

No. 89

2nd Session, 15th Legislature, Alberta
13 Elizabeth II

BILL 89

A Bill respecting Public Works

HON. MR. COLBORNE

Explanatory Note

1. This Bill gathers together in one Act a number of provisions relating to public works (of all kinds, including highways) that are presently found in several Acts. Many of these provisions are revised by this Bill which also contains some new ones as indicated in the explanatory notes to the clauses. In the notes, the references to the equivalent sections in existing legislation are indicated by HD, PW, SE or CP followed by the section number.

HD means The Highways Department Act
(chapter 140 of the Revised Statutes)

PW means The Public Works Department Act
(chapter 270 of the Revised Statutes)

SE means The Surveys and Expropriation Act
(chapter 328 of the Revised Statutes)

CP means The Public Works Creditors Payment Act
(chapter 78 of the 1964 Statutes of Alberta)

2. Definitions.

3. Authority to enter into contracts. HD 13 and PW 14.

4. Tenders for the construction, repair, etc. of public works. HD 14 (1) and PW 15 (1).

BILL

No. 89 of 1965

An Act respecting Public Works

(Assented to _____, 1965)

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 Public Works Act*".
2. In this Act,
 - (a) "Crown" means Her Majesty the Queen in right of Alberta;
 - (b) "Minister" means
 - (i) the Minister of Highways with respect to public works within his jurisdiction,
 - (ii) the Minister of Public Works with respect to public works within his jurisdiction, and
 - (iii) any other Minister with respect to any public works within his jurisdiction;
 - (c) "public work" includes 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.

Contracts

3. (1) Any contract or undertaking that is considered necessary or advisable for the purpose of carrying out the functions, duties or powers of the Minister may be entered into on behalf of the Crown by the Minister, the Deputy Minister or any employee authorized to do so by the Minister.
- (2) A contract or undertaking that is not signed by the Minister, the Deputy Minister or a person authorized to sign by the Minister is not binding on the Crown.
4. Where it appears practical or expedient to the Minister to do so, he may by invitation or public notice call for

5. Security may be required on tenders. New.

6. Opening of tenders. New.

7. Withdrawal of tenders before opening time. New.

8. Accepting lowest tender. HD 14 (2) and PW 15 (2).

**9. Penalty for failure to enter into contract when tender accepted.
New.**

**10. Security for due performance of a contract. HD 15 (1) and
PW 16 (1).**

tenders for the design, construction, demolition, alteration and repair of and the supplying of materials for public works.

5. Where the Minister so requires, every tender shall be accompanied by security in a form and amount satisfactory to the Minister, conditioned upon the tenderer entering into a contract if his tender is accepted.

6. (1) A notice calling for tenders shall state the place where and the time up to which tenders will be received, but the Minister may, by public notice, extend the time for receiving tenders.

(2) At the time and place fixed for receiving tenders all tenders received shall be publicly opened and the amount of each tender shall then and there be made known.

7. A tender may be withdrawn at any time up to the time fixed for receiving tenders, but only on a request in writing signed by the tenderer or his agent in fact.

8. The Minister is not bound to accept the lowest or any tender, but he shall obtain the authority of the Lieutenant Governor in Council before accepting a tender other than the lowest one.

9. (1) Where a tenderer whose tender is accepted refuses or fails within fifteen days after a contract is offered to him for acceptance

(a) to enter into a contract with the Crown for the performance of the work or the supplying of material covered by his tender, and

(b) to provide the security for the performance of the contract as required by section 10,

and a contract for that work or material is entered into with some other person for a greater amount, the tenderer is liable to the Crown in the amount of the security given by him pursuant to section 5 and the security is forfeited to the Crown.

(2) No person may withdraw a tender at or after the time fixed for receiving tenders

(a) until some other person has entered into a contract with the Crown for the performance of the work or the supplying of the materials specified in the notice inviting tenders, or

(b) until thirty-five days after the time fixed for receiving tenders,

whichever first occurs.

10. With every contract, the Minister may require that security, in an amount and form satisfactory to him, be given

11. Contracts may provide penalty for failure to complete on time. New.

12. (1) Commencement of work under contract. HD 15 (2) and PW 16 (2).

(2) Payment of contractor. New.

(3) Payment of subcontractor. New.

- (a) for the due performance of the contract in accordance with the plans and specifications applicable to the contract, and
 - (b) for the payment in full of all claims for labour and for material used or reasonably required for use in the performance of the contract, and
 - (c) for the repair of any damage to or failure in the works to which the contract relates and for which the contractor is responsible under the contract,
- and may also require proof that any public liability and property damage insurance required by the contract has been obtained and is being maintained by the contractor.

11. (1) A contract that specifies a date by which or a time within which any work is to be done or material is to be supplied may also provide for a penalty for failure to complete the work or supply the material by that date or within that time.

(2) The contract may provide for the penalty to be either or both of:

- (a) the actual loss or damages suffered by the Crown because of the failure;
- (b) a stipulated sum for each day that the work is unfinished or the material not supplied in full after the date or time agreed upon, regardless of actual loss or damages.

(3) Where a contract provides for a penalty as mentioned in this section, the amount of the penalty may, to the extent thereof, be realized out of the security required under section 10 or it may be withheld from any moneys payable by the Crown under the contract, or both.

12. (1) No sum of money shall be paid to a contractor and, unless the Minister otherwise authorizes, no work shall be commenced on a contract until

- (a) the contract has been signed by the parties named therein, and
- (b) the required security and proof of insurance has been given.

(2) Before payment in full is made under a contract, the Minister may require the contractor to supply proof, by statutory declaration, of the payment of all creditors with respect to labour, equipment, materials or services used in the performance of the contract, or any subcontract, and until the Minister is satisfied that those creditors have been paid

- (a) he may withhold all or any of the money remaining to be paid under the contract, or
- (b) he may apply the money to the payment of the creditors as provided under section 15.

13. Definitions. CP 2.

14. Notice of claim. CP 3.

15. Payment of claims. CP 4. Subsection (4) is new.

(3) Where the Minister requires a contractor to supply proof under subsection (2) with respect to a subcontract the contractor may withhold payment of all or any money remaining to be paid by him under the subcontract until the subcontractor supplies him with the required proof by statutory declaration.

Payment of Public Works Creditors

13. In sections 14, 15 and 16,

- (a) "Crown" includes a board, commission or agency of the Crown;
- (b) "surety" means a person who guarantees to the Crown the payment of creditors.

14. (1) Where

- (a) a person provides labour, equipment, materials or services used or reasonably required for use in the performance of a contract with the Crown for the construction, alteration, demolition, repair or maintenance of a public work, and
 - (b) the contractor or a subcontractor does not pay that person in accordance with his obligation to do so,
- that person may send a notice of his claim to the department, board, commission or agency of the Crown that is responsible for the public work.

(2) The notice of the claim

- (a) shall be sent by registered mail not later than ninety days after the last day on which the labour, equipment, material or services were provided, and
- (b) shall set out the nature and amount of the claim against the contractor or subcontractor in a form satisfactory to the Crown.

15. (1) Thirty days after giving notice in writing to the contractor and surety, the Crown may pay the claimant the amount the Crown considers proper and deduct the amount so paid from any moneys due and payable to the contractor on any account or from the moneys or securities, if any, deposited by the contractor with the Crown.

(2) Where there are insufficient moneys due and payable to the contractor to permit of such deduction, the surety, if any, shall, to the extent of the security, pay to the Crown upon demand an amount equal to the amount paid to the claimant by the Crown.

(3) In paying a claim under subsection (1), the Crown may act upon any evidence that it considers sufficient and may compromise any disputed liability, and as against the Crown payment is not open to dispute or question by the contractor or the surety, if any, but is final and binding upon them.

(4) Instead of paying the claimant as provided in this section, the Crown may pay the money into court and the

16. List of creditors. CP 5.

17. Display of section 14. CP 6.

18. Offence and penalty. CP 7.

19. Orders re payment of public works creditors. CP 8.

20.(1) Authority of Crown to expropriate.

(2) Acquisition of extra land where economical to do so. **Section**
9 of The Expropriation Procedure Act.

court on the application of the claimant, the contractor or the surety shall determine the persons entitled to the money and direct payment thereof in accordance with the determination.

16. The Crown may, in writing, require a contractor or any of his subcontractors to send to it by registered mail within fifteen days from the date of the mailing of the demand, a list of the names of and the amounts owing to his creditors for labour, equipment, materials or services used or reasonably required for use in the performance of a contract or the subcontract, as the case may be.

17. Every contractor and subcontractor shall display and keep displayed in a conspicuous place

- (a) on the public work to which the contract relates, or
- (b) at any place prescribed by the regulations, a copy of section 14.

18. A contractor or subcontractor

- (a) who does not file a statutory declaration when required to do so under section 12 or a list when required to do so under section 16, or
- (b) who does not display and keep displayed a copy of section 14 as required by section 17,

is guilty of an offence and is liable on summary conviction to a fine of not less than ten dollars and not more than one hundred dollars for every day during which the default continues.

19. (1) The Lieutenant Governor in Council may make orders

- (a) extending or reducing the periods of time referred to in sections 14, 15 and 16, and
- (b) providing for and requiring notices in addition to the notice mentioned in section 14.

(2) Any orders made under subsection (1) or any provision thereof may be made applicable in respect of any class or classes of contractor or subcontractor or to any class of public work.

Expropriation

20. (1) The Crown may acquire by expropriation any land required for, or that it is expedient or advantageous to acquire in connection with a public work.

(2) 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 or a portion of any parcel of land of which a part may be expropriated by the Crown, the Crown may take the whole or the portion of the parcel.

21. Survey of land required for a public work. SE 13 and 14.

22. Authority of the Minister respecting land required for a public work. SE 10.

21. (1) Land required for a public work shall be surveyed and marked on the ground by a qualified land surveyor or engineer who shall prepare a plan thereof.

(2) Notwithstanding subsection (1), where any land required for a public work

(a) consists of a lot or parcel shown on a plan that is filed or registered under *The Land Titles Act*, or

(b) is the subject matter of one certificate of title, or consists of one or more legal subdivisions within the meaning of *The Alberta Surveys Act*,

the land need not be surveyed but the Director of Surveys shall prepare a notification describing the lot, parcel, land or legal subdivision and stating that it is required for a public work.

(3) The deposit in the land titles office of a notification as provided in section 10 of *The Expropriation Procedure Act* shall, for the purposes of *The Land Titles Act*, be deemed to be the filing of a plan of the land.

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

22. The Minister by his surveyors, engineers, foremen, agents, workmen and servants may

(a) enter upon and take possession of any land required for a public work,

(b) enter upon any land and survey and take levels of the land and make such borings or sink such trial pits as he considers necessary for a purpose relative to a public work,

(c) enter upon and take possession of any land that in his judgment is necessary for the use, construction, maintenance or repair of a public work or for obtaining better access thereto,

(d) enter with animals, equipment and machines on 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, and

(iii) cut down and carry away trees, bushes, logs, poles and brushwood and remove them from the land for the making, construction, maintaining or repairing of a public work,

(e) make and use any temporary roads to and from such timber, stones, clay, gravel, sand or gravel pits that are required by him for the convenient passing to and from a public work during its construction or repair,

23. Removal of fences to construct a public work. SE 11.

24. Taking of gravel etc. for a public work. SE 12.

25. Establishment of Public Works Development Areas. PW 25
(1).

26. Acquisition of land in a Public Works Development Area.
PW 25 (2) and (3).

- (f) enter upon land for the purpose of making proper drains to carry off the water from a public work, and for the purpose of keeping the drains in repair,
- (g) divert or alter temporarily or permanently the course of a waterway, watercourse, road, street or way or raise or lower the level thereof in order to carry it over or under on the level of or by the side of a public work as he considers expedient, and
- (h) divert or alter the position of a water pipe, oil pipe, gas pipe, sewer or drain, or a telecommunication or electric transmission wire or pole.

23. (1) Where it is necessary or expedient in the constructing, demolishing, 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 that caused its taking down or removal has ceased.

(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 would by law be required to do if the wall or fence had never been taken down or removed.

24. (1) Where gravel, stone, earth, sand, water or other material 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) The powers contained in this section may at any time after the public work is constructed be used for the purpose of repairing and maintaining the public work.

Public Works Development Areas

25. Where it is intended

- (a) to expend public moneys on the acquisition and development of any area of land for the purposes of the Crown or another public body in the Province, and
- (b) to acquire all the lands in that area over a period of time as they become available or are needed,

the Lieutenant Governor in Council may declare that area of land to be a Public Works Development Area.

26. (1) Land within a Public Works Development Area shall be acquired by the Crown

- (a) by purchase at any time the owner of the land is willing to sell it to the Crown, or

27. Prohibition of unapproved construction in a Public Works Development Area. PW 25 (4).

28. Filing of plan in land titles office. PW 25 (5) and (6).

29. Effect on landowners of establishment of Public Works Development Area. PW 25 (7).

30. Resolving conflicts. PW 25 (8).

31. Declaring certain property to be a public work. PW 7 and SE 25.

- (b) by expropriation,
 - (i) where the owner of the land wishes the Crown to acquire it but agreement cannot be reached as to price, or
 - (ii) where the owner of the land requests that the land be expropriated or consents to expropriation,
 or
 - (c) by purchase or expropriation, when the land is required for or in connection with a public work.
- (2) Where the Crown is negotiating the purchase of land in a Public Works Development Area and the owner indicates that in the event of a sale he wishes to retain possession or the right to possession of the land for the time being or until it is required for or in connection with a public work, the Crown shall negotiate with that owner in good faith and in preference to any other person for the leasing of the land to that owner when it is sold to the Crown.

27. No person shall construct an improvement or reconstruct or add to an improvement on any land within a Public Works Development Area, except with the approval in writing of the Minister.

28. (1) When a Public Works Development Area is created, the Minister shall file a copy of the order in council and a plan of the Public Works Development Area with

- (a) the clerk or secretary-treasurer of the municipality, and
- (b) the Registrar of Land Titles for the land registration district,

in which the Area is situated and shall give notice of the creation of the Area and of the provisions of this section to all owners of land in the Area.

(2) The Registrar of Land Titles shall endorse upon every certificate of title to land within a Public Works Development Area, a notice that the land is within a Public Works Development Area and that this section applies in respect of that land.

29. Any person who holds or acquires an interest in land within a Public Works Development Area holds or acquires that interest subject to sections 26 to 28.

30. Where any conflict exists between sections 25 to 29 and any Act, regulation or by-law, this section prevails.

Miscellaneous

31. (1) The Lieutenant Governor in Council may declare to be a public work any real or personal property that has

32. Title to land acquired by agreement for highways. SE 15.

33. Offences and penalties. HD 21 and 22 and PW 22 and 23 and SE 26.

34. General authority to make regulations. New.

35. Repeal of part of the legislation being incorporated in this Bill. Repeal of the remainder of the existing provisions will be done by the new Department of Highways Act and Department of Public Works Act.

been constructed, purchased or otherwise acquired by any one at the public expense or on which public moneys have been expended.

(2) Title to property declared to be a public work under subsection (1) vests from the time of declaration in the Crown and that property shall be under the control of the Minister designated by the Lieutenant Governor in Council.

32. 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.

33. (1) A person who interrupts, hinders or molests a person engaged under the authority of the Minister in making an examination, exploration or survey in connection with any work authorized by the Minister or by this Act is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars or to imprisonment for a term of not more than two months or to both fine and imprisonment.

(2) A person who interrupts, hinders or molests a person engaged under the authority of the Minister in removing an obstruction, or in constructing, demolishing, maintaining or repairing a public work, is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars or to imprisonment for a term of not more than two months or to both fine and imprisonment.

(3) A person who carelessly or wilfully breaks, cuts or fills up or otherwise injures or damages a public work is guilty of an offence and liable on summary conviction to a fine of not more than one hundred dollars and in default of payment to imprisonment for a term of not more than ninety days.

(4) A court by which a person is convicted of an offence under subsection (3) may also order the offender to repair forthwith any damage to the public work or to pay to the Crown the cost of repairing the damage.

34. The Lieutenant Governor in Council may make regulations respecting any matters he considers necessary or advisable to carry out effectively the intent and purpose of this Act.

35. (1) This Act repeals and replaces

- (a) *The Surveys and Expropriation Act*,
- (b) *The Public Works Creditors Payment Act*.

(2) *The Expropriation Procedure Act* is amended

- (a) as to section 7,

36. Commencement of Act.

- (i) by striking out the words "*The Surveys and Expropriation Act*" where they occur in clauses (a) and (c) and by substituting the words "*The Public Works Act*",
- (ii) by striking out subclause (ii) of clause (d),
- (b) by striking out section 9,
- (c) as to section 10, subsection (3) by striking out the words "section 10 of *The Surveys and Expropriation Act*" and by substituting the words "section 22 of *The Public Works Act*",
- (d) as to section 10, subsection (4) by striking out the words "*The Surveys and Expropriation Act*" and by substituting the words "*The Public Works Act*".

36. This Act comes into force on the day upon which it is assented to.

No. 89

SECOND SESSION
FIFTEENTH LEGISLATURE
13 ELIZABETH II
1965

BILL

An Act respecting Public Works

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. COLBORNE
