

BILL

No. 5

An Act respecting Essential Public Services

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(Assented to)

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

PART I

Short Title, Interpretation and Application

Short title

1 This Act may be cited as *The Public Service Essential Services Act*.

Interpretation

2 In this Act:

(a) “**board**” means the Labour Relations Board;

(b) “**employee**” means an employee of a public employer who is represented by a trade union;

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- (c) **“essential services”** means:
- (i) with respect to services provided by a public employer other than the Government of Saskatchewan, services that are necessary to enable a public employer to prevent:
 - (A) danger to life, health or safety;
 - (B) the destruction or serious deterioration of machinery, equipment or premises;
 - (C) serious environmental damage; or
 - (D) disruption of any of the courts of Saskatchewan; and
 - (ii) with respect to services provided by the Government of Saskatchewan, services that:
 - (A) meet the criteria set out in subclause (i); and
 - (B) are prescribed;
- (d) **“essential services agreement”** means an agreement concluded pursuant to section 6;
- (e) **“essential services employee”** means an employee who, during a work stoppage, is required to provide essential services in accordance with:
- (i) an essential services agreement; or
 - (ii) a notice given by a public employer pursuant to section 9 or 12;
- (f) **“last collective bargaining agreement”** means the collective bargaining agreement last in effect between a public employer and a trade union before a work stoppage;
- (g) **“minister”** means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (h) **“prescribed”** means prescribed in the regulations;
- (i) **“public employer”** means:
- (i) the Government of Saskatchewan;
 - (ii) a Crown corporation as defined in *The Crown Corporations Act, 1993*;
 - (iii) a regional health authority as defined in *The Regional Health Services Act*;
 - (iv) an affiliate as defined in *The Regional Health Services Act*;
 - (v) the Saskatchewan Cancer Agency continued pursuant to *The Cancer Agency Act*;
 - (vi) the University of Regina;
 - (vii) the University of Saskatchewan;
 - (viii) the Saskatchewan Institute of Applied Science and Technology;

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- (ix) a municipality;
- (x) a board as defined in *The Police Act, 1990*;
- (xi) any other person, agency or body, or class of persons, agencies or bodies, that:
 - (A) provides an essential service to the public; and
 - (B) is prescribed;
- (j) “**trade union**” means a trade union representing employees of a public employer;
- (k) “**work stoppage**” means a lock-out or strike within the meaning of *The Trade Union Act*.

Application of Act

3 This Act applies to every public employer, every trade union and every employee.

Act to prevail

4 This Act is to prevail if there is any conflict between this Act and:

- (a) any other Act or law; or
- (b) any collective bargaining agreement, arbitral or other award or decision or any obligation, right, claim, agreement or arrangement of any kind.

Crown bound

5 The Crown in right of Saskatchewan is bound by this Act.

PART II

Essential Services Agreements

Negotiations for essential services agreement required

6(1) If a public employer and a trade union do not have an essential services agreement that is in effect, the public employer and the trade union shall begin negotiations with a view to concluding an essential services agreement:

- (a) at least 90 days before the expiry of the collective bargaining agreement; or
- (b) as soon as is reasonably possible if:
 - (i) on the day this Act comes into force, there are fewer than 90 days before the expiry of the collective bargaining agreement; or
 - (ii) there is no collective bargaining agreement in effect.

(2) On beginning negotiations pursuant to this section, a public employer other than the Government of Saskatchewan shall advise the trade union of those services of the public employer that the public employer considers as essential services for the purposes of an essential services agreement.

(3) For the purposes of an essential services agreement between the Government of Saskatchewan and a trade union, the prescribed services are the essential services for the purposes of an essential services agreement.

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(4) For the purpose of facilitating the negotiation of an essential services agreement, the public employer may give a notice to the trade union setting out the information the public employer is required to provide pursuant to subsection 9(2) if:

- (a) either:
 - (i) at any point during the 30-day period before the expiry of the collective bargaining agreement, the public employer and trade union have not concluded an essential services agreement; or
 - (ii) there is no collective bargaining agreement in effect and the public employer and trade union have not concluded an essential services agreement; and
- (b) the public employer considers it appropriate to give the notice.

(5) For the purpose of facilitating the negotiation of an essential services agreement, the public employer shall give, as soon as is reasonably possible, a notice to the trade union setting out the information the public employer is required to provide pursuant to subsection 9(2) if:

- (a) either:
 - (i) at any point during the 30-day period before the expiry of the collective bargaining agreement, the public employer and trade union have not concluded an essential services agreement; or
 - (ii) there is no collective bargaining agreement in effect and the public employer and trade union have not concluded an essential services agreement; and
- (b) the trade union has requested that notice.

(6) Every employee who is covered by an essential services agreement is deemed to be an essential services employee.

Contents of essential services agreement

7(1) An essential services agreement must include the following provisions:

- (a) in the case of an employer other than the Government of Saskatchewan, provisions that identify the essential services that are to be maintained;
- (b) provisions that set out the classifications of employees who must continue to work during the work stoppage to maintain essential services;
- (c) provisions that set out the number of employees in each classification who must work during the work stoppage to maintain essential services;
- (d) provisions that set out the names of employees within the classifications mentioned in clause (b) who must work during the work stoppage to maintain essential services;
- (e) any other prescribed provisions.

(2) For the purposes of clause (1)(c), the number of employees in each classification who must work during the work stoppage to maintain essential services is to be determined without regard to the availability of other persons to provide essential services.

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Termination

8(1) An essential services agreement continues until it is terminated in accordance with this section.

(2) A party to an essential services agreement may terminate the essential services agreement only if:

- (a) the parties have a collective bargaining agreement; and
- (b) there are at least 100 days left before the expiry of the collective bargaining agreement.

(3) A party may terminate an essential services agreement pursuant to subsection (2) by giving the other party written notice.

(4) Nothing in this section affects the obligation of a public employer and a trade union to negotiate with a view to concluding an essential services agreement in accordance with section 6.

PART III

Provision of Essential Services if no Essential Services Agreement

Notice if no essential services agreement

9(1) A public employer shall serve a notice on the trade union in accordance with this section if:

- (a) there is a work stoppage or a potential work stoppage; and
- (b) there is no essential services agreement concluded between the public employer and the trade union.

(2) A notice served pursuant to subsection (1) must set out the following:

- (a) the classifications of employees who must continue to work during the work stoppage to maintain essential services;
- (b) the number of employees in each classification who must work during the work stoppage to maintain essential services;
- (c) the names of employees within the classifications mentioned in clause (a) who must work during the work stoppage to maintain essential services;
- (d) in the case of a public employer other than the Government of Saskatchewan, the essential services that are to be maintained.

(3) The public employer shall notify each of the employees named in a notice served pursuant to subsection (1) that he or she must work during the work stoppage to maintain essential services.

(4) If at any time the public employer determines that more employees in one or more classifications set out in the notice served pursuant to subsection (1) are required to maintain essential services and there is no essential services agreement concluded between the public employer and the trade union, the public employer may serve a further notice on the trade union setting out:

- (a) the additional number of employees in those classifications who must work during all or any part of the work stoppage to maintain essential services; and
- (b) the names of the employees within those classifications who must work.

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(5) The public employer shall notify each of the employees named in a notice served pursuant to subsection (4) that he or she must work during the work stoppage to maintain essential services.

(6) Every employee who is named in a notice pursuant to this section, other than a further notice served pursuant to subsection (7), is deemed to be an essential services employee.

(7) If at any time the public employer determines that fewer employees in one or more classifications set out in the notice served pursuant to subsection (1) are required to maintain essential services and there is no essential services agreement concluded between the public employer and the trade union, the public employer may serve a further notice on the trade union setting out:

(a) the number of employees in those classifications who are no longer required to work during all or any part of the work stoppage; and

(b) the names of the employees within those classifications who are no longer required to work during all or any part of the work stoppage.

(8) The public employer shall notify each of the employees named in a notice served pursuant to subsection (7) that he or she is no longer required to work during all or any part of the work stoppage.

Trade union may apply to Labour Relations Board re numbers of employees

10(1) If the trade union believes that the essential services can be maintained using fewer employees than the number set out in a notice pursuant to section 9, the trade union may apply to the board for an order to vary the number of essential services employees in each classification who must work during the work stoppage to maintain essential services.

(2) If a trade union applies to the board pursuant to subsection (1), the trade union shall serve a written copy of the application on the public employer.

(3) On receiving an application pursuant to this section, the board may hold any hearings and conduct any investigation that the board considers necessary to determine whether or not to issue an order varying the number of essential services employees in each classification who must work during the work stoppage to maintain essential services.

(4) Within 14 days after receiving an application pursuant to subsection (1) or any longer period that the board considers necessary, the board shall issue an order confirming or varying the number of essential services employees in each classification who must work during the work stoppage to maintain essential services.

(5) The board shall cause a copy of every order issued pursuant to this section to be served on the public employer and the trade union.

(6) The public employer, the trade union and the employees of the public employer who are represented by the trade union are bound by an order of the board issued pursuant to this section.

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Employer or trade union may apply for further orders

11(1) A public employer or trade union may apply to the board for an order to amend, vary, rescind or rescind and replace an order issued pursuant to section 10 or any further order issued pursuant to this section.

(2) If a public employer or trade union applies to the board pursuant to subsection (1), it must serve a written copy of the application on the other party.

(3) On receiving an application pursuant to this section, the board may hold any hearings and conduct any investigation that the board considers necessary to determine whether or not to amend, vary, rescind or rescind and replace an order issued pursuant to section 10 or any further order issued pursuant to this section.

(4) Within 14 days after receiving an application pursuant to subsection (1) or any longer period that the board considers necessary, the board shall issue an order:

(a) confirming the order issued pursuant to section 10 or the further order issued pursuant to this section; or

(b) amending, varying, rescinding or rescinding and replacing the order issued pursuant to section 10 or the further order issued pursuant to this section.

(5) The board shall cause a copy of every order issued pursuant to this section to be served on the public employer and the trade union.

(6) The public employer, the trade union and the employees of the public employer who are represented by the trade union are bound by an order of the board issued pursuant to this section.

Effect of order re number of employees

12(1) If the result of an order of the board issued pursuant to section 10 or 11 is to reduce the number of essential services employees in each classification who must work during the work stoppage to maintain essential services, the public employer shall, as soon as possible after being served with the order:

(a) vary the notice served pursuant to section 9 to comply with the order of the board;

(b) serve a copy of the varied notice on the trade union; and

(c) notify any affected employee that he or she is no longer required to work during the work stoppage.

(2) If the result of an order of the board issued pursuant to section 10 or 11 is to increase the number of essential services employees in each classification who must work during the work stoppage to maintain essential services, the public employer shall, as soon as possible after being served with the order:

(a) vary the notice served pursuant to section 9 to comply with the order of the board;

(b) serve a copy of the varied notice on the trade union; and

(c) notify any affected employee that he or she must work during the work stoppage to maintain essential services.

(3) An order of the board issued pursuant to section 10 or 11 is effective 48 hours after the public employer was served with the order.

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PART IV
General**Obligations of public employers**

13 No public employer shall authorize, declare or cause a work stoppage of essential services employees.

Obligations of employees

14 No essential services employee shall participate in a work stoppage against his or her public employer.

Obligations of trade union

15(1) No trade union shall authorize, declare or cause a work stoppage of essential services employees.

(2) Neither the trade union nor any person acting on behalf of the trade union shall in any manner:

- (a) discipline any essential services employee for the reason that the essential services employee complies with this Act; or
- (b) direct, authorize or counsel another person to discipline any essential services employee for the reason that the essential services employee complies with this Act.

No person to prevent compliance with this Act

16 No person or trade union shall in any manner impede or prevent or attempt to impede or prevent any essential services employee from complying with this Act.

No person to aid, abet or counsel non-compliance with this Act

17 No person or trade union shall do or omit to do anything for the purpose of aiding, abetting or counselling any essential services employee not to comply with this Act.

Essential services employees to continue or resume work

18(1) If there is a work stoppage:

- (a) every essential services employee shall continue or resume the duties of his or her employment with the public employer in accordance with the terms and conditions of the last collective bargaining agreement, if any;
- (b) the public employer shall permit each of its essential services employees to continue or resume the duties of his or her employment in accordance with the terms and conditions of the last collective bargaining agreement, if any; and
- (c) every person who is authorized on behalf of the trade union to bargain collectively with the public employer shall give notice to the essential services employees that they must continue or resume the duties of their employment in accordance with the terms and conditions of the last collective bargaining agreement, if any.

(2) If there is a work stoppage, no essential services employee shall, without lawful excuse, fail to continue or resume the duties of his or her employment with the public employer.

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(3) Neither the public employer nor any person acting on behalf of the public employer shall, without lawful excuse, refuse to permit or authorize, or direct or authorize another person to refuse to permit or authorize, any essential services employee from continuing or resuming the duties of his or her employment as required by this Act.

Powers of board

19(1) For the purpose of carrying out the intent of this Act, in addition to the powers conferred on it by this Act, the board has all the powers conferred on it by *The Trade Union Act*.

(2) An order made by the board pursuant to this Act or the regulations is enforceable in the same manner as an order of the board made pursuant to *The Trade Union Act*.

(3) There is no appeal from an order or decision of the board pursuant to this Act, and the proceedings, orders and decisions of the board are not reviewable by any court of law or by any *certiorari*, mandamus, prohibition, injunction or other proceeding.

(4) The chairperson of the board may make any rules of practice and procedure that the board considers necessary to carry out its responsibilities pursuant to this Act.

Offence and penalties

20(1) No person or trade union shall fail to comply with this Act, the regulations or an order of the board.

(2) Every person who or trade union that contravenes any provision of this Act is guilty of an offence and liable on summary conviction:

(a) in the case of an offence committed by a public employer or a trade union or by a person acting on behalf of a public employer or the trade union, to a fine of not more than \$50,000 and, in the case of a continuing offence, to a further fine of \$10,000 for each day or part of a day during which the offence continues; and

(b) in the case of an offence committed by any person other than one described in clause (a), to a fine of not more than \$2,000 and, in the case of a continuing offence, to a further fine of \$400 for each day or part of a day during which the offence continues.

(3) In the case of default of payment of a fine imposed on a person pursuant to this section, the convicting court shall, on the request of the Attorney General, furnish the Attorney General with a certified copy of the order of conviction and fine imposed and, on its filing in the office of the local registrar of the Court of Queen's Bench, that order is enforceable as a judgment of that court.

Regulations

21 The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

(b) prescribing, for the purposes of this Act, services provided by the Government of Saskatchewan for the purposes of subclause 2(c)(ii);

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- (c) prescribing any person, agency or body, or class of persons, agencies or bodies, for the purposes of subclause 2(i)(xi);
- (d) for the purposes of clause 7(1)(e) prescribing other provisions that must be included in an essential services agreement, including prescribing the contents of those provisions;
- (e) prescribing any other matter or thing that is authorized or required by this Act to be prescribed in the regulations;
- (f) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

PART V
Coming into Force

Coming into force

22 This Act comes into force on assent.