);
- (g) defining, for the purposes of this Act, any word or expression used but not defined in this statute.

Amends SA 2009 cA-31.5

24 The *Alberta Public Agencies Governance Act* is amended in section 2(1) by striking out “and the *Health Information Act*” and substituting “, the *Health Information Act* and the *Reform of Agencies, Board and Commissions Compensation Act*”.

Amendment

25(1) This section applies only if Bill 11, the *Alberta Research and Innovation Amendment Act, 2016*, introduced on May 2, 2016, receives Royal Assent.

(2) On the later of the day that this statute comes into force and the day that section 6 of Bill 11 comes into force, the Schedule to this statute is amended by striking out

Alberta Innovates — Bio Solutions
Alberta Innovates — Energy and Environment Solutions
Alberta Innovates — Health Solutions
Alberta Innovates — Technology Futures

and substituting

Alberta Innovates

Schedule

Public Agencies

Agriculture Financial Services Corporation
Alberta Energy Regulator
Alberta Enterprise Corporation
Alberta Gaming and Liquor Commission
Alberta Health Services
Alberta Human Rights Commission
Alberta Innovates — Bio Solutions
Alberta Innovates — Energy and Environment Solutions
Alberta Innovates — Health Solutions
Alberta Innovates — Technology Futures
Alberta Investment Management Corporation
Alberta Local Authorities Pension Plan Corporation
Alberta Pensions Services Corporation
Alberta Petroleum Marketing Commission
Alberta Securities Commission
Alberta Treasury Branches

Explanatory Notes

24 Amends chapter A-31.5 of the Statutes of Alberta, 2009.
Section 2(1) presently reads:

2(1) Except where this Act or the regulations provide otherwise, the provisions of this Act and the regulations under this Act prevail to the extent of any inconsistency or conflict with one or more provisions of any other enactment except the Freedom of Information and Protection of Privacy Act and the Health Information Act.

Alberta Utilities Commission
Appeals Commission under the Workers' Compensation Act
Balancing Pool
Credit Union Deposit Guarantee Corporation
Health Quality Council of Alberta
Independent System Operator
Labour Relations Board
Land Compensation Board
Market Surveillance Administrator
Natural Resources Conservation Board
Surface Rights Board
Teachers' Pension Plans Board of Trustees
Travel Alberta
The Workers' Compensation Board

