

No. 78

2nd Session, 14th Legislature, Alberta
9 Elizabeth II

REPRINTED BILL

BILL 78

A Bill to Provide the Procedure for the Compulsory
Acquisition and Purchase of Lands and respecting
Matters Incidental Thereto

HON. MR. MANNING

Explanatory Note

General. The purpose of this Bill is to provide in one Act procedures for expropriation and determining compensation therefor that will have application to most Acts in which expropriation is authorized as a means of acquiring land for authorized works or undertakings. The Bill is intended to make expropriation procedures uniform for those cases provided by the Bill, and will reduce the variation now found in these matters in the statutes.

2. Meaning ascribed to terms used.

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No. 78 of 1961

An Act to Provide the Procedure for the Compulsory
Acquisition and Purchase of Lands and respecting
Matters Incidental Thereto

(Assented to , 1961)

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

1. This Act may be cited as "*The Expropriation Procedure Act*".

2. In this Act,

- (a) "authorizing Act" means the Act authorizing the expropriation by an expropriating authority;
- (b) "Board" means the Public Utilities Board constituted under *The Public Utilities Board Act*;
- (c) "Court" means a judge of the Supreme Court;
- (d) "Crown land" means land of the Crown in right of Alberta;
- (e) "expropriating authority" means the Crown or any person empowered to acquire land by expropriation;
- (f) "expropriation" means the taking of land without the consent of the owner by an expropriating authority in the exercise of its statutory powers;
- (g) "land" means land as defined in the authorizing Act and if not so defined, as defined in *The Land Titles Act*;
- (h) "land registry" means the land titles office of the land registration district in which the land is situated;
- (i) "municipality" means a city, town, new town, village, county or municipal district;
- (j) "owner" means
 - (i) a person registered in the land registry as the owner of an estate in fee simple in land,
 - (ii) a person who is shown by the records of the land registry as having a particular estate or an interest, mortgage or encumbrance in or upon land,
 - (iii) any other person who is in possession or occupation of the land, and
 - (iv) in the case of Crown land, a person shown on

3. This Act will override expropriation proceedings in all provincial Acts except in two cases:

- (a) where the procedure is prescribed in one of the Acts listed in Schedule One, and
- (b) where the Act, being later than this Act, expressly prescribes a different procedure.

4. Empowers expropriating authority to acquire estates, particular estates in land, as well as empowering expropriating authority to expropriate a right, privilege or benefit, not amounting to an estate or interest.

5. Minerals not to be acquired by expropriation except:

- (a) where authorizing Act authorizes compulsory acquisition of minerals, and
- (b) the plan, notification or order by which the expropriation is made expressly states that mines and minerals are acquired.

6. This Act is not to restrict right of expropriating authority to acquire land by private agreement, or the right of owner to convey to the expropriating authority, except where the contrary is expressly provided in the authorizing Act.

the records of the Department administering the land as having an estate or interest in the land;

- (k) "works" means the undertaking and all the works and property that may be acquired, constructed, extended, enlarged, repaired, maintained, improved, formed, excavated, operated, reconstructed, replaced or removed in the exercise of any powers conferred by an authorizing Act.

Application of Act

3. (1) This Act applies to any expropriation authorized by the law of the Province and prevails over any contrary provisions that may be found therein, except the statutes or parts of statutes enumerated in Schedule One, and except any expropriation authorized, after the commencement of this Act, by an enactment that expressly provides a different procedure.

(2) This Act binds the Crown.

4. Where an authorizing Act permits or authorizes an expropriation of land, the expropriating authority may, unless the authorizing Act expressly otherwise provides, acquire any estate required by him in the land and may, unless the authorizing Act expressly otherwise provides, acquire any lesser interest by way of a profit, easement, right, privilege or benefit in, over or derived from the land.

5. (1) Unless the authorizing Act expressly authorizes the expropriation of mines or minerals, the expropriating authority is not entitled to any mines or minerals in any land vested in him under the procedure prescribed by this Act, and subject to subsection (2), the ownership of mines or minerals is in no way affected by the filing or registration in the land registry of a plan, notification or order under this Act.

(2) Where an authorizing Act expressly authorizes the expropriation of mines or minerals, the plan, notification or order by which the expropriation is effected shall state the estate or interest acquired in the mines and minerals, and failing such statement no estate or interest in the mines and minerals passes upon the expropriation.

(3) Notwithstanding subsection (1), an expropriating authority may, to the extent necessary for his works, excavate or otherwise disturb any minerals within, upon or under land in which he has acquired an estate or interest by expropriation or by agreement or transfer, without permission from or compensation to any person.

6. Unless an authorizing Act expressly otherwise provides, nothing in this Act restricts or affects

- (a) the right of an expropriating authority to acquire.

7. Meaning ascribed to terms used in Part I.

8. The Crown to expropriate as herein provided and not otherwise. (But see Clause 3 for application of Act.)

9. Crown may acquire by expropriation more land than actually required, if it will reduce the cost of expropriation or otherwise be of advantage to the Crown, and may after sell the land or any part thereof.

10. Expropriation effected by Minister depositing a plan of survey or a notification in appropriate land titles office.

- by agreement or transfer, any estate or interest in land that he may acquire by expropriation, or
- (b) the right of the Crown or any person to convey to an expropriating authority any estate or interest in any land that the expropriating authority may acquire by expropriation from the Crown or person.

PART I

CROWN EXPROPRIATION

7. In this Part,

- (a) "Director of Surveys" means the Director of Surveys appointed under *The Surveys and Expropriation Act*;
- (b) "Minister" means the member or members of the Executive Council charged with the construction or maintenance of a public work;
- (c) "notification" means a notification under *The Surveys and Expropriation Act* by the Director of Surveys;
- (d) "public work" includes
- (i) the undertaking and all the works and property that may be acquired, made, built, constructed, erected, extended, enlarged, repaired, maintained, improved, formed, excavated, operated, reconstructed, replaced or removed at the expense of the Crown or for which there is legislative authority to pay out or apply public moneys thereon otherwise than by way of subsidy only, and
 - (ii) a public work within the meaning of *The Surveys and Expropriation Act*.

8. Subject to section 3, where an authorizing Act empowers the Crown to expropriate land, the land may be expropriated in the manner prescribed by this Part and not otherwise.

9. Where the Minister is of the opinion that the Crown can obtain, at a more reasonable price or to greater advantage than by acquiring a part only, the whole of any parcel of land of which a part may be expropriated by the Crown, the Crown may take the whole of the parcel, and a right of way thereto if the land taken is separated from the public work, and may later sell and convey the same or any part thereof as deemed expedient.

10. (1) When the Crown desires to expropriate land, the Minister shall cause to be deposited in the land registry

- (a) a plan of the land to be expropriated, which shall be signed by the Minister or his deputy or the Director of Surveys, or

11. A corrected plan or notification may be deposited in the land titles office with same effect as original plan or notification in cases of errors in original plan or notification.

- (b) a notification in respect of the land to be expropriated,

and upon registration in the land registry of the plan or notification the land becomes and is vested in the Crown.

(2) Where the land to be expropriated is required for a limited time only or where only a profit, easement, right, privilege or benefit in, over or derived from the land, is required, the plan or notification shall indicate that the land is taken for such limited time only or that such profit, easement, right, privilege or benefit only is acquired, and by the registration in the land registry of the plan or notification, the possession of the land for such limited time, or the profit, easement, right, privilege or benefit becomes and is vested in the Crown.

(3) Notwithstanding subsection (2), where in the course of constructing a highway, earth, stones, gravel or other material required in the construction is taken from any land pursuant to section 10 of *The Surveys and Expropriation Act*,

- (a) it is not necessary to register a plan showing the area of land from which such material is taken, but
- (b) it is sufficient if a notification is registered describing the whole lot or parcel from which such material is taken.

(4) Where pursuant to *The Surveys and Expropriation Act* possession is taken of any land before the plan or notification is deposited pursuant to this section, the Minister shall deposit the plan or notification within eighteen months of taking possession of the land.

(5) Notwithstanding subsection (4), where the plan or notification cannot be prepared within the time limited by subsection (4), the Minister may extend the time for filing for a further period of six months, and so on from time to time, and shall serve notice of such extension upon any owner with whom the Minister has not been able to reach a settlement.

(6) Where a plan or notification registered pursuant to this section states that the land is taken for a limited time only, the Registrar of the land registry may, at any time after the expiry of that time cancel the registration of the plan or notification and thereupon the estate or interest taken in the land vests in the person from whom it was expropriated or the person who has acquired his reversionary interest.

11. (1) If there is an omission, misstatement or error in a plan or notification, the Minister may cause a plan or notification replacing or amending the original plan or notification to be deposited in the land registry.

(2) A plan or notification registered under this section shall be marked to show the nature of the replacement or amendment and is of the same force and effect and is in substitution for the original plan or notification to the extent that such plan or notification is replaced or amended thereby.

12. Presumption as to direction of Minister in respect of a deposit of plan or notification in land titles office.

13. Makes provision for the case of an expropriation of land not under The Land Titles Act. (See clause 2 (f) defining "expropriation".)

14. Notice of expropriation to be given to former owner in the manner and within the time herein specified.

15. Right to compensation.

12. Where

(a) a plan purporting to be signed by the Deputy Minister or the Director of Surveys, or

(b) a notification,

is deposited in the land registry under section 10 or 11, the plan or notification shall be deemed to have been deposited by the direction and authority of the Minister.

13. (1) Where Crown land that is not registered in the land registry is appropriated by the Crown to the use of a public work, a plan of the land shall be deposited with the Deputy Minister of the Department charged with the administration of the land affected, with like effect as a plan deposited in the land registry under section 10 in so far as it affects any estate or interest of any person in the Crown land.

(2) Where any land is occupied or in the possession of the Crown and used for the purposes of a public work, a plan or notification of the land may be deposited in the land registry at any time, in like manner and with like effect as provided in section 10, saving always the lawful claims to compensation of any person interested in the land.

14. (1) Where land is expropriated under the procedure prescribed by this Part, the Minister shall, within thirty days after the registration of the plan or notification, cause notice to be given to any owner with whom he has not been able to reach a settlement,

(a) if the owner is known and his address is known, by personal service upon him or by registered mail addressed to him at that address, or

(b) if the owner is unknown or his address is unknown, by publication once a week for at least three weeks in a newspaper having a general circulation in the municipal area in which the land is situated.

(2) The notice required under subsection (1)

(a) shall describe the land and the estate or interest therein taken,

(b) shall state the purpose for which the land is to be used by the Crown, and

(c) shall give the date of registration of the plan or notification.

15. (1) An owner of land expropriated by the Crown and an owner of land injuriously affected by the exercise of the power of expropriation is entitled to due compensation for any damages necessarily resulting from the exercise of the power of expropriation beyond any advantage that he may derive from any public work for which the land was expropriated or by which the land was injuriously affected.

(2) Compensation for land expropriated shall be ascertained

16. Claim for compensation for land injuriously affected to be made by owner.

17. Minister to make an offer of compensation for expropriated land.

- (a) as of the date of deposit of the plan or notification pursuant to section 10, or
 - (b) as of the date possession of the land is taken by the Crown,
- whichever first occurs.

(3) Compensation for land injuriously affected shall be ascertained

- (a) as of the date of the completion or abandonment of the construction of the public work, or
 - (b) where no public work is to be constructed, as of the date of deposit of the plan or notification pursuant to section 10.
- (4) A claim for compensation not mutually agreed upon shall be determined as hereinafter provided.

16. (1) A claim for compensation for injurious affection of land caused by the expropriation of other land or by a public work constructed or to be constructed on the expropriated land shall be made by an owner by filing the claim and particulars thereof in the office of the Minister

- (a) not later than one year after the completion or abandonment of the construction of the public work, or
- (b) where no public work is to be constructed, not later than one year after the date of expropriation, and if the claim for compensation is not filed within that time the right to compensation is forever barred.

(2) The Minister shall within three months

- (a) from the receipt of a claim for compensation in accordance with subsection (1), or
- (b) of becoming aware of injurious affection for which the right to compensation is not barred under subsection (1),

serve upon any owner with whom he has not been able to reach a settlement the offer of a sum in full payment of the compensation for the land injuriously affected.

(3) The offer under subsection (2) shall state that if the owner is not satisfied with the amount of compensation offered by the Minister he shall notify the Minister in writing of his dissatisfaction within sixty days of the date of service of the offer.

(4) Where an owner does not notify the Minister of his dissatisfaction pursuant to subsection (2) he shall be deemed to be satisfied with and bound to accept the compensation offered.

17. (1) The Minister shall within three months from the date of registration of the plan or notification serve upon any owner with whom he has not been able to reach a settlement the offer of a sum in full payment of the compensation for the land expropriated.

18. Method of determining compensation when not agreed upon.

19. Determination of compensation by arbitration.

20. Determination of compensation by Court.

(2) The offer under subsection (1) shall state that if the owner is not satisfied with the amount of compensation offered by the Minister he shall notify the Minister in writing of his dissatisfaction within sixty days of the date of service of the offer.

(3) Where an owner does not notify the Minister of his dissatisfaction pursuant to subsection (2) he shall be deemed to be satisfied with and bound to accept the compensation offered.

18. Where

- (a) an owner of land injuriously affected or expropriated has, pursuant to section 16 or 17, as the case may be, notified the Minister of his dissatisfaction with the offer of compensation made by the Minister, or
- (b) the Minister has failed to serve the offer of compensation required to be served under section 16 or 17, as the case may be,

and the Minister and the owner are unable to agree on the compensation payable, the Minister or the owner may, at any time, serve notice on the other that he wishes the compensation to be determined by proceedings under this Act, stating whether he prefers it to be determined by arbitration under section 19 or by the Court under section 20 and stating the amount he considers to be sufficient compensation.

19. (1) Where the Minister and an owner agree that the compensation is to be determined by arbitration, the Minister shall, within sixty days of the service of the notice pursuant to section 18, make a submission to two arbitrators, one to be appointed by the owner and one to be appointed by the Minister.

(2) The arbitration shall be governed by *The Arbitration Act*, except that

- (a) the only costs allowable on the arbitration are the fees of the arbitrators and witnesses,
- (b) the awarding of costs on the arbitration is in the discretion of the arbitrators, and
- (c) if costs are awarded against the owner they shall be deducted from any moneys due to him under the award.

20. (1) Where the Minister and an owner do not agree that the compensation is to be determined by arbitration, the compensation shall be determined by the Court and the Minister shall file in the Court a statement of particulars within sixty days of the service of the notice pursuant to section 18.

21. Information to be specified in proceedings under clauses 19 and 20.

(2) A statement of particulars may include the claims for compensation of more than one owner if

- (a) all the claims relate to the same expropriation, and
- (b) all the owners have been served with notice pursuant to section 18,

and the filing of the statement shall be deemed to be the institution of a suit against such owners.

(3) The statement of particulars shall claim such judgment or declaration as in the opinion of the Minister the facts warrant.

(4) The statement of particulars shall be served upon all persons named therein in like manner as a statement of claim, and all proceedings in respect thereof or subsequent thereto shall be regulated by and shall conform as nearly as possible to the procedure in other cases instituted by statement of claim in the Court.

(5) A person who is named in the statement of particulars or who afterwards is made or becomes a party to the proceedings may, by his answer, exception or defence, raise any question of fact or law incident to the determination of his right to compensation or any part thereof or in respect of the sufficiency of the compensation.

(6) The Court shall determine the compensation and make such order for the distribution, payment or investment thereof and for the securing of the rights of all persons interested therein, as it may deem proper.

(7) The Lieutenant Governor in Council may prescribe a tariff of fees and costs applicable to proceedings under this section.

21. A submission under section 19 and a statement of particulars under section 20 shall set forth

- (a) the date of the expropriation that gave rise to the claim for compensation and the nature of the estate or interest acquired in the land or the nature of the injurious affection, as the case may be,
- (b) the persons who to the Minister's knowledge had an estate or interest in the land expropriated or in the land injuriously affected, as the case may be, at the date of expropriation, and particulars thereof,
- (c) the amount that the Crown is ready to pay for the land expropriated or in respect of the land injuriously affected, and
- (d) any other facts material to the consideration and determination of the questions involved in the proceedings.

22. Municipalities to expropriate as herein authorized and not otherwise. (See clause 3 for application of Act and clause 2(i) for definition of "municipality".)

23. This Act does not empower an annexation of land to a municipality.

24. (1) Municipality to prepare a survey plan of the land and file the same in municipal office.

(2) A notice in writing, specifying the matters herein set out, shall then be served on owner of land.

PART II**EXPROPRIATION BY MUNICIPALITIES**

22. (1) Where a municipality is empowered to acquire land by expropriation, the land may be expropriated in the manner prescribed by this Part and not otherwise.

(2) Notwithstanding subsection (1), where a municipality owns or operates a public utility and desires to expropriate land for the purpose of its pipe line or power line or installations incidental thereto it may, in the alternative, expropriate the land in the manner prescribed by Part III as if it were a company within the meaning of Part III.

23. Nothing in this Part shall be construed as empowering a municipality to extend the boundaries of the municipality to include any land situated outside the municipality.

24. (1) Where a municipality desires to expropriate land for any purpose permitted by the authorizing Act, the municipality shall cause to be prepared and filed in the office of the secretary-treasurer or clerk of the municipality a plan of survey of the land it proposes to expropriate.

(2) Thereupon the municipality shall cause to be served upon the owner of the land to be expropriated a notice in writing, which shall set forth:

- (a) a description of the parcel and of the estate or interest to be acquired therein;
- (b) the purpose for which the land is to be used by the municipality;
- (c) the amount that the municipality is ready to pay for the land to be expropriated;
- (d) the date, time and place at which a by-law will be first presented to the council of the municipality to authorize the expropriation;
- (e) that a plan of survey of the land to be expropriated is on file in the office of the secretary-treasurer or clerk of the municipality and that the plan is available for inspection during specified reasonable hours;
- (f) that the owner is entitled, before enactment of the by-law, to make representations to the municipality and set forth his reasons why the land should not be expropriated;
- (g) that the amount of the compensation for the land will be ascertained and fixed by the Public Utilities Board, at a future date.

(3) Prescribes time within which notice is to be served.

(4) Service may be made by mail in certain cases.

(5) Notice shall also be published in newspapers as herein required.

25. (1) The matters that are to be considered by municipality before enacting expropriation by-law.

(2) The matters that the by-law shall contain.

(3) Certified copy of by-law and copy of plan shall be deposited in land titles office, except an expropriation by a city under a development plan.

(4) In case of development plan, the deposit of required material in land registry shall be delayed for one month.

(5) Within that time, appeal may be made to Board to determine whether development plan is in public interest.

(3) The notice shall be served upon the owner not less than two weeks preceding the date that the by-law authorizing the municipality to expropriate the land is first presented to the council of the municipality.

(4) When the owner is not resident in the Province, or his present address is unknown, the notice shall be served upon him by mailing the same to him at his latest known address not less than three weeks preceding the date the by-law is first presented to the council of the municipality.

(5) The notice shall also be published once a week for two consecutive weeks preceding the presentation of the by-law to the council of the municipality, in a newspaper having a general circulation in the municipality.

25. (1) Before enacting a by-law authorizing the expropriation of any land, a council shall have regard to the circumstances that appear to it to be relevant and, in particular but not so as to limit the generality of the foregoing, shall have regard to

- (a) the recommendation, if any, of any of its departments or consultants retained by it,
- (b) the objections of an interested party, and
- (c) the needs and general good of the municipality.

(2) The by-law authorizing the expropriation shall contain

- (a) a description of the land and the estate or interest therein to be acquired,
- (b) the purpose for which the land is to be used by the municipality, and
- (c) the authority for the payment of such compensation as may be ascertained and fixed by the Board under this Act or as may be agreed on.

(3) Unless the land is being expropriated by a city pursuant to a plan of development, a certified copy of the by-law authorizing the expropriation and a copy of the plan of survey shall be deposited in the land registry.

(4) If the land is being expropriated by a city pursuant to a plan of development, the certified copy of the by-law and the copy of the plan of survey shall, subject to subsection (5), be deposited in the land registry only after the expiration of one month from the date of enactment of the by-law.

(5) When land is being expropriated by a city pursuant to a plan of development, the owner of the land may, within one month from the date of the enactment of the by-law authorizing the expropriation, appeal to the Board to determine whether the plan of development is in the public interest, and if an appeal is made within the time prescribed the depositing of the copies of the by-law and the plan shall be stayed until the appeal is determined.

(6) "Plan of development" defined.

26. (1) Upon registration of by-law and plan, land therein specified becomes vested in municipality.

(2) Exception to subsection (1) in case of roadways, etc., expropriated by municipalities other than cities.

(3) All actions and claims in respect of expropriation other than for compensation, barred by the registration of by-law and plan.

(4) Date to be used in determining compensation.

27. Claim for compensation for injurious affection to be made within limited time.

28. Where compensation cannot be agreed upon, the amount is to be fixed by the Public Utilities Board upon the application of the municipality.

(6) In this section "plan of development" means a plan of development mentioned in subsection (2) of section 298 of *The City Act*.

26. (1) When a certified copy of the by-law authorizing the expropriation and a copy of the plan of survey is filed in the land registry, the land, subject to subsection (2), becomes and is vested in the municipality.

(2) Where any land expropriated by a municipality, other than a city, is for the purposes of a highway, road, street, lane, bridge, culvert, ditch or drain that land becomes and is vested in the Crown.

(3) Upon the filing of the by-law and the plan of survey in the land registry, all actions and claims in respect of the expropriation are barred except that the former owner of the land has a right to compensation therefor in the manner prescribed by this Act.

(4) The amount of compensation shall be ascertained as at the date the plan of survey is filed pursuant to section 24.

27. (1) A claim for compensation for injurious affection of land caused by the expropriation of other land or by a work constructed or to be constructed on the expropriated land shall be made by an owner by filing the claim and particulars thereof with the clerk or secretary-treasurer not later than two months after notice has been given in a local newspaper of the completion or abandonment of construction of the works.

(2) A notice under subsection (1) shall be given by the clerk or secretary-treasurer and shall state the last day on which any claim under this section may be filed.

(3) The amount of compensation shall be ascertained as at the date of the completion or abandonment of construction of the works.

(4) Any claim under this section that is not made within the period hereinbefore limited is forever barred.

28. (1) Any claim for compensation, if not mutually agreed upon, shall be determined in accordance with this section.

(2) The municipality shall apply to the Board

(a) within three months from the date of the depositing of the by-law and plan of survey in the land registry, or

(b) in the case of a claim under section 27, within three months after the publication of the notice,

for an order fixing the compensation to be paid by the municipality for the land expropriated or for the injurious affection, as the case may be, and if the municipality fails to so apply, the owner may apply at any time thereafter.

(3) Upon receipt of the application, the Board shall fix

29. Municipality may use land as owner before compensation order made.

30. Council may abandon expropriation before entry is made but is liable for costs.

31. Terms used in Part III defined.

a date for the hearing of the application, notify the municipality of the date fixed, and require the municipality to give such notice of the hearing by personal service, advertisement or in such other manner, and to such persons, as the Board may direct.

(4) The Board shall proceed to hear and determine the application and, upon the conclusion of the hearing, or as soon as conveniently may be, the Board shall dispose of the application and make an order declaring

- (a) the amount of money payable by the municipality to an owner for the land expropriated by the municipality,
- (b) the amount of money payable to an owner for injurious affection caused by or arising out of the expropriation or the construction of the works, and
- (c) the costs of and incidental to the application and by whom payable.

29. Notwithstanding that an application to fix compensation is to be made to the Board or is pending before the Board, the municipality may exercise every right acquired in the expropriated land and may occupy and use the same for the purpose of its works.

30. Where proceedings for the expropriation of land have been commenced or authorized but no entry on or use of the land has been made or authorized except for the purpose of survey, or if an entry has been authorized but has not been acted upon, the council may by by-law adopt the award at any time within sixty days of the making of the award, but if the award is not so adopted, the property stands as if no expropriation had been authorized or Board order made and the municipality shall pay the costs of the Board hearing and, if as a result of whatever action has been taken by the municipality damage has in fact been suffered by an owner, the municipality shall pay compensation therefor.

PART III

EXPROPRIATION BY COMPANIES

31. In this Part,

- (a) "company" means a person, other than the Crown or a municipality, empowered to enter on, take, use or acquire land by expropriation under or pursuant to an Act of the Legislature;
- (b) "Crown land" includes land of the Crown in right of Canada;
- (c) "Minister" means the member of the Executive Council charged with the administration of any statute under and by virtue of which a company is entitled to expropriate any land;

32. Act not to affect administrative official's power to prescribe routes, sites, etc., of authorized works or undertakings.

33. Expropriation by a company shall be in the manner prescribed by this Act and not otherwise, but subject to any permit requirements.

34. (1) Company required to apply to Public Utilities Board for an expropriation order.

(2) Service of application.

35. (1) The Board shall fix the hearing date and prescribe the notice to be given.

- (d) "permit" means any permission, whether termed approval, permit, licence or certificate or other term, required to be held by a company under an authorizing Act before the company may exercise its power of expropriation or before that power is to exist.

32. (1) Nothing in this Act restricts or affects any power or authority of the Minister, under the authorizing Act, to prescribe the intended route or site, or the extent thereof, of or for the works of the company or any part of such works.

(2) Subject to subsection (3), where a permit issued under an authorizing Act approves or authorizes the works of a company, the permit is final and binding and not subject to review in any court or other tribunal, notwithstanding anything contained in the authorizing Act or this Act.

(3) Upon the application of a company to which a permit has been issued, the Minister may from time to time make such variations in or amendments to the permit as he deems advisable, and the decision of the Minister thereon is final and not subject to review in any court or other tribunal.

33. Where an authorizing Act empowers a company to acquire land by expropriation, the land may be expropriated in the manner prescribed by this Part and not otherwise but subject to any provisions of the authorizing Act respecting the holding of a permit by the company.

34. (1) Where a company desires to expropriate land it may file with the Board an application setting forth

- (a) the name of its authorizing Act,
- (b) a description of the land it desires to expropriate,
- (c) the purpose for which it desires to expropriate the land, and
- (d) the names and addresses of the persons known to the company to have an estate or interest in the land,

and the application shall have attached thereto reference maps, plans or sketches showing the land to be expropriated.

(2) When an application under this section is made in respect of Crown land a copy of the application shall be served upon

- (a) the Deputy Minister of the Department administering the land, and
- (b) any person shown by the records of that Department to have an estate or interest in the land.

35. (1) Upon receipt of the application, the Board shall fix a date for the hearing of the application within a reason-

(2) The Board to dispose of application and make expropriation order, specifying the land taken, the location thereof, persons entitled to compensation, the amount of compensation awarded, and the costs of the application.

(3) Service of order.

36. (1) While application pending, interim order of expropriation may be made to enable company to begin construction of the works, if conditions herein set out are complied with.

able time, notify the company of the date fixed, and require the company to give such notice, by personal service, advertisement or in such manner as the Board may direct, to such persons as the Board may direct.

(2) The Board shall proceed to hear and determine the application and, upon conclusion of the hearing or as soon as conveniently may be, the Board shall dispose of the application and make an order declaring,

- (a) the estate or interest in the land granted to the company for the works and general undertaking of the company, and when necessary a right of way to and from the works, but subject to any provisions of the authorizing Act that provides for the nature of the estate, interest or right to be acquired by expropriation,
- (b) the description of the land to which the order relates,
- (c) the names and addresses of the persons known to the Board to have an estate or interest in the land,
- (d) the amount of money payable by the company to the Crown or other persons for the estate or interest granted to the company, and the manner in which the money is payable,
- (e) the amount of money payable by the company to the Crown or other persons for incidental damages resulting from or likely to result from the construction of the works for which the land is or was required, and
- (f) the costs of and incidental to the application and by whom payable.

(3) Upon making an order under this section, the Board shall send a copy of the order to every person known to the Board to have an estate or interest in the land.

36. (1) At any time before an order is made under section 35, the Board

- (a) upon application being made by the company, either *ex parte* or upon such notice to such parties as the Board in its sole discretion may direct, and
- (b) upon the Board being satisfied of the necessity for the immediate exercise by the company of all or any of the rights over the land for which the application has been made,

may order that, upon the company making a deposit with the Board of such amount as the Board estimates to be sufficient to secure the payment by the company of such sums as may, by reason or on account of the exercise of all or any of the rights of the company, become payable ultimately to the Crown or to any owner, the company be at liberty to exercise forthwith, in such manner and subject to such conditions as the Board may deem fit and proper in the circumstances, such rights in or over the land as are specified in the order.

(2) Amount deposited on interim order to be available for compensation as subsequently awarded.

(3) Deposit not to prejudice amount that may ultimately be arrived at as compensation.

(4) Service of order.

(5) Term "interim order" authorized.

(6) Rescission of interim order.

(7) Powers of Board in rescinding interim order.

37. Company acquires immediate right to enter and use land under expropriation order, upon the making of the order and the payment of the sums fixed in the order.

38. (1) Orders other than interim orders may be registered.

(2) Registration vests title in company.

39. Revesting of land in owner when company fails to pay the compensation ordered.

(2) The amount deposited under this section by the company stands charged with and is available for the payment of all such sums as the Board may subsequently order to be paid in respect of all or any estate or interest acquired in land by the company as a result of the application and the costs of and incidental to the application.

(3) In determining the amount of a deposit under this section, the Board shall not be deemed to have limited or determined the amount that it may ultimately order to be paid in respect of all or any estate or interest acquired by the company in the land expropriated.

(4) Upon making an order under this section, the Board shall send a copy of the order to every person known to the Board to have an estate or interest in the land.

(5) Orders made under this section may be referred to as "interim orders".

(6) Upon the making of an order under section 35, the Board may rescind the whole or any part of an interim order made during the proceedings.

(7) The Board upon application shall, or of its own motion may, make an inquiry as to whether or not an interim order should be rescinded in whole or in part and, if the circumstances in the opinion of the Board so warrant, the Board may by an order

- (a) rescind the interim order as to the whole or any part of the land to which it relates, and
- (b) determine the person or persons to whom any deposit held in connection with the interim order shall be paid or returned.

37. Upon the making of an order by the Board pursuant to this Part and upon the Board certifying in writing that the company has paid all the sums of money payable pursuant to the order or, in the alternative, that the company has deposited with the Board a sum sufficient to pay all sums payable under the order, the company acquires an immediate right to enter upon, take and use the land in the manner described in the order.

38. (1) An order made by the Board pursuant to this Part, or a certified copy thereof, other than an interim order,

- (a) may be registered in the land registry, or
- (b) if the land is not registered in the land registry, may be filed with the Deputy Minister of the Department charged with the administration of the land affected.

(2) Upon registration or filing of an order pursuant to subsection (1), the estate or interest in land described in the order vests in the company.

39. (1) Where, at any time after the expiration of six months from the date of an order under this Part, the

40. Definition of terms used in this Part, which comprehends other bodies, such as school boards, etc., that have expropriating authority but do not come within the classes specified under the other three Parts.

41. An authorized body will expropriate and pay compensation in the same manner as a company under Part III, that is, by application to and orders of the Board.

expropriating authority has not begun construction of his works or has discontinued the use of his works, or has failed to pay any sums fixed as compensation by the order, the expropriating authority, or the owner of the lands expropriated by the order, or their successors or assigns, may apply to the Board for an order terminating the estate or interest of the expropriating authority.

(2) Where, upon the hearing of an application under subsection (1), the Board is of the opinion that the works will not likely be constructed within a reasonable time or that the expropriating authority, its successors or assigns has discontinued the use of the works or has failed to pay any sums fixed as compensation by the order, as the case may be, the Board may by order

- (a) terminate the estate or interest acquired by the expropriating authority,
- (b) grant the estate or interest so terminated to the person from whom it was expropriated or to such other person as the Board may name in the order, and
- (c) direct, as may be just in the circumstances, that the expropriating authority
 - (i) remove the works or any part thereof, and
 - (ii) restore the land as nearly as possible to the same condition as it was before the expropriation, and do all such other things as may be deemed proper by the Board,
 within the period of time specified in the order.

(3) An order made by the Board pursuant to subsection (2), or a certified copy thereof,

- (a) may be registered in the land registry, or
- (b) if the land is not registered in the land registry, may be filed with the Deputy Minister of the Department charged with the administration of the land affected,

and upon registration or filing, the estate or interest so terminated is revested in the person from whom it was expropriated or is vested in the other person named in the order, as the case may be.

PART IV

EXPROPRIATION BY OTHER BODIES

40. In this Part, "authorized body" means the board of trustees of a school district or division, and includes any board, commission, or other body, whether incorporated or not, that is empowered by an authorizing Act to acquire any land by expropriation and to hold the same in its own name.

41. Where an authorizing Act empowers an authorized body to acquire land by expropriation, the land may be

42. (1) Where a person is authorized to expropriate land, he may enter upon the land without permission, after notice, for the purpose of running surveys thereon to determine extent or description of land to be taken.

(2) Permits purchaser to cut down obstacles to survey lines.

(3) Satisfaction to be made to owner for any damage done to property.

(4) Period of limitation set out for claims for damages by the exercise of powers under this section.

(5) Section does not apply if authorizing Act has provision on subject.

43. (1) The right to compensation and the compensation when awarded to stand for the estate or interest acquired by expropriation.

(2) The estate or interest as acquired by the purchaser free from all claims or encumbrances.

expropriated in the same manner, *mutatis mutandis*, as in the case of an expropriation by a company under Part III of this Act, and compensation therefor shall be determined in the same manner as in the case of a company expropriating land under Part III.

PART V

GENERAL

42. (1) Where an authorizing Act empowers an expropriating authority to acquire land by expropriation for the purposes of his works, the expropriating authority may, after giving notice thereof to the registered owner and to the occupant but without any previous licence, consent, approval or permit of any person whomsoever, enter, by himself or by his servants or agents, on any Crown or other land for the purpose of making surveys, examinations or other necessary arrangements to determine the location of any proposed works or the description of the land that he may require in connection therewith.

(2) Subject to subsection (3), an expropriating authority may, by himself or by his servants or agents, cut down any trees or brush that obstruct the running of survey lines.

(3) An expropriating authority who exercises a power given by this section shall compensate the owner of the land for all damage caused by him or his servants or agents in or by the exercise of all or any of the powers given by this section.

(4) Where the land entered upon is not expropriated, no action lies against the expropriating authority for damage occasioned by him in the exercise of a power given by this section unless notice in writing signed by the claimant is given to the expropriating authority who exercised the power within six months after notice was given to the claimant pursuant to subsection (1).

(5) This section does not apply in any case where the authorizing Act makes express provision with respect to the subject matter of this section.

43. (1) The right to compensation and the compensation finally awarded for any estate or interest acquired or taken under this Act in Crown or other land by an expropriating authority shall be deemed to stand in the stead of the estate or interest so acquired or taken and a claim to or an encumbrance upon the estate or interest is converted, as against the expropriating authority, into a claim against the compensation.

(2) When the estate or interest has been expropriated in the manner provided by this Act, the estate or interest becomes the property of the expropriating authority free and

(3) Where disposition of compensation is disputed, may be resolved by Court if application made by Crown, or if by Board order, the compensation will be paid into Court until disposition is settled by Court on the application of a claimant.

44. Appointment of representative where an owner is under a disability or can't be found, etc.

45. A plea denying right of expropriating authority to have recourse to expropriation, or that the land expropriated is necessary to the works of the expropriating authority, shall not be made in the proceedings prescribed by this Act.

46. No compensation award to be invalid for want of form or by reason of other technical objection, if Act substantially complied with.

47. The manner in which expropriation may be enforced where unlawful resistance is made to expropriation.

clear of any and all claims and encumbrances in respect of the previous estate or interest.

(3) Where the persons interested, or appearing to be interested, in the compensation, fail to agree as to the disposition thereof among themselves then

- (a) if the application was made under Part I, the Minister shall pay the compensation into Court and the Court, on the application of any such claimant, shall determine the claimant or claimants to whom the compensation, or any portion or portions thereof, is payable and shall order and direct the payment thereof in accordance with such determination, or
- (b) if the application was made under Part II, III or IV, the Board shall require the expropriating authority to pay the compensation into Court and the Court, on the application of any such claimant, shall determine the claimant or claimants to whom the compensation, or any portion or portions thereof, is payable and shall order and direct the payment thereof in accordance with such determination.

44. (1) If the owner of land to be expropriated or land injuriously affected is under disability or is out of the Province, or not known, or his residence is not known, or he cannot be found, the Court may appoint a person to act in his behalf for any purpose under this Act.

(2) Where there is no guardian, committee or other person to represent an owner under disability, or the owner is absent or unknown, or his residence is unknown, or he cannot be found, the order fixing or awarding compensation shall require the expropriating authority to pay into Court the compensation awarded to such owner, subject to further order of the Court.

45. Except as provided in subsection (5) of section 25, no person may in any proceedings under this Act dispute the right of an expropriating authority to have recourse to expropriation or question whether the land or estate or interest therein to be expropriated is necessary or essential for the public work or the works, as the case may be, for which it is to be acquired.

46. Where the requirements of this Act have been substantially complied with, and if the compensation order states clearly the sum awarded, and the lands or estate or interest therein or other right or privilege, for which the sum will be the compensation, no order shall be held invalid by reason of any want of form or other technical objection.

47. (1) If any resistance or opposition is made or is threatened to be made by any person to the expropriating authority, or to any authorized person acting for him,

48. Board proceedings to be governed by Part I of The Public Utilities Board Act.

49. Power given Lieutenant Governor in Council to make rules and regulations under this Act.

50. Issuing of certificate of title where expropriated land not registered under The Land Titles Act.

51. Method of serving documents under this Act.

desiring to exercise his rights in or over, or enter upon and take possession of the land, or any estate or interest therein, a judge of the Court may

- (a) on proof of the execution of a conveyance of the land to the expropriating authority, or agreement thereof, or of the registration in the land registry of a plan or by-law or notification thereof, or of the making of an order by the Board, as the case may be, and
- (b) after notice to show cause given in such manner as the Court prescribes,

issue a warrant to the sheriff of the judicial district within which the land is situated directing him to put down the resistance or opposition, and to put the expropriating authority, or some person acting for him, in possession thereof, or to take such steps as may be necessary to enable the expropriating authority to exercise such right.

(2) The sheriff shall take with him sufficient assistance for that purpose and shall put down the resistance and opposition, and shall put the expropriating authority or the person acting for him, in possession, and shall forthwith make return to the Court of the warrant, and of the manner in which he executed it.

48. The provisions of Part I of *The Public Utilities Board Act*, relating to the powers of the Board, the procedure of the Board and the enforcement of orders of the Board, apply to proceedings and orders of the Board under Parts II, III and IV of this Act in so far as they do not conflict with the provisions of this Act.

49. The Lieutenant Governor in Council may make such orders, rules and regulations as may be deemed necessary to effect the intent of this Act and to provide for any matter or thing not provided for or insufficiently provided for by this Act.

50. Where a fee simple estate in any land is held by any person and the land is not registered in the land registry, the land may be expropriated by a deposit in the land registry of the instruments mentioned in section 10, 26 or 38, as the case may be, and such certificates of title may be made in respect thereof by the Registrar of the land registry as may be necessary to indicate the vesting in the expropriating authority of the land expropriated.

51. Where a document is required by this Act to be served upon any person and no method of service is prescribed

- (a) the document may be served upon the person by registered mail, and
- (b) the document shall be deemed to be served on the date it is so mailed.

52. Right of appeal on amount of compensation.

53. Transitional provisions.

54. As a result of this Act, many consequential amendments are required to various statutes. These are made dependant upon this Act in the Schedule herein referred to.

55. Commencement of Act to be on date proclaimed.

52. Where an order under Part I, II, III or IV fixes compensation in the sum of one thousand dollars or more, and in all other cases by leave of a judge of the Appellate Division of the Supreme Court, an appeal lies to the Appellate Division of the Supreme Court in respect of the amount of the compensation.

53. (1) Where before the commencement of this Act proceedings for acquiring land by expropriation pursuant to an authorizing Act or Acts have been begun but not completed, the proceedings may be completed as if this Act had not been passed.

(2) An order made before the commencement of this Act or in proceedings mentioned in subsection (1) for the expropriation of land in favour of an expropriating authority under an authorizing Act shall be treated in all respects as an order under this Act.

(3) Notwithstanding subsection (1), an interim order made by the Board before the commencement of this Act or in proceedings mentioned in subsection (1) with respect to land under an authorizing Act shall be treated in all respects as an interim order under Part III.

54. The enactments enumerated in Schedule Two are subject to the amendments set out in the second column of that Schedule, being amendments consequential upon the coming into force of this Act.

55. This Act comes into force on a date to be fixed by proclamation.

SCHEDULE ONE

Title	Citation	Extent of Exception
1. The Agricultural Service Board Act	R.S.A. 1955, c. 9	Orders of reclamation under section 14
2. The Land Titles Act	R.S.A. 1955, c. 170	Plans of subdivisions and plans of surveys under sections 82 and 91
3. The Public Lands Act	R.S.A. 1955, c. 259	Withdrawals under sections 104 to 106
4. The Public Utilities Board Act	1960, c. 85	Cancellation of plans of subdivision under Part III
5. The Railway Act	R.S.A. 1955, c. 276	The whole
6. The Right of Entry Arbitration Act	R.S.A. 1955, c. 290	The whole

7. The Rural Mutual Telephone Companies Act	R.S.A. 1955, c. 292	Confiscation of plant and equipment by Crown
8. The Town and Rural Planning Act	R.S.A. 1955, c. 337	(a) Compulsory subdivisions (b) Replotting schemes
9. The Power Commission Act	R.S.A. 1955, c. 239	(a) Expropriation of personal property (b) Confiscation of plants and equipment

SCHEDULE TWO

Consequential Amendments

Enactment amended Amendments

- The City Act
(R.S.A. 1955, c. 42)
1. Subsection (3) of section 298 is repealed.
 2. Section 299 is amended by striking out subsection (2) and as to subsection (3) by striking out the words "judge or arbitrator" and by substituting the words "Public Utilities Board" and by striking out subsection (4) and by substituting the following:

(4) To provide for a uniform assessment of damages only one hearing shall be held in respect of the street or part thereof to be widened and the Public Utilities Board has power to make one or more awards as it sees fit.
 3. Sections 301, 302, 303, 305, 306, 307, 308, 310, 311, 312, 313, 314, 315 and 316 are repealed.
 4. Section 303*b* is amended by striking out the words "303 or".
 5. Section 303*c* is amended by striking out the words "303 or".
 6. Clauses (a) and (b) of section 309 are repealed.

Enactment

Amendments

7. Section 317 is amended by striking out subsection (1) and as to subsection (2) by striking out the words and figures "under sections 298 to 316" and by striking out the words and figures "in pursuance of section 307".

The Drainage Districts Act
(R.S.A. 1955, c. 91)

1. Subsections (2) and (3) of section 192 are repealed.

2. Sections 193 to 197 are repealed.

The Irrigation Districts Act
(R.S.A. 1955, c. 162)

1. Sections 186 to 189 are repealed.

The Land Titles Act
(R.S.A. 1955, c. 170)

1. Section 34 is amended

(a) as to subsection (1) by striking out the words

(i) "any land is expropriated or" and

(ii) "the land or",

(b) as to subsection (2) by striking out the words "the land expropriated or".

2. Section 93, subsection (1) is amended by striking out the words "*The Surveys and Expropriation*" and by substituting the words "*The Expropriation Procedure*".

3. Section 94 is repealed.

The Municipal District Act
(R.S.A. 1955, c. 215)

1. Section 256 is amended by striking out subsections (1), (4) and (5).

2. Sections 258 to 267 are repealed.

The Alberta Hospitals Act

1. Section 10, subsection (2) is repealed.

The Municipal Telephone Act
(R.S.A. 1955, c. 218)

1. Section 6, subsection (2) is amended by striking out clause (a) and by substituting the following:

"(a) proceed under *The Expropriation Procedure Act* to acquire such easement or right of way as may be necessary and to make compensation for such acquisition and any damages resulting therefrom,".

Enactment amended Amendments

The Power Com-
mission Act
(R.S.A. 1955, c. 239)

1. Section 11 is amended
 - (a) by striking out clause (a),
 - (b) as to clause (c) by striking out
 - (i) the words "the description or plans or both of" and
 - (ii) the words "and in the case of real property upon all persons shown by the records of the land titles office to be interested in the land expropriated",
 - (c) as to clause (d) by striking out
 - (i) the words "lands or", and
 - (ii) the words "real or".

The Provincial
Parks Act
(R.S.A. 1955, c. 249)

1. Section 6 is repealed.

The Research
Council Act
(R.S.A. 1955, c. 287)

1. Section 10 is struck out and the following is substituted:

10. If the Research Council exercises the power to enter upon, take or use lands without the consent of the owner *The Expropriation Procedure Act* applies to the same extent as if the acquisition of land were being made by a Minister of the Crown acting for the Province.

The School Act
(R.S.A. 1955, c. 297)

1. Section 216, subsection (2) is amended by striking out the words "execute a transfer of the site or the addition, excepting thereout all mines and minerals, to the board" and by substituting the words "empower the board to expropriate the site or the addition".

2. Sections 217 and 218 are repealed.

3. Section 219 is amended

- (a) as to subsection (2) by adding at the end thereof the words ", in accordance with *The Expropriation Procedure Act*",

Enactment

Amendments

(b) by striking out subsection (3).

4. Sections 220 and 221 are repealed.

The Surveys and Expropriation Act (R.S.A. 1955, c. 328)

1. Sections 15 to 22 are struck out and the following section is substituted:

15. Where any land is acquired by the Crown for a highway through agreement with the owner, title to the land may be registered in the name of the Crown by the filing of the plan or notification and it is not necessary to register a transfer of that land.

The Alberta Government Telephones Act (1958, c. 85)

1. Section 18 is amended

(a) as to subsection (3) by striking out the words "*Surveys and Expropriation*" and by substituting the words "*Expropriation Procedure*",

(b) by striking out subsections (4) and (5).

The Town and Rural Planning Act (R.S.A. 1955, c. 337)

1. Section 77 is amended by striking out subsections (2), (3) and (4).

The Town and Village Act (R.S.A. 1955, c. 338)

1. Section 284 is amended by striking out subsection (2).

2. Section 285 is repealed.

3. Section 286 is repealed.

4. Sections 287 to 290 are repealed.

5. Clauses (a) and (b) of section 292 are repealed.

6. Sections 293 to 296 are repealed.

7. Section 297 is amended by striking out subsections (4), (6) and (8) to (22).

The Water, Gas, Electric and Telephone Companies Act (R.S.A. 1955, c. 361)

1. Section 29 is amended

(a) as to subsection (1) by striking out the words "*The Arbitration Act*" and by substituting the words "*The Expropriation Procedure Act*",

Enactment

Amendments

- (b) by striking out subsections (2), (3) and (4).

2. Section 32, subsection (2), clause (b) is amended by striking out the words and figures "sections 33 to 36" and by substituting the words "*The Expropriation Procedure Act*".

3. Sections 33 to 36 are repealed.

The Water Resources
Act
(R.S.A. 1955, c. 362)

1. Section 84 is amended

- (a) by striking out subsection (2),

- (b) as to subsection (3) by striking out the words "*Surveys and Expropritian*" and by substituting the words "*Expropriation Procedure*".

2. Section 84*d*, subsection (2), clause (b) is amended by striking out the words and figures "sections 84*e* to 84*h*" and by substituting the words "*The Expropriation Procedure Act*".

3. Sections 84*e* to 84*h* are repealed.

4. Section 84*i* is amended by striking out the figures "84*g*" and by substituting the figures "84*d*".

The Pipe Line
Act, 1958
(1958, c. 58)

1. Section 39, clause (d) is amended by striking out the words "this Part" and by substituting the words "*The Expropriation Procedure Act*".

2. Sections 40 to 50 are struck out and the following section is substituted:

40. (1) Where an operator requires an interest in land for the purposes of his pipe line he may expropriate the interest required by an order under *The Expropriation Procedure Act*.

(2) Where an order or orders are made with respect to a processing plant the area of land in which an interest is vested for the site of the processing plant shall not exceed five acres in the aggregate.

Enactment

Amendments

(3) An order vests in the operator, unless otherwise provided in the order, an exclusive interest in the land described in the order for the purposes named therein, with such annexed rights in or over other land as may be specified in the order, but the order does not give an operator

(a) any right or entitlement to a certificate of title under *The Land Titles Act* for the interest in land acquired by the operator by the order, or

(b) the right to carry away sand and gravel from the land in respect of which the order was made.

(4) Where an order pertains to land registered in the land registry it shall be deemed to be an instrument referred to in section 71 of *The Land Titles Act*.

No. 78 **REPRINTED BILL**

SECOND SESSION

FOURTEENTH LEGISLATURE

9 ELIZABETH II

1961

BILL

An Act to Provide the Procedure for
the Compulsory Acquisition and
Purchase of Lands and respecting
Matters Incidental Thereto

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
