

Guide The Building and Electrical Permitting Improvement Act

Part A: Introduction

Introduction

On May 20, 2021, The Building and Electrical Permitting Improvement Act received Royal Assent. The Building and Electrical Permitting Improvement Act enacts a new Act (The Permit Dispute Resolution Act – Schedule A) and amends two other Acts (The Buildings Act – Schedule B and The Manitoba Hydro Act – Schedule C).

The Building and Electrical Permitting Improvement Act delivers on Manitoba’s commitment to modernize permitting processes and to reduce red tape associated with development activity, while balancing the public interest. These changes will improve efficiency, transparency and accountability of building permitting processes, while also enhancing opportunities for economic growth across the province.

Through improved coordination of building permitting, The Building and Electrical Permitting Improvement Act 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 The Building and Electrical Permitting Improvement Act. This guide is also useful for the general public, the development community and others with an interest in permitting. Additional information on The Building and Electrical Permitting Improvement Act, including a fact sheet and FAQ, are posted on Labour and Immigration’s website.

Part B: The Permit Dispute Resolution Act (Schedule A)

The Permit Dispute Resolution Act (NEW LEGISLATION):

The Building and Electrical Permitting Improvement Act establishes the new Permit Dispute Resolution Act. The Permit Dispute Resolution Act creates the framework that allows for an adjudicator to be appointed to hear appeals, conduct hearings, resolve disputes and make binding orders respecting decisions made by provincial or municipal officials about the technical requirements of building and electrical standards, complaints that inspections and decisions on permit applications were not conducted or made in a timely manner, which party was at fault in a permit dispute and the proportion of the adjudicator’s fees that should be charged directly to each party.

Sections of The Permit Dispute Resolution Act that relate to electric permitting disputes and electrical permitting performance standards are anticipated to be proclaimed along with the changes to The Manitoba Hydro Act in 2024.

Application and scope:

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 cross-referenced legislation, namely the Manitoba construction codes (Building, Plumbing and Energy for Buildings), under The Buildings 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 approving 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.

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” or “permitting authority”). For building codes, this would either be the Building Code Unit of Inspection and Technical Services, a municipality or a planning district.

Permits and Inspection Timeframes:

The Buildings Act now has timeframes established in the Performance Standards Regulation within which a permitting 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 Performance Standards Regulation has mandatory timeframes within which the approving authority must make a required inspection after receiving notification to inspect. The adjudicator will be able to make a determination on whether or not the mandatory timeframes were adhered to.

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 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 The Building and Electrical Permitting Improvement Act.

Internal Appeals/Review and Adjudication:

While council appeals on technical code matters are no longer permitted, permitting 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 councilors are involved in decision making. Provincial building permitting decisions where Inspection and Technical Services is the approving authority, may be reviewed by the Director appointed under The Buildings Act. These reviewed decisions are appealable to an adjudicator.

Adjudicators:

Appointment, Qualifications and Selection: Under The Permit Dispute Resolution Act, the Minister responsible for the Act will develop a roster of qualified adjudicators. Adjudicators are to be technical experts on the codes that they are adjudicating on. Once an application for adjudication has been received, an appropriately qualified adjudicator with the relevant expertise is selected by the Minister 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:

Holding Hearings: Once an adjudicator has been appointed, the adjudicator will hold a

hearing where parties can present evidence and make submissions. The adjudicator will 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.

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 permitting 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 and the matter in dispute is not subject to an appeal or review by the approving authority.

Costs:

The costs of the hearing will be calculated by the adjudicator in accordance the Permit Dispute Resolution Regulation – see Part C.

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, 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 C: The Permit Dispute Resolution Regulation

The Permit Dispute Resolution Regulation (NEW LEGISLATION):

The Permit Dispute Resolution Regulation lays out the processes that apply to permit dispute resolution hearings, the timeframes for which a hearing must be held by an adjudicator – depending on the nature of the dispute – and the costs associated with the adjudication process. The adjudicator will bill parties directly for their services.

Dispute Resolution Hearing:

An adjudicator must hold a dispute resolution hearing for a hearing initiated under the provision of The Permit Dispute Resolution Act as indicated in Column 1 within the time period as indicated in Column 2:

COLUMN 1 Provision	COLUMN 2 Time Period
Hearing: Technical requirements of building standards	30 days
Hearing: Failure to meet performance standard for building standards	15 days
Hearing: Orders for building standards	30 days

It is anticipated that timeframes associated with decisions on matters related to electrical permitting and disputes involving electrical permitting performance standards will be added to the Permit Dispute Resolution Regulation in 2024.

Deadline to Issue an Order:

An adjudicator must issue their order and written reasons within 15 days after the conclusion of the dispute resolution hearing.

Cost of the Hearing:

The cost for a dispute resolution hearing is \$450 for a hearing up to two hours in length, plus \$112.50 for each additional half-hour, up to a maximum of \$2,250 per hearing.

Part D: The Buildings Act (Schedule B)

The Buildings Act:

The Building and Electrical Permitting Improvement Act amends The Buildings 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 permitting authority on technical code interpretation matters. The Building and Electrical Permitting Improvement Act also allows for performance standards to be established by regulation; an adjudicator under The Permit Dispute Resolution Act will resolve disputes on technical matters and make determinations on compliance with the timeframes in the Performance Standards Regulation. The Building and Electrical Permitting Improvement Act also addresses the timely adoption of building codes and establishes a Director under the Act.

Performance Standards:

The Building and Electrical Permitting Improvement Act changes The Buildings Act to allow for the addition of performance standards (timeframes) in the regulations. There are three types of activities for which these performance standards can be prescribed: timeframes to assess an application as complete or incomplete; timeframes within which a permit must be issued or refused (with written reasons); and, timeframes within which an inspection required by the approving authority is to be carried out after receiving notification from the client. These timeframes are set out in the Performance Standards Regulation – see Part E.

Building Code Adoption:

The Building and Electrical Permitting Improvement Act amends The Buildings Act to ensure that future editions of adopted codes, including the National Model Building, Plumbing and Energy Code for Buildings, are adopted by default based on a timeframe that coincide those in the Regulatory Reconciliation and Cooperation Table (RCT) agreement on Construction Codes under The Canada Free Trade Agreement. This fixed timeframe requires that Manitoba adopt the national model codes within 18 months following publication. The Manitoba government is still free to adopt the

national model codes before this period; however, this change will act as a binding commitment to adopt future code versions in a timely manner.

Position of Director:

The Building and Electrical Permitting Improvement Act establishes a role for a new Director position under The Buildings 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. This change formalizes the 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 following such a review, the client is still free to pursue an appeal through an adjudicator. The Director will also be able to approve municipalities to inspect large or complex buildings based on criteria set out in regulation rather than the Fire Commissioner to better reflect departmental restructuring.

Part E: The Performance Standards Regulation

The Performance Standards Regulation (NEW LEGISLATION):

The Performance Standards Regulation lays out the timeframes for which a permitting authority must notify the applicant if their application for a building or occupancy permit is complete, whether the application is approved and, at the request of the applicant, conduct an inspection.

The Performance Standards Regulation outlines a phased implementation approach to assist permitting authorities in meeting these new requirements and will allow them to make the operational changes required to meet more aggressive performance standards, to be phased in after one year.

The performance standards in the Performance Standards Regulation are as follows:

Performance Standard Category	Class of Building	Phase 1 (March 1, 2024- February 28, 2025)	Phase 2 (March 1, 2025 and onward)
Timeframe for which a permitting authority must notify the applicant if their application for a building permit is complete.	All applications	5 business days	2 business days
Timeframe for which a permitting authority must notify the applicant if their application for a building permit is approved.	Detached and semi-detached houses, townhouses or row houses where no dwelling unit is located above another dwelling unit and associated	25 business days	10 business days

	accessory structures		
	Part 9 buildings other than those listed in the row above	25 business days	15 business days
	Part 3 buildings	30 business days	30 business days
Timeframe for which a permitting authority must, at the request of the applicant, conduct an inspection.	Residential	6 business days	2 business days
	Commercial	4 business days	2 business days
Timeframe for which a permitting authority must notify the applicant if their application for an occupancy permit is approved.	All applications	10 business days	10 business days

Exclusions:

The timeframes included in the above table may be extended by an agreement, in writing, between the applicant and the approving authority.

The timeframes for an approving authority to conduct an inspection do not apply if the building is located more than 200 kilometres from the office of the approving authority, if the applicant has requested that inspections of the building occur outside of the approving authority's business hours or if the applicant has requested that the inspection of the building occur at a later date.