

Bill No. 37 of 1951.

A BILL RESPECTING THE SURVEY, EXPROPRIATION AND USE OF LANDS REQUIRED FOR PUBLIC PURPOSES.

NOTE

This Bill enacts a new Act to be known as "*The Surveys and Expropriation Act*".

The Department of Public Works is being divided into two new Departments, a Public Works Department and a Highways Department. It is desirable that certain provisions scattered throughout the present *Public Works Department Act* and *The Public Works Act* should be applicable to both new Departments. These provisions relate mainly to the survey of lands required for public purposes and the expropriation of such lands. Rather than repeating all of these provisions in each of the two new departmental Acts it appeared desirable to enact a new Act relating to surveys and expropriation that would be applicable to both Departments. That is what this Bill does and practically all of its provisions are re-enactments with minor modifications of provisions that were formerly contained in *The Public Works Act* and *The Public Works Department Act*, both of which are being repealed.

The first few sections set out the duties and powers of the Director of Surveys and of the Surveys Branch.

Sections 8 and 9 deal with surveys for public works.

The following sections dealing with entry on land required for public works and the ultimate expropriation of such land are similar to sections 15 to 26 of *The Public Works Act*. In addition to the actual taking of the land these sections deal with claims for compensation and the procedure for arbitration of such claims.

These sections are followed by general provisions dealing with a variety of subjects. Provision is made for the disposition of public property no longer required for public works. The Minister is empowered to prescribe a manual of instructions for the guidance of surveyors and engineers making surveys and plans for public works. The Lieutenant Governor in Council is empowered to declare property constructed, purchased or otherwise acquired at the public expense to be public works. A provision is included prescrib-

ing penalties for obstructing engineers or surveyors engaged in making surveys for public works.

The Public Works Act, being chapter 73 of the Revised Statutes of Alberta, 1942, is repealed. Most of the provisions contained in the Act have now been included in either of the two new departmental Acts or in this Act, or in *The Public Highways Act*.

The Bill comes into force on a date to be fixed by proclamation of the Lieutenant Governor in Council. This will enable the Bill to be proclaimed on the same date that the division of the Department becomes effective.

KENNETH A. MCKENZIE,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

Bill No. 37 of 1951.

An Act respecting the Survey, Expropriation and Use of
Lands Required for Public Purposes.

(Assented to _____, 1951.)

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

Short Title.

1. This Act may be cited as "*The Surveys and Expropria- Short title
tion Act*".

Interpretation.

2. In this Act, unless the context otherwise requires,—
- (a) "construction" means the original work of constructing any public work or highway; Interpretation
"construction"
 - (b) "Department" means the Public Works Department or the Highways Department, as the case may be; "Department"
 - (c) "ditch" or "drain" means any ditch or drain opened or covered wholly or in part and whether in the channel of a natural stream, creek or watercourse or not, and also the work and materials necessary for any culvert, catch basin or guards; "ditch" or
"drain"
 - (d) "engineer" means an engineer or surveyor employed by or acting as the agent of the Public Works Department or the Highways Department, as the case may be; "engineer"
 - (e) "highway" includes every common or public highway, road allowance, thoroughfare, public travelled road, trail, road or way vested in the Province or overlands vested in the Province by any Act or otherwise, or overlands reserved for public purposes and every bridge, culvert, drain or other accessory to a highway erected thereon, thereunder or adjacent thereto or used and enjoyed therewith, and any part of a highway as herein defined; "highway"
 - (f) "land" includes lands, messuages, tenements and hereditaments, corporeal or incorporeal, of every nature and description and any estate or interest therein, whether such estate or interest is legal or equitable, together with all paths, passages, ways, watercourses, liberties, privileges, easements, mines, "land"

- minerals and quarries appertaining thereto and all trees and timber thereon;
- “maintenance” (g) “maintenance” includes the preservation and keeping in repair of any public work or highway;
- “Minister” (h) “Minister” means the Minister of Public Works or the Minister of Highways, as the case may be;
- “outlet” (i) “outlet” means any river, creek, watercourse or natural drainage channel;
- “owner” (j) “owner” includes any person who by any right, title or estate is or is entitled to be in possession of any land;
- “public work” (k) “public work” includes,—
- (i) public buildings;
 - (ii) public highways;
 - (iii) dams, hydraulic works and other works for improving the navigation of any stream;
 - (iv) dams, slides, piers, booms or other works for facilitating the transmission of logs or timber;
 - (v) dams erected for the storage of water, water powers and works connected therewith;
 - (vi) all property belonging to and used by the Province;
 - (vii) all works and properties, acquired, constructed, extended, enlarged, repaired, equipped or improved at the expense of the Province;
 - (viii) any work declared to be a public work by order of the Lieutenant Governor in Council in accordance with the provisions of this Act;
- “surveyor” (l) “surveyor” means a land surveyor duly authorized under the provisions of *The Alberta Land Surveyors Act*.

Surveys Branch.

Surveys Branch 3. There shall be a branch of the public service of the Province to be called the Surveys Branch.

Appointment of Director of Surveys 4. (1) Subject to the provisions of *The Public Service Act, 1947*, the Lieutenant Governor in Council may appoint a duly qualified surveyor to be Director of Surveys for the Province and may define his duties and fix his remuneration.

Director of Surveys shall,— administer Surveys Branch make or direct surveys prepare maps and plans (2) The Director of Surveys shall,—

- (a) have charge of the administration of the Surveys Branch;
- (b) make or cause to be made, or have direction over the execution of all surveys required by the Minister or by any Act;
- (c) prepare or cause to be prepared and issued the maps and plans required by the Department or by any other Department of the Government;

- (d) do and perform such duties as may be required of him by any Act or defined by the Lieutenant Governor in Council, or assigned to him by the Minister. perform duties assigned to him

5. Subject to the provisions of *The Public Service Act, 1947*, the Lieutenant Governor in Council may appoint such surveyors, officers, clerks and servants as may be required to carry on the business of the Surveys Branch and may prescribe their duties and provide for their remuneration. Lieutenant Governor in Council may appoint surveyors and other personnel

6. With the approval of the Lieutenant Governor in Council, the Director of Surveys, from time to time, may,— Director of Surveys may,—

- (a) make such regulations as he deems proper in regard to any plan of subdivision or plan of survey which it is proposed to register under the provisions of *The Land Titles Act*; make regulations governing registration of plans of subdivision
- (b) impose and collect such fees or charges upon and from any person proposing to register a plan of subdivision as he deems proper; impose and collect fees for registration of plans of subdivision
- (c) make such reservations from the area of any land included in a plan of subdivision for school or other public purposes as he deems proper. make reservations from land required for public purposes

7. When any plan is required by law to be examined or approved by the Director of Surveys or any of the officers of his branch, a fee of twenty-five dollars may be charged therefor which shall form a part of the General Revenue Fund of the Province. Fee for approval of plan

Surveys for Public Works.

8. The Minister may cause to be made by a duly qualified surveyor or engineer the survey of any area required for a public work. Survey of area for public work

9. The Minister, from time to time, may cause to be made by any person approved by him any exploration or investigation needed to determine the feasibility and cost of a proposed public work. Exploration to determine feasibility and cost of proposed public work

Land Required for Public Works.

10. The Minister, by his surveyors, engineers, foremen, agents, workmen and servants, may,— With respect to land required for public works the Minister may,—

- (a) enter upon and take possession of any lands required for any public work; enter upon land
- (b) enter into and upon any land and survey and take levels of the same and take such borings or sink such trial pits as he deems necessary for any purpose relative to a public work; survey land
- (c) enter upon and take possession of any land which, in his judgment, is necessary for the use, construction, maintenance or repair of a public work or for obtaining better access thereto; take possession of land

- deposit or remove materials
- (d) enter with workmen, animals, equipment and machines upon any land and;
- (i) deposit thereon soil, earth, gravel, trees, bushes, logs, poles, brushwood or other material found on land required for a public work;
- (ii) dig up, quarry and carry away earth, stones, gravel or other material required for a public work;
- (iii) cut down and carry away trees, bushes, logs, poles and brushwood and remove the same therefrom for the making, construction, maintaining or repairing of a public work;
- make and use roads
- (e) make and use all such temporary roads to and from such timber, stones, clay, gravel, sand or gravel pits as are required by him for the convenient passing to and from a public work during its construction or repair;
- make drains
- (f) enter upon land for the purpose of making proper drains to carry off the water from a public work or for keeping the drains in repair;
- divert streams or roads
- (g) divert or alter temporarily or permanently the course of any brook, rivulet, road, street or way or raise or sink the level of the same in order to carry it over or under on the level of or by the side of a public work as he deems expedient;
- transfer land no longer required for public work to owner
- (h) discontinue the use of any land as a highway and transfer the land comprised in the highway or part thereof so discontinued to the owner of the land of which the highway originally formed a part;
- divert public utilities
- (i) divert or alter the position of any water pipe, gas pipe, sewer, drain or any telephone or electric light wire or pole.

Removal of fence to construct public work

11. (1) Where it is necessary or expedient in the construction, maintaining or repairing of a public work to take down or remove a wall or fence of an owner or occupier of land or premises adjoining the premises of a public work the wall or fence shall be replaced as soon as the necessity which caused its taking down or removal has ceased.

Liability of owner as to maintenance of fence after replaced

(2) After the wall or fence has been replaced the owner or occupier of the land or premises shall maintain the wall or fence to the same extent as he might by law be required to do if the wall or fence had never been taken down or removed.

Taking of gravel, stone, etc., for public work

12. (1) Where gravel, stone, earth, sand or water is taken for a public work from lands at a distance from the public work, the Minister may cause to be laid down the necessary sidings, roads, water pipes, conduits or tracks over or through land intervening between the public work and the land on which the material or water is found.

(2) All the provisions of this Act apply and may be used and exercised to obtain the right-of-way from the public work to the land on which the materials or water are situate. Right-of-way

(3) The right-of-way may be acquired for a term of years or permanently, as the Minister deems proper.

(4) The powers contained in this section may be used at any time after the public work is constructed for the purpose of repairing and maintaining the same.

Expropriation.

13. (1) Lands taken for a public work shall be surveyed and marked on the ground by a duly qualified surveyor or engineer who shall prepare a proper plan of the same. Plan of lands expropriated for public work

(2) The plan need not be prepared before or at the time of the entry or taking possession of the lands under the authority of this Act.

14. (1) The plans of any land required for a public work shall be examined and approved by the Director of Surveys and one copy thereof shall thereupon be filed in the proper Land Titles Office. Approval of plans of expropriated lands by Director of Surveys

(2) Notwithstanding the provisions of section 13, where any such land consists of a lot or parcel shown on a plan which is registered under the provisions of *The Land Titles Act*, or a parcel which is the subject matter of a separate certificate of title, or of a legal subdivision within the meaning of *The Alberta Surveys Act*, the land shall be deemed to have been surveyed and the plan thereof shall be deemed to have been filed within the meaning of *The Land Titles Act* and this Act upon the filing in the Land Titles Office of a notification from the Director of Surveys that the lot, parcel or subdivision is required for the purpose of a public work. Surveyed lot or parcel required for public work

15. (1) Upon the filing in the Land Titles Office of the plan of any land taken for a public work, or upon the filing in the Land Titles Office of a notification from the Director of Surveys, the Minister, except as hereafter provided, shall cause to be served by registered mail upon all persons shown by the records of the Land Titles Office to be interested in the lands so taken,— Notice of compensation for land expropriated

- (a) a notice setting forth the compensation which he is ready to pay for the land so taken for the erection or relocation of fences and for any damages suffered by the land during the construction of the public work; and

(b) a copy of this subsection and of sections 16 and 17.

(2) In the event that a claim is submitted to the Minister that any land, other than that taken for a public work, has been damaged during the construction of the public work, Notice of compensation for land damaged

the Minister shall cause to be served by registered mail upon all persons shown by the records of the Land Titles Office to be interested in such land,—

- (a) a notice setting forth the compensation which he is ready to pay for such damage; and
- (b) a copy of this subsection and of sections 16 and 17.

Claim for increased compensation

16. (1) If a person claiming compensation is dissatisfied with the amount offered he shall notify the Minister in writing of his dissatisfaction within two months from the date of the mailing of the notice referred to in section 15.

(2) He shall state in the notice,—

- (a) the amount he claims as compensation;
- (b) a full outline of the facts in support of his claim.

(3) In the event of no claim for increased compensation being received by the Minister within the period of two months the person entitled to compensation shall be deemed to be satisfied with and shall be bound to accept the amount of compensation mentioned in the notice.

Notice of decision as to increased compensation

17. The Minister shall consider every claim for increased compensation and shall notify the claimant of his decision with respect thereto by registered letter addressed to the claimant's last known place of abode.

Request for arbitration

18. (1) If the claimant is dissatisfied with the decision of the Minister he may give notice in writing to the Minister, within sixty days of the date of the mailing of the Minister's decision, that he wishes the claim submitted to arbitration.

Security for costs of arbitration

(2) The claimant shall forward with his notice in writing to the Minister as security for the costs of the arbitration,—

- (a) a cash deposit equal to ten per cent of the amount claimed by him but not in any event less than twenty-five dollars; or
- (b) a bond with two sureties satisfactory to the Minister in double the amount required for the cash deposit.

(3) If the claimant fails to notify the Minister and provide the security within sixty days of the mailing of the Minister's decision, he shall be deemed to have accepted the Minister's decision and shall not thereafter be at liberty to question it.

Appointment of arbitrators

(4) The Minister upon receipt of the notice and the security for costs shall submit the claim to arbitration by two arbitrators, one to be appointed by the claimant and one to be appointed by the Minister.

(5) The arbitration shall be governed by the provisions of *The Arbitration Act*.

Estimating compensation

19. (1) In estimating the amount to which the claimant is entitled, the arbitrators shall consider and find separately,—

- (a) the value of the land taken with all improvements thereon;
- (b) the damage, if any, to the remaining property of the claimant; and
- (c) the original cost of any extra fencing which may be necessary by reason of the taking of the land.

(2) If the value of the remaining property of the claimant is increased by reason of the construction of the public work, the increase in value shall be deducted from the amount estimated and found under subsection (1) and the difference, if any, shall be the amount awarded to the claimant.

20. (1) The only costs allowable upon an arbitration shall be the arbitrators' and witnesses' fees. Costs allowable on arbitration

(2) The costs of the arbitration may be awarded in the discretion of the arbitrators.

(3) In the event of costs being awarded against the claimant the Minister may deduct the same out of the moneys deposited by the claimant and he shall return the surplus, if any, to the claimant.

(4) In the event of costs not being awarded against the claimant, the Minister shall return the full amount of his deposit to the claimant or shall deliver up the bond thereby cancelled, as the case may be.

21. (1) When the amount of the compensation is claimed by two or more persons who are unable to agree as to a division thereof, the Minister may pay the same to the Clerk of the Supreme Court whose office is nearest to the land affected. Payment of compensation into court

(2) The amount may be paid out to the parties interested in such proportions as may be ordered by a judge of the Supreme Court on the application of either of the parties.

22. (1) If any resistance or opposition is made by any person to the taking possession by the Minister or any person authorized by him of lands for public works as provided by this Act, a judge of the Supreme Court, on proof of the proper taking of such lands as herein provided, may issue his warrant to the sheriff of the judicial district within which the lands are situated directing him to put down the resistance or opposition and to put the Minister or the persons acting for him in possession of the lands. Suppression of resistance or opposition

(2) The sheriff shall take with him sufficient assistance for that purpose and shall put down the resistance or opposition and shall put the Minister or the persons acting for him in possession of the lands.

(3) The sheriff shall forthwith make a return to the clerk or deputy clerk of the judicial district in which the land is situated setting out the manner in which he executed the warrant.

General Provisions.

- 23.** (1) Any property, real or personal, when no longer required for the use of any public works may be sold, leased or otherwise disposed of by the Minister.
- (2) The proceeds of each such sale, lease or disposition shall be accounted for as public money and deposited in the General Revenue Fund.
- (3) Whenever practicable such property shall be sold, leased or otherwise disposed of by tender or by public auction.
- 24.** (1) The Minister, from time to time, may prescribe a manual of instructions for the guidance of surveyors and engineers employed in making any survey required by the Minister or authorized by this Act.
- (2) The manual of instructions may designate the manner in which the survey shall be performed on the ground and the plans and field notes of the same prepared.
- 25.** (1) The Lieutenant Governor in Council, from time to time, may declare any property, real or personal, that has been constructed, purchased or otherwise acquired at the public expense or on which public moneys have been expended to be a public work.
- (2) Any property declared to be a public work under subsection (1) shall henceforth be vested in His Majesty and be under the control of the Department designated by the Lieutenant Governor in Council.
- 26.** Any person who interrupts, hinders or molests any engineer or surveyor engaged in making an examination, exploration or survey in connection with any work authorized by the Minister or by this Act shall be guilty of an offence and liable on summary conviction to a penalty not exceeding one hundred dollars or to imprisonment for a term not exceeding two months or to both.
- 27.** *The Public Works Act*, being chapter 73 of the Revised Statutes of Alberta, 1942, is hereby repealed.
- 28.** This Act shall come into force on a date to be fixed by Proclamation of the Lieutenant Governor in Council.

Sale of public property no longer required for public work

Manual of instructions for guidance of surveyors and engineers

Declaration of works as public works

Penalty for obstructing engineer or surveyor

Repeal

Coming into force

No. 37.

FOURTH SESSION
ELEVENTH LEGISLATURE

15 GEORGE VI

1951

BILL

An Act respecting the Survey,
Expropriation and Use of Lands
Required for Public Purposes.

Received and read the

First time

Second time

Third time

HON MR. MACMILLAN.
