

# Guide to Bill 38

## *The Building and Electrical Permitting Improvement Act*

### Part A - Introduction

On October 14, 2020, the Government of Manitoba introduced Bill 38, *The Building and Electrical Permitting Improvement Act* to the Manitoba Legislative Assembly.

Bill 38 and the previous Bill 48 deliver on Manitoba's commitment to modernize planning and permitting processes and reduce red tape on development, while balancing the public interest. These changes will improve efficiency, transparency and accountability of planning and permitting, while also enhancing opportunities for economic growth in across the province.

Through improved collaboration and coordination of planning, permitting and development, Bill 38 and the previous Bill 48 will help build a solid foundation for ongoing economic success and position Manitoba to encourage investment and compete on a global scale.

This guide is intended for primary stakeholders – municipalities and planning districts. It provides an overview and explanation of key changes to permitting processes introduced by Bill 38. The guide will also be useful to the general public, the development community and others with an interest in land use planning and permitting. Additional information on the Bill, including Fact Sheets and FAQs, are posted on the Department's website in the Quick Links section at <https://www.gov.mb.ca/mr/index.html>.

### Part B - Scope and Application

#### 1. Overview of the Newly Enacted Permit Dispute Resolution Act, Changes to The Buildings and Mobile Homes Act and The Manitoba Hydro Act.

*The Permit Dispute Resolution Act (NEW LEGISLATION)*: Bill 38 establishes a new Permit Dispute Resolution Act. This law establishes the framework which allows for an adjudicator to be appointed to hear appeals to technical matters for permit refusals and orders/decisions issued under the authority of other cross referenced legislation (see below). It also allows for this adjudicator to make determinations if timelines that are adopted by regulation under these other Manitoba laws were adhered to. See Part C for more information.

*The Buildings and Mobile Homes Act*: Bill 38 amends The Buildings and Mobile Homes Act to cross reference the newly established Permit Dispute Resolution Act and allow for appeals of permitting decisions or orders, directions or requirements imposed by an approving authority (the authority that enforces the relevant code) on technical code interpretation matters. The Act also allows for the establishment of performance standard timelines to be established by regulation (these have not yet been developed and are not yet in effect); an adjudicator under The Permit Dispute Resolution Act will resolve disputes on technical matters and make determinations on compliance with timeframes adopted by regulation. Bill 38 also addresses timely adoption of building codes, establishes a new Director under the Act and allows for the removal of mobile home requirements from the Act. Please see Part D for more information.

*The Manitoba Hydro Act:* Similar to The Buildings and Mobile Homes Act, Bill 38 amends The Manitoba Hydro Act to cross reference the Permit Dispute Resolution Act to allow for appeals of electrical permitting decisions, orders, directions or requirements imposed by an approving authority, as well as determinations of timelines to be adopted by regulation. It will also create one Manitoba Electrical Code that will be adopted province-wide once regulations have been developed. Currently, the Manitoba Electrical Code doesn't apply within Winnipeg as the City of Winnipeg adopts and enforces their own code. Bill 38 will require the City of Winnipeg to enforce the Manitoba Electrical Code adopted under The Manitoba Hydro Act once these sections come into force. See Part E for more information.

**2. Post-legislation Regulation:** Bill 38 provides for various regulation making powers (see Appendix A).

For example, regulations are needed to specify requirements such as:

- Application requirements for an appeal hearing;
- Timeframes within which an adjudicator must hold a hearing or issue their decision with reasons;
- Method of determining costs of a hearing;
- Timeframes within which an approving authority must assess an application as complete, process an application/issue a permit or written denial of permit, or conduct a required inspection;
- When prescribed timelines do not apply or are suspended; and,
- Manitoba Electrical Code changes.

Once the legislation is adopted, the Province will engage stakeholders in regulation changes needed to fully implement the changes in Bill 38. Additionally, as the proposed regulations become available they will be posted on the Government of Manitoba's Regulatory Consultation Portal to solicit feedback and comments from the public. Once the regulations are developed they will be brought into force along with the legislative changes which will be proclaimed at the same time.

## Part C – Permit Dispute Resolution Act

### Application and scope

- 3. Scope of Appeals:** The Permit Dispute Resolution Act is intended to provide an appropriate dispute resolution mechanism for technical matters related to codes adopted under the cross referenced legislation: namely, the Manitoba Building Codes (Building, Plumbing and Energy for Buildings), under The Buildings and Mobile Homes Act; and, The Manitoba Electrical Code, adopted under The Manitoba Hydro Act. Appeals within this scope include permit refusals, conditions of permit, revocations of permits as well as any orders or requirements imposed by the permitting authority. Non-code related matters, such as requirements related to planning and zoning cannot be resolved by an adjudicator appointed under The Permit Dispute Resolution Act.
- 4. Approving Authorities:** The Permit Dispute Resolution Act uses the term “approving authority” to refer to the administrative body enforcing the relevant code within their jurisdiction (often referred to as the “authority having jurisdiction”). For building codes, this would either be the Building Code Unit of Manitoba Municipal Relations, a municipality, or a planning district. For the Electrical Code, this would be the City of Winnipeg or Manitoba Hydro. Once regulatory changes have been made and sections of The Manitoba Hydro Act have been brought into force, then the City of Winnipeg will be brought into scope of the Permit Dispute Resolution Act as an approving authority for the Manitoba Electrical Code. Essentially, all technical code requirements and decisions of approving authorities may be subject to review by a technical adjudicator under The Permit Dispute Resolution Act.

5. **Permits and Inspection Timeframes:** The Buildings and Mobile Homes Act and Manitoba Hydro Act will have timelines established in regulations within which an approving authority must issue permits, or refuse the permit with written reasons. Written reasons are required because permit refusals can be appealed to an adjudicator under The Permit Dispute Resolution Act; the adjudicator will address the permit refusal reasons directly, rather than do a full application/plan review to determine compliance with the relevant code. The regulations under The Buildings and Mobile Homes Act and The Manitoba Hydro Act will also have mandatory timeframes within which the approving authority must make a required inspection after receiving notification to inspect. The adjudicator can make a determination on whether or not the mandatory timeframes were adhered to.
6. **Replacement of Council and Ministerial Appeals:** The Permit Dispute Resolution Act is intended to replace appeals to municipal councils, where political decision makers are involved in reviews of decisions made by technical experts. Provisions under The Buildings and Mobile Homes Act which allowed for ministerial review of municipal permitting decisions or requirements, as well as the ability for the minister to hold hearings on permitting decisions or requirements are also eliminated by Bill 38.
7. **Internal Appeals/Review and Adjudication:** While council appeals on technical code matters are no longer permitted, approving authorities may still have internal review mechanisms, such as through a manager or director of a permitting department, or through a body composed of technical experts, so long as no municipal councillors are involved in decision making. Provincial building permitting decisions where Manitoba Municipal Relations is the permitting authority may be reviewed by the Director appointed under The Buildings and Mobile Homes Act. These reviewed decisions are appealable to an adjudicator.

## Adjudicators

8. **Appointment, Qualifications and Selection:** Under The Permit Dispute Resolution Act, the Minister responsible for the Act appoints adjudicators and a roster of qualified adjudicators will be appointed with input from stakeholders. Adjudicators are to be technical experts on the codes that they are adjudicating on: for building code decisions, this will likely include extensively experienced engineers, architects and building officials; for electrical code decisions, this would likely include extensively experienced electrical engineers and licenced electricians.

Once an application for adjudication has been received, an appropriately qualified adjudicator with the relevant expertise is selected from the roster to adjudicate on the request. An adjudicator may not be selected where there is a reasonable apprehension of bias or interest in relation to the matter in dispute.

## Hearings and Orders

9. **Holding Hearings:** Once an adjudicator has been appointed, they will hold a hearing so that parties can present evidence and make submissions. Subject to the regulations that are yet to be developed, the adjudicator may determine the procedures of a dispute resolution hearing and may include oral and written presentations and the use of technology to accommodate distance participation. The adjudicator will give the parties a written Notice of Hearing, specifying the manner in which the hearing is to be conducted, and procedural requirements respecting the hearing. The adjudicator may seek independent technical advice, provided that the advice is presented to parties so that they may respond to the adjudicator in relation to that advice.
10. **Adjudicator's Orders:** After a dispute resolution hearing, the adjudicator must issue an order that:
  - a) Confirms, varies or sets aside the decision, order, direction or requirement in question; or

- b) In the case of a dispute respecting compliance with a performance standard, determines whether the applicable service standard was met.

If the adjudicator determines that the performance standard was not met, the adjudicator may order the approving authority to make a decision respecting the application for the permit or conduct an inspection by a specified date. The adjudicator must provide the parties with written reasons for the order and the minister must ensure that all orders and written reasons by the adjudicator are available to the public. The adjudicator's order is binding on parties and the matter in dispute is not subject to an appeal or review by the approving authority.

## Costs

- 11. Calculating Costs:** The costs of the hearing will be calculated by the adjudicator in accordance with the regulations, which are yet to be developed.
- 12. Assigning Costs:** The adjudicator's order will specify the portion of the costs of the dispute resolution hearing to be paid by each party. The adjudicator will factor in the outcome of the dispute, "who was in the right", the conduct of each party, and any other factor the adjudicator considers relevant. The adjudicator has complete discretion to determine the allocation of costs. The parties must pay costs directly to the adjudicator within 30 days of the order being issued.

## Part D – Buildings and Mobile Homes Act Amendments

### Service Standards

- 13. Proposed New Service Standards:** Bill 38 changes The Buildings and Mobile Homes Act to allow for the addition of service standard timelines in the regulations. There are three types of activity for which timelines can be prescribed: timelines to assess an application as complete or incomplete; timelines within which a permit must be issued or refused (with written reasons); and, timelines within which an inspection required by the approving authority is to be carried out after receiving notification from the client. The timelines will be set out in regulation and have yet to be determined. Government will be consulting with industry and approving authorities in the coming months to determine appropriate timelines for decisions on permit applications and to conduct associated inspections.
- 14. Possible Exclusions:** While timelines are being developed for regulations, consideration of exclusions may be given for buildings which may be excluded from prescribed service standards, considering such circumstances as inspections for remotely located buildings, exceptionally complex buildings, or situations where a client has requested an approving authority "stop the clock" to accommodate the project.

### Building Code Adoption

- 15. Adoption of Future Editions of National Model Codes:** Bill 38 amends The Buildings and Mobile Homes Act to ensure that future editions of adopted codes, including the National Model Building, Plumbing and Energy Code for Buildings are adopted by default on a timeframe that coincides with proposed adoption timelines under a Regulatory Reconciliation and Cooperation Table (RCT) agreement under The Canada Free Trade Agreement. These fixed timelines require that Manitoba adopt the 2020 edition of the national codes within 24 months, and any subsequent editions within 18 months. The Manitoba government is still free to adopt the codes before those timeframes, but these amendments are intended to act as a binding commitment to adopt future codes in a timely manner.

**16. Information on 2015 Edition of Codes:** These changes do not affect the current Manitoba Building Code, which adopts the 2010 edition of the National Model Codes with Manitoba-specific amendments. In December 2019, the Manitoba government published its commitment to adopt the 2015 National Model Codes with minimal amendments as a proactive step to implementing the anticipated RCT agreement. That scope of work falls under a separate regulatory project.

### Mobile Homes Changes

**17. Removal of Mobile Homes References:** Bill 38 amends The Buildings and Mobile Homes Act to remove references to “mobile homes”. This is to facilitate moving recreational vehicle requirements to more appropriate legislation while leaving requirements for manufactured homes and buildings under the Manitoba Building Code. Once these provisions are proclaimed, The Buildings and Mobile Homes Act will be retitled “The Buildings Act”.

### Administrative Changes

**18. New Position of Director:** Bill 38 establishes a role for a new Director Position under The Buildings and Mobile Homes Act to transfer administrative responsibilities from the Minister to an appropriate administrative position. In practice, it is Manitoba Civil Service employees who issue permits on behalf of the Minister, so this change formalizes current practice and places this responsibility under the Director. The Director may also review permitting decisions and requirements imposed by provincial building inspectors to avoid unnecessary appeals to an adjudicator. However, if a client is dissatisfied by the decision of the Director upon such a review, they are still free to pursue an appeal to an adjudicator. The Director will also be able to approve municipalities to inspect large/complex buildings based on criteria set out in regulation rather than the Fire Commissioner, to better reflect departmental restructuring.

## Part E – Manitoba Hydro Act Amendments

### Service Standards

**19. Proposed New Service Standards:** Bill 38 changes The Manitoba Hydro Act to allow for the addition of service standard timelines in the regulations. As with the changes to The Buildings and Mobile Homes Act, there are three types of activity for which timelines can be prescribed: timelines to assess an application as complete or incomplete; timelines within which a permit must be issued or refused (with written reasons); and, timelines within which an inspection required by the approving authority is to be carried out after receiving notification from the client. The timelines will be set out in regulation and have yet to be determined. Government will be consulting with industry and approving authorities in the coming months to determine appropriate timelines for decisions on permit applications and to conduct associated inspections.

**20. Possible Exclusions:** While timelines are being developed for regulations, consideration of exclusions may be given for installations which may be excluded from prescribed service standards, considering such circumstances as inspections for remotely located buildings, exceptionally complex installations, or situations where a client has requested an approving authority “stop the clock” to accommodate the project.

## Electrical Code

**21. Adoption of One Manitoba Electrical Code:** Bill 38 amends the Manitoba Hydro Act to enable the adoption of one Manitoba Electrical Code across the province. Currently, the City of Winnipeg is excluded from the jurisdiction of the Manitoba Electrical Code under The Manitoba Hydro Act. Legislative changes will allow for the Manitoba Electrical Code to be adopted province-wide, but enforced by the City of Winnipeg within their boundaries. This will require a coordinated effort between the City and Manitoba Hydro to harmonize jurisdictional amendments to the Canadian Electrical Code. These changes will come into force upon proclamation once this scope of work is completed and both parties are ready to implement changes.

## **Appendix A:**

# **List of Regulatory Making Authorities Created under Bill 38**

### **Permitting Dispute Resolution Act:**

- 5(1) An application for a dispute resolution hearing must be made in writing to the Minister in accordance with the regulations.
- 6(2) The adjudicator must hold a dispute resolution hearing within a period prescribed by regulation after the application for the hearing was made.
- 6(3) Subject to the regulations, the adjudicator may determine the procedure at a dispute resolution hearing.
- 9(4) The adjudicator must issue their order and written reasons within the period prescribed by regulation after the conclusion of the dispute resolution hearing.
- 10(1) The cost of a dispute resolution hearing is to be determined in a accordance with the regulations.
- 16 The Minister may also make regulations:
  - defining terms not defined under the Act, and
  - any other matter the minister considers necessary to carry out the purposes of the Act.

### **Buildings and Mobile Homes Act:**

- 14.1(1) When an application for a building permit or occupancy permit is submitted, an approving authority must notify the applicant within the time period specified in the regulations and advise whether the application is complete.
- 14.2(1) Except in circumstances specified by regulation, an approving authority must make a decision on an application for a building permit or occupancy permit within the time period specified in the regulations after a complete application has been submitted.
- 14.3(2) Except in circumstances specified by regulation, when notice under subsection (1) has been provided, the approving authority must conduct an inspection within the time period specified in the regulations.
- 14.4(1) The Lieutenant Governor in Council (LGIC) may also make regulations:
  - specifying circumstances when time periods are suspended, and
  - specifying circumstances prescribed time periods do not apply.
- 14.4(2) Regulations may establish different time periods based on
  - the geographic area where the work is to be performed;
  - the size or complexity of the work to be performed; or
  - other factors LGIC considers appropriate.

### **The Manitoba Hydro Act:**

- 28(1) The LGIC may make regulations establishing standards for the construction, installation, maintenance, repair, extension, alteration and use of electric wiring and related facilities that are, or are intended to be, connected to the corporation's electric grid in Manitoba.

- 28(2) A regulation under subsection (1) may adopt by reference, in whole or in part, any code, rule or standard prepared and published by the Canadian Standards Association or a similar association, and may adopt it as amended from time to time subject to any changes that the LGIC considers necessary or advisable.
- 28.2(1) When an application for an electrical permit is submitted, the corporation or the City of Winnipeg must notify the applicant within the time period specified in the regulations and advise whether the application is complete.
- 28.3(1) Except in circumstances specified by regulation, the corporation or the City of Winnipeg must make a decision on an application for an electrical permit within the time period specified in the regulations after a complete application has been submitted.
- 28.4(2) Except in circumstances specified by regulation, when notice under subsection (1) has been provided, the corporation or the City of Winnipeg must conduct an inspection within the time period specified in the regulations.
- 28.5(1) LGIC may also make regulations:
  - specifying circumstances when time periods are suspended, and
  - specifying circumstances prescribed time periods do not apply.
- 28.5(2) Regulations may establish different time periods based on
  - the geographic area where the work is to be performed;
  - the size or complexity of the work to be performed; or
  - other factors LGIC considers appropriate.