

1969 Bill 101

Second Session, 16th Legislature, 18 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 101

An Act to amend The Irrigation Act, 1968

THE MINISTER OF AGRICULTURE

First Reading

Second Reading

Third Reading

BILL 101

1969

An Act to amend The Irrigation Act, 1968

(Assented to _____, 1969)

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

1. *The Irrigation Act, 1968* is hereby amended.

2. Section 4, subsection (6) is amended by adding after the words "Council is" the words "permitted or required".

3. Section 18, clause (a) is amended by adding after the word "district" the word "or".

4. Section 20 is amended by striking out subsection (1) and by substituting the following:

20. (1) The board of each existing district shall as soon as possible after the commencement of this Act furnish the Council with lists of the legal descriptions of the parcels shown on its assessment roll as containing a number of acres classified as "to be irrigated".

5. The following section is added after section 20:

20a. (1) Notwithstanding anything in this Part, where the assessment roll of a district is amended to remove a parcel of land or part thereof

(a) that, as a result of being reclassified under Part 4, no longer contains any acres classified as "to be irrigated", or

(b) in respect of which an amount has been paid under section 147 as commuted irrigation rates,

the manager shall notify the Council forthwith and provide the Council with the legal description of the parcel or part thereof.

(2) The Local Authorities Board shall, at the direction of the Council, amend its order forming or constituting the

Explanatory Notes

1. This Bill amends chapter 49 of the Statutes of Alberta, 1968. This Bill also contains an amendment to The Municipal Taxation Act as a consequence of the repeal of section 58 of The Irrigation Act, 1968.

2. Section 4 (6) presently reads:

(6) An order, direction, approval or other instrument that the Council is to make may be made on its behalf by the chairman, vice-chairman or any other member of the Council.

Corrects a typographical omission.

3. Corrects a typographical omission.

4. Section 20 (1) presently reads:

20. (1) The board of each existing district shall before or as soon as possible after the commencement of this Act furnish the Council with lists of the descriptions of the parcels constituting the district according to its records.

The subsection is rewritten to indicate more precisely what is to be contained in the lists.

5. The new section 20a will provide a procedure for the exclusion of land from an irrigation district in special cases without the necessity of a petition under Part 1.

district in order to remove from the district the parcel or part thereof to which the notice under subsection (1) refers.

6. Section 31, clause (*d*) is amended by striking out the words “from the meetings of the board for three consecutive meetings of the board” and by substituting the words “from three consecutive regular monthly meetings of the board”.

7. Section 36 is amended

- (a) as to subsection (2) by striking out clause (*b*) and by substituting the following:
 - (*b*) all three readings shall not be given to the by-law at the same meeting unless all directors are present at that meeting and they unanimously agree to give the by-law third reading.
- (b) by striking out subsection (3).

8. Section 38 is amended by adding the following after subsection (6) :

- (6a) The board may make by-laws establishing a tariff of fees payable to the board
 - (a) for the inspection by members of the public of any documents or records referred to in subsection (6), or
 - (b) supplying any extracts from or copies of any documents or records referred to in subsection (6).

9. Section 41 is amended

- (a) as to subsection (1) by striking out clause (*e*) and by substituting the following:
 - (*e*) may, on behalf of the board and in accordance with the board’s employment policy, hire and dismiss all officers and employees of the board, and
- (b) as to subsection (2) by striking out clause (*h*) and by substituting the following:
 - (*h*) prepare in each month a statement of moneys received during the previous month and the disposition thereof and submit the statement to the board at its next regular monthly meeting following preparation of the report,

6. Section 31 (d) presently reads:

31. A person is not qualified to be elected or appointed or to remain a member of the board if he
.....

(d) absents himself, without being authorized by resolution of the board to do so, from the meetings of the board for three consecutive meetings of the board.

This amendment avoids the possibility of a director disqualifying himself accidentally if, for example, three urgent meetings are called while he is on holiday.

7. Section 36 (2) (b) and (3) presently read:

(2) Where by this or any other Act a by-law of the board is required
.....

(b) not more than two readings shall be given to the by-law unless all of the directors are present at the meeting and they un-animously agree to give the by-law third reading.

(3) No by-law of a board is valid unless it is approved by the Council.

Subsection (2)(b) is rewritten for clarification.

The requirement that all by-laws be approved by the Irrigation Council is to be removed except in particular cases dealing with financial matters. These particular cases are the subject of specific amendments elsewhere in this Bill.

Also, a number of other requirements for the Council's consent or approval to matters other than by-laws are being removed.

8. The new subsection (6a) follows a similar provision in section 149 of The Municipal Government Act. Section 38 (6) enumerates documents and records of a board which are open for public inspection.

9. Section 41 (1)(e) presently reads:

(e) shall, on behalf of the board and subject to its directions, hire and dismiss all officers and employees of the board, and

The purpose of the amendment to that clause is to avoid the interpretation that the manager must get directions from the board in the case of every person he hires or dismisses.

Section 41 (2)(h) presently reads:

(h) prepare before the 15th day of each month a statement of moneys received during the previous month and the disposition thereof and submit the statements to the board at its next meeting,

10. Section 47 is amended

- (a) as to subsection (2) by striking out the words “upon such terms as the Council may approve”,
- (b) by striking out subsection (4) and by substituting the following:

(4) The Lieutenant Governor in Council may authorize the Provincial Treasurer to guarantee on behalf of the Government the repayment of all or part of moneys borrowed by a board pursuant to a by-law under this section.

(5) A by-law under subsection (2) is not valid unless it is approved by the Council.

11. Section 48, subsection (1) is amended by striking out clause (b) and by substituting the following:

- (b) subject to subsection (2) and except as otherwise provided in this Act, to acquire, hold, sell or otherwise alienate or deal in any estate or interest in land.

12. Section 51, subsection (1) is amended by adding the words “made available or” before the words “supplied to them”.

13. The following section is added after section 52:

52a. (1) In this section,

- (a) “benefitted land” means land classified by the manager as benefitted land under this section;
- (b) “water benefit charges” means charges imposed pursuant to a by-law under this section.

(2) Where a by-law is passed under this section

- (a) the manager shall keep records of the lands that he has classified as benefitted lands, the persons liable for the water benefit charges in respect of those lands and the water benefit charges imposed under the by-law, and
- (b) such records shall be maintained separately from the assessment roll and do not form part of the assessment roll.

(3) The manager may classify lands as benefitted lands only where

- (a) the land is contiguous to, or has passing through it, any irrigation works of the board or where the land is contiguous to any natural water body or watercourse or reservoir fed by water diverted by means of irrigation works of the board, and

10. Section 47 (2) and (4) presently read:

- (2) A board may by by-law authorize the manager to borrow money on behalf of the board upon such terms as the Council may approve
- (a) to pay any expenses incurred in connection with the formation of the district, the organization thereof, the preparation of the assessment roll, the classification of lands in the district, and any expenses incidental thereto,
 - (b) to pay for the construction, replacement, repair, extension, alteration, modification, dismantling or abandonment of irrigation works,
 - (c) for financing and carrying out work required under any agreement entered into by the board with the approval of the Council,
 - (d) to provide money for loans made under clause (i) of subsection (1) of section 44, and
 - (e) for any other purpose approved by the Council.
- (4) The Government may guarantee the repayment of all or any portion of the moneys borrowed from time to time under this section by a board.

As to the new subsection (5), see the note to clause 7 of this Bill. The addition of subsection (5) makes the deleted words in subsection (2) redundant.

11. Section 48 (1)(b) presently reads:

48. (1) The board has the power and capacity
.....
- (b) subject to subsection (2), to acquire, hold, sell and otherwise deal in any estate or interest
 - (i) in any land within the district,
 - (ii) in any land inside or outside the district required or held for the purpose of irrigation works, and
 - (iii) with the consent of the Council, in any other land outside the district.

The consent of the Council will no longer be required in relation to land outside the district. The words "except as otherwise provided in this Act" are added because there are other provisions in the Act which regulate or restrict a board's powers to sell land.

12. Section 51 (1) presently reads:

51. (1) Subject to the payment of charges therefor under this Act,
- (a) all water users of the district, and
 - (b) all persons who are the holders of terminable water agreements,
- have the privilege of using for domestic purposes any water supplied to them for irrigation purposes.

The reference to "water supplied" might be construed as meaning only water that is physically delivered by the district. The amendment is made so that it is clear that the subsection extends to water "made available" for irrigation purposes but used for domestic purposes.

13. By-law re imposition of annual "water benefit charges" where land is considered as being benefitted by irrigation water even though the landholder is not a water user of the district nor has an agreement with the board. This is a modification of section 60 of The Irrigation Districts Act which was not brought forward in The Irrigation Act, 1968.

(b) the land is benefitted by reason of the physical possibility of the water that is in or may be in or available from such irrigation works being used for domestic purposes by the owner, purchaser, lessee or occupier of that land or any of his domestic animals or poultry.

(4) The manager shall not classify as benefitted land any parcel or any land that is the subject of a terminable water agreement or domestic water privilege or an agreement under section 52.

(5) The board may make by-laws establishing a tariff of charges to be imposed annually in respect of benefitted parcels.

(6) A by-law under this section shall establish the tariff of water benefit charges on an equitable and uniform basis, except that the tariff may establish different charges for benefitted lands according to whether the water is or may be used for domestic purposes only or for both domestic and irrigation purposes.

(7) Unless the by-law otherwise provides, the purchaser of benefitted land, or if there is no purchaser, then the owner, is primarily liable for the payment of water benefit charges.

(8) Water benefit charges may be recovered by a board only by an action in debt against the person liable therefor but it is a defence to such an action if it is shown

(a) that the land was wrongly or improperly classified as benefitted land, or

(b) that neither the owner, purchaser, lessee or occupier of the land or any domestic animals or poultry received any benefit from the existence of the irrigation works either by reason of the lack of water in the irrigation works in that year or the physical impossibility of obtaining the water in that year.

14. Section 58 is struck out.

15. Section 59 is amended

(a) as to subsection (2) by striking out the words "district manager" and by substituting the word "manager",

(b) as to subsection (3) by striking out the words "or in any other form approved by the Council".

16. Section 113 is amended

(a) as to subsection (1) by striking out the words ", with the consent of the Council",

14. Section 58 presently reads:

58. (1) Notwithstanding any other Act,

(a) all irrigation works of a board other than buildings, and

(b) all lands held by the board for the purpose of its irrigation works,

are exempt from assessment and taxation made or imposed under or pursuant to any Act of the Province.

(2) Subsection (1) does not exempt a board from the payment of taxes pertaining to minerals owned by the board.

This section is being replaced by a new clause 16 in section 20 of The Municipal Taxation Act. See clause 31 of this Bill.

15. Subsection (2) is amended because the term "manager" is used in the Act, not "district manager".

As to the amendment to subsection (3), see note to clause 7 of this Bill.

16. Section 113 (1) presently reads:

113. (1) The board may at any time, with the consent of the Council, direct the manager to alter or cancel the assessment of any parcel of land or any part thereof in the district

(a) when it appears to the board that the assessment is erroneous, because some relevant factor was omitted from consideration at the time of its assessment, or

(b) when the assessment made has resulted in an injustice, or

(c) where there has been a change in the factors referred to in subsection (4) of section 112.

(3) After altering or cancelling an assessment, the board may with the consent of the Council refund all or part of any irrigation rates paid before the change in the assessment in such an amount as the board and the Council consider to be equitable.

See note to clause 7 of this Bill.

(b) by striking out subsection (3) and by substituting the following:

(3) After altering or cancelling an assessment, the board may refund all or part of any irrigation rates paid before the change in the assessment in such an amount as the board considers to be equitable.

17. Section 119, subsection (2) is amended by striking out the words "of land" and by substituting the words "or land".

18. Section 132 is amended by striking out all the words preceding clause (a) and by substituting the following:

132. A board shall, not later than the first day of July in each year, prepare and send to the Council for its approval the board's estimates of the amounts required in its current fiscal year to pay

19. Section 133 is amended by adding the following after subsection (4):

(5) A by-law passed under this section is not valid unless it has been approved by the Council and no billing notices shall be delivered or transmitted in that year until the Council's approval to the by-law is obtained.

20. Section 134 is amended

(a) as to subsection (1) by adding after the words "for water" the words "made available or",

(b) by adding the following subsection after subsection (2):

(3) A by-law under subsection (1) is not valid unless it is approved by the Council.

21. Section 135 is amended

(a) as to subsection (1) by adding after the words "for water" the words "made available or",

(b) by adding the following subsection after subsection (2):

(3) A by-law under subsection (1) is not valid unless it is approved by the Council.

22. Section 138 is amended

(a) as to subsection (2), clause (b) by striking out the word "ditches" and by substituting the words "irrigation works",

17. Section 119 (2) presently reads:

(2) No director shall act on a court of revision with respect to any parcel of land in which he is directly or indirectly interested.

Corrects a typographical error.

18. The portion of section 132 being replaced reads:

132. A board shall, not later than the first day of May in each year, make an estimate of the amount required in its current fiscal year to pay

The amendment extends the time limit from May 1 to July 1 and also requires that the estimates be submitted to the Council for approval by July 1.

19. Section 133 provides for the levying of an annual rate to be paid by water users. See note to clause 7 of this Bill.

20. Section 134 (1) presently reads:

134. (1) The board shall in each year pass a by-law prescribing the charges, called "special rates", payable to the board for that year for water supplied by the board under terminable water agreements.

As to the new subsection (3), see clause 7 of this Bill.

21. Section 135 (1) presently reads:

135. (1) The board shall in each year pass a by-law establishing a tariff of charges payable to the board for water supplied by the board during that year for domestic purposes pursuant to domestic water privileges granted under subsection (1) of section 51 or agreements made under subsection (2) of section 51.

As to the new subsection (3), see clause 7 of this Bill.

22. Section 138 (2) and (3) presently read:

(2) When any apportionment is made under this section at the request of the water user of the parcel of land, the board may require that person to submit

- (a) plans and specifications of all additional ditches necessary to bring irrigation water to the boundary of each of the parts into which the parcel is to be divided, and
- (b) an estimate of the cost of constructing the ditches.

(3) The board may refuse to make an apportionment of the rates until

- (a) it has received payment of a sum sufficient to defray the cost of the construction referred to in subsection (2), or
- (b) it has had the payment of such cost fully secured, or
- (c) the ditches have been constructed to the satisfaction of the board.

The word "ditches" is considered too restrictive in this context.

- (b) as to subsection (3), clause (c) by striking out the word "ditches" and by substituting the words "irrigation works".

23. Section 140 is amended

- (a) as to subsection (5) by striking out the words ", with approval of the Council,"
- (b) by adding the following after subsection (5):

(6) The report of the chairman of the board to the annual meeting of the water users shall contain a copy of each resolution of the board made under subsection (5) in the previous fiscal year and the reasons for making it.

24. Section 145, subsection (2) is amended by adding after the words "on the next succeeding" the words "first day of July and on the first day of July in each succeeding".

25. Section 154 is amended by striking out subsection (4) and by substituting the following:

(4) The notice mentioned in subsection (1) shall be in the prescribed form.

26. Section 159, subsection (1) is amended by striking out the word "Council" and by substituting the word "board".

27. Section 168 is amended by striking out subsection (2).

28. The following section is added after section 188:

188a. (1) in this section,

- (a) "board" includes the predecessors of a board of an existing district;
- (b) "irrigable parcel" means a parcel in an existing district which, during the period from May 1, 1958 to the commencement of this section, has been in an existing district and has been classified in whole or in part in the assessment roll of the existing district as "to be irrigated";
- (c) "servient lands" means any land, inside or outside an existing district,
 - (i) on or within which there exists, at the commencement of this section, any irrigation works that have, at any time during the period

23. Section 140 (5) presently reads:

(5) Notwithstanding anything in this Part, when it appears to the board that the payment of all or part of the amounts shown as owing on the collector's roll by any person has resulted or is likely to result in hardship or injustice to the person who owes the amounts to the board, the board may, with approval of the Council, cancel or refund all or any part of the amounts owing or paid.

See note to clause 7 of this Bill.

24. This amendment corrects a typographical omission.

25. Section 154 (4) presently reads:

(4) The notice mentioned in subsection (1) may be in the prescribed form or in any other form approved by the Council.

See note to clause 7 of this Bill. The notice referred to is a notice for the hearing on the confirmation of the enforcement return.

26. Section 159 (1) presently reads:

159. (1) When, under this Part, any parcel or land vests in the board or a purchaser's agreement for sale is cancelled, as the case may be, the board is entitled to the immediate vacant possession of the parcel or land and may at any time before the parcel or land is offered for sale lease the parcel or land for a period of not more than one year at a rent and upon terms and conditions approved by the Council.

See note to clause 6 of this Bill.

27. Section 168 (2) presently reads:

(2) The parcel or land shall not be sold under this section at a price less than the upset price fixed by the board under section 164.

28. The new section will give the board of an existing district a statutory easement over land for the purpose of draining off water supplied for irrigation to a parcel that has been in the district since May 1, 1958 and where the board has used that land at any time since May 1, 1958 for drainage but without any legal conveyance entitling it to do so.

from May 1, 1958 to the commencement of this section, been used for the purpose of carrying away or draining off water from an irrigable parcel or any part thereof, and

- (ii) in respect of which the board did not have, on the commencement of this section, any legal estate or interest permitting it to use that land for any purpose referred to in subclause (i).

(2) The board of an existing district has, in respect of any servient lands, the right in perpetuity

- (a) to enter upon the servient lands for the purpose of constructing, repairing, replacing, dismantling or abandoning any irrigation works thereon, if the irrigation works are used or are to be used for the purpose of carrying away or draining off water from an irrigable parcel or any part thereof or carrying water to another parcel in the district or to land that is the subject of a terminable water agreement, a domestic water privilege or an agreement under section 52,
- (b) to use the irrigation works on the servient lands for the purpose of carrying away or draining off water from an irrigable parcel or any part thereof or carrying water to another parcel in the district or to land that is the subject of a terminable water agreement, a domestic water privilege or an agreement under section 52, and
- (c) to use so much of the land on either side of the irrigation works on the servient lands as may be required by the board for the deposit of soil thereon, or for the construction, repair, replacement, dismantling or abandoning of the irrigation works.

(3) The rights conferred on a board by subsection (2) shall be deemed to be an easement within the meaning of section 64, subsection (1), clause (g) of *The Land Titles Act* in favour of the board.

(4) No board is liable for the payment of compensation or damages by reason of the exercise of rights conferred on it by this section.

29. Section 192 is amended by renumbering the section as subsection (1) and by adding the following subsection:

(2) It is hereby declared that the repeal of the former Act did not operate to terminate, discharge or otherwise affect the agreement in Schedule II of the former Act.

30. Section 193 is amended by renumbering the section as subsection (1) and by adding the following subsection:

29. Section 192 is a transitional provision relating to The Eastern Irrigation District Act (referred to as the "former Act") which was repealed by The Irrigation Act, 1968. Schedule I of the former Act contained an agreement between the E.I.D. and the C.P.R. and the district board has been concerned as to the effect of repeal of the former Act on this agreement. The new subsection (2) is a declaration that the agreement remains unaffected.

30. Section 193 is the equivalent of section 192 in relation to The Western Irrigation District Act, which also contained an agreement between the W.I.D. and the C.P.R. The amendment is the equivalent of that in clause 29.

(2) It is hereby declared that the repeal of the former Act did not operate to terminate, discharge or otherwise affect the agreement in Schedule II of the former Act.

31. *The Municipal Taxation Act* is amended as to section 20, subsection (1) by striking out clause 16 and by substituting the following:

16. land and improvements held by the board of directors of an irrigation district except
 - (i) land and improvements that are not held by the board for the purposes of its offices or its irrigation works (as defined in *The Irrigation Act, 1968*), and
 - (ii) buildings used by employees of the board as dwellings;

32. *The United Irrigation District Colonization Act*, being chapter 104 of the Revised Statutes of Alberta, 1942, is repealed.

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

31. Section 20 (1)/16 of The Municipal Taxation Act presently reads:

16. works constructed, operated and used in connection with irrigation ditches as well as ditches operated under and subject to The Water Resources Act or The Irrigation Act, 1968, until the year following the year in which the operations of such work cease;

The new clause 16 replaces both the present clause 16 and also section 58 of The Irrigation Act, 1968.

The result is to extend the exemption to all lands and improvements of a board that do not produce revenues for the board as farm land. Dwellings supplied to its employees are not exempted.

32. Repeals an obsolete Act.