

1968 Bill 70

First Session, 16th Legislature, 17 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 70

An Act to amend The Expropriation Procedure Act

THE MINISTER OF MUNICIPAL AFFAIRS

First Reading

Second Reading

Third Reading

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An Act to amend The Expropriation Procedure Act

(Assented to _____, 1968)

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

1. *The Expropriation Procedure Act* is hereby amended.
2. Section 24 is amended
 - (a) as to subsection (1) by striking out the words "of survey",
 - (b) as to subsection (2), clause (e) by striking out the words "of survey",
 - (c) by adding the following subsection after subsection (2):
 - (2a) A notice to an owner under subsection (2) may also set forth the amount the municipality is prepared to pay as damages for injurious affection but the inclusion of that amount in the notice
 - (a) does not bind the municipality in the event that the amount is not accepted by the owner, and
 - (b) does not constitute an admission by the municipality that any land or interest therein will be injuriously affected.
3. Section 25 is amended by striking out sections (3) to (6) and by substituting the following:
 - (3) A certified copy of the by-law authorizing the expropriation and a plan of survey of the land expropriated shall be registered in the land registry.

Explanatory Notes

1. This Bill amends chapter 30 of the Statutes of Alberta, 1961.

2. Section 24 (1) presently reads:

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.

The plan to be filed with the clerk or secretary-treasurer will not have to be a plan of survey at the outset. A plan of survey will still be required when the expropriation by-law is filed in the land titles office. The amendment to subsection (2) (e) is made as a result of the change in subsection (1).

Section 24 (2) of the Act requires a municipality desiring to expropriate land to serve a notice on the owner setting out, among other things, the amount it is ready to pay for the land to be expropriated. This amount does not include the damages that the owner might claim for injurious affection where only part of his land is to be taken. The new subsection (2a) will permit the municipality to include this further amount so that the notice will indicate the total amount that the municipality is prepared to pay to the owner and not just part of it.

3. Subsections (3) to (6) of section 25 presently read:

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

The repeal of subsections (4) to (6) will do away with appeals pertaining to the expropriation by a city pursuant to a plan of development under section 298(2) of The City Act, that is, appeals to the Public Utilities Board by an owner on the ground that the expropriation is not in the public interest. No appeal has ever been made under these provisions since their enactment in 1961. Subsection (3) is the same but with the reference to the plan of development omitted.

4. Section 26, subsection (4) is amended by striking out the words "of survey".

5. Section 27 is struck out and the following section is substituted:

27. (1) A claim for compensation for injurious affection 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

- (a) at any time after the completion or abandonment of the works or after the damage is sustained but not later than two months after notice has been given in a newspaper circulating in the municipality of the completion or abandonment of the works, or
- (b) where no work is to be constructed, not later than one year from the date of the filing of the expropriation by-law and plan of survey in the land registry,

and if the claim is not filed within that time the right to compensation is forever barred.

(2) A notice under clause (a) of subsection (1)

- (a) shall be given by the clerk or secretary-treasurer forthwith after the person in charge of the construction or abandonment of the work has given his final certificate of its completion or abandonment, and
- (b) shall state the last day on which any claim may be filed under this section.

(3) Compensation for land injuriously affected shall be ascertained

- (a) as of the date of completion or abandonment of the work, or
- (b) where no work is to be constructed, as at the date the plan is filed pursuant to section 24.

6. Section 28, subsection (2) is amended by striking out clause (b) and by substituting the following:

- (b) in the case of a claim under section 27, within three months after the date on which the claim and particulars were filed under that section,

7. Section 45 is amended by striking out the words "Except as provided in subsection (5) of section 25, no person" and by substituting the words "No person"

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

4. Section 26 (4) presently reads:

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

The amendment conforms to the changes in section 24 (1): See Clause 2 of this Bill.

5. Section 27 presently reads:

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.

The present section 27 deals only with the case where the claim for injurious affection of land is made following the completion or abandonment of a public work. It does not, however, deal with the case where no public work is intended to be constructed following the expropriation. The section will now cover both cases, just as the provisions on Crown expropriation do.

The present section 27 (1) prevents a claim being made unless the required notice is first published. The new subsection (1) overcomes the difficulty and will allow the claim to be made at any time after the damages are sustained but not later than 2 months after publication of the notice.

6. Section 28 (2) presently reads:

(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.

The amendment is made to correspond with the new section 27.

7. Subsection (5) of section 25 is being repealed by clause 3 of this Bill and the reference to it in section 45 is removed as a consequence.