

1970 Bill 90

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 90

An Act respecting Transportation Systems in Cities

THE MINISTER OF HIGHWAYS AND TRANSPORT

First Reading

Second Reading

Third Reading

BILL 90

1970

An Act respecting Transportation Systems in Cities

(Assented to _____, 1970)

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 City Transportation Act*.
2. In this Act,
 - (a) "highway" means land used or surveyed for use as a public highway and includes a bridge forming part of the highway and any structure incidental to the public highway or bridge;
 - (b) "Minister" means the member of the Executive Council charged with the administration of this Act;
 - (c) "owner" means
 - (i) a person registered in a land titles office as the owner of an estate in fee simple or a life estate in land, or
 - (ii) a purchaser of land whose interest as purchaser is recorded on the certificate of title for that land, or
 - (iii) a tenant or any person who is in possession or occupation of land, and whose interest as tenant is recorded on the certificate of title for that land;
 - (d) "permit" means a permit issued under this Act;
 - (e) "rapid transit" means a public transportation system running on rails or other tracked systems and operating on an exclusive right of way but does not include privately-owned railways or railways directly responsible to federal or provincial governments;
 - (f) "street" means a highway subject to the direction, control and management of a city;
 - (g) "transportation facility" means everything necessary for the efficient transportation of persons and goods in a particular manner;

Explanatory Notes

- 1.** This Bill will provide for the planned development of an integrated transportation system within each participating city.
- 2.** Definitions.

- (h) "transportation protection area" means land designated by the council of a city as a transportation protection area;
- (i) "transportation system" means a system of transportation facilities including streets, highways, rapid transit and all types of transportation facilities to which this Act applies on, above and below the ground.

PART 1

ESTABLISHMENT OF TRANSPORTATION SYSTEMS

3. Each city is responsible for the costs of establishing and maintaining all transportation facilities subject to its direction, control and management but may qualify for financial assistance from the Province by complying with with the terms of this Act.

4. The city shall prepare a comprehensive transportation study report for the development of an integrated transportation system designed to service the needs of the entire city.

5. (1) The city council shall by by-law establish a transportation system in accordance with the transportation study report and the by-law shall designate the transportation system.

(2) The by-law shall include a map showing the approximate location of the transportation facilities and such other items as may be required by the regulations.

(3) The by-law shall be passed not later than October 31, 1970 and shall come into force on January 1, 1971 unless either time is extended by the Minister.

(4) The city council shall submit the by-law to the Minister for approval by the Lieutenant Governor in Council and the Lieutenant Governor in Council may vary or approve the by-law in whole or in part and where the by-law is varied or approved in part only, it shall be enforced and take effect as approved.

(5) It is not necessary for the city council to pass any further by-law amending the by-law submitted pursuant to subsection (4) to conform with the by-law as approved by the Lieutenant Governor in Council but it shall be deemed to be amended as approved.

(6) Subject to the approval of the Lieutenant Governor in Council, the city may amend the by-law from time to time by the addition or deletion of transportation facilities or in any other manner.

(7) The city council shall, after second reading, cause notice of the proposed by-law establishing a transportation system or any amendment thereto to be published at least once a week for two consecutive weeks in one or more newspapers having general circulation within the city, the last of such publications to be at least 14 days before the date fixed for the third reading of the by-law.

3. Financial responsibility for transportation systems.

4. Transportation study report. The city is to prepare a report integrating various transportation facilities required to fulfill its present and future needs.

5. Transportation system by-law. This section establishes the machinery for establishing the urban transportation system and obtaining approval of the system by the provincial government.

(8) In considering the proposed by-law, the city council shall hear and consider the representations, presented either personally or through an agent, of any interested party.

6. (1) When a city considers that a transportation facility included in the transportation system should be constructed it shall submit the proposal to the Minister.

(2) If the proposal is approved by the Minister, the Minister may enter into an agreement with the city with respect to the sharing of costs of establishing the transportation facility.

(3) Any contribution toward the cost of establishing a transportation facility under this section received by the city from any source other than the city's sources shall be deducted from the cost for the purpose of the agreement.

7. The title to all transportation facilities forming the transportation system is, subject to any Act or agreement to the contrary, vested in the city.

8. Where a part of the transportation system lies outside the boundaries of a city, the city may acquire the land pursuant to the provisions of *The Municipal Government Act*, and the Minister shall deal exclusively with the city with respect to development of the system within that area.

6. Approval of transportation facility. As each facility within the system is to be constructed it must be approved by the Minister for cost-sharing.

7. Title to transportation facilities

8. Extra-territorial development.

PART 2

PROTECTION AND ACQUISITION OF LAND

9. In this Part “development” means

- (a) the carrying out of any construction or excavation or other operations in, on, over or under land, or
- (b) the making of any change in the use or the intensity of use of any land, buildings or premises.

10. (1) Where a city intends to acquire any area of land for a transportation system, either immediately or over a period of time as it becomes available or is needed, the city may by by-law declare that area of land to be a transportation protection area.

(2) The city council may by by-law declare any street or land subject to its direction, management and control to be a transportation protection area.

(3) The city council shall cause notice of the proposed by-law establishing a transportation protection area or any amendment thereto to be published at least once a week for two consecutive weeks in one or more newspapers having general circulation within the city, the last of such publications to be at least 14 days before the date fixed for the passing of the by-law.

(4) In considering the passage of the proposed by-law, the city council shall hear and consider the representations, presented either personally or through an agent, of any person who claims that the land in which he is interested as owner, occupier or otherwise will be affected by the by-law.

11. (1) When a transportation protection area is designated pursuant to section 10 the council shall file a copy of the by-law and a plan of the transportation protection area with the Registrar of Titles for the land registration district in which the land is located.

(2) The Registrar of Titles shall endorse upon every certificate of title to land within a transportation protection area, a notice that the land is within a transportation protection area and that this Part applies in respect of that land.

(3) The council shall give notice of the designation of a transportation protection area and of the provisions of this Part to all owners of land within the transportation protection area by registered mail to the last address shown on the certificate of title in the land titles office or on the tax rolls of the city, whichever appears more recent.

9. Definition.

10. Transportation protection area. Protection of "corridors" for future use in bringing system into being.

11. Notice.

(4) A copy of the by-law and plan designating the transportation protection area shall be maintained at the city hall and made available at such times as are reasonable for the inspection of all persons.

12. The plan of the transportation protection area shall be prepared by an Alberta land surveyor and where the land included in a transportation protection area

- (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
 - (c) can be described sufficiently without the necessity of a plan of survey or any additional plan of survey
- the land need not be re-surveyed.

13. (1) Where a transportation protection area is by by-law abandoned in whole or in part, the council shall file a notice of abandonment with the Registrar of Titles for the land registration district in which the land is located.

(2) The Registrar of Titles shall endorse upon every certificate of title to land affected by the notice of abandonment, a memorandum that the notice filed pursuant to section 11, subsection (2) is withdrawn.

(3) The council shall give notice of the abandonment to all owners of land thereby affected by registered mail to the last address shown on the certificate of title in the land titles offices or on the tax rolls of the city, whichever appears more recent.

14. The city may make by-laws

- (a) prohibiting any type of development within a transportation protection area,
- (b) allowing within a transportation protection area, under the authority of a permit, any type of development not inconsistent with the establishment of the transportation system and specifying any conditions or restrictions thereto,
- (c) providing for the appointment of a protection area officer who shall be an official of the city,
- (d) authorizing the protection area officer to receive, consider and decide on applications for permits, and
- (e) providing for the establishment of a Protection Area Appeal Board, the majority of the members of which shall not be members of the city council or employees of the city.

12. Preparation of plan.

13. Abandonment of transportation protection area.

14. Development control by-laws.

15. (1) Notwithstanding any other Act, no person shall without a permit engage in any development within a transportation protection area.

(2) A permit under this section shall be obtained before making any application under *The Planning Act* and any application under that Act shall be subject to the conditions and restrictions of the permit.

(3) No permit under subsection (1) shall be required for any development for which authority to proceed has been given under any other Act prior to July 1, 1970 unless the authority is not exercised within one year of its issuance.

16. (1) The protection area officer shall upon consideration of an application for a permit and within 40 days

- (a) grant a permit for the development applied for, or
- (b) grant a permit for the development subject to certain conditions and restrictions, or
- (c) refuse to grant a permit.

(2) An application for a permit shall be deemed to be refused when a decision thereon is not made within the 40-day period.

17. (1) A person affected by a decision of a protection area officer may appeal to the Protection Area Appeal Board by serving notice by registered mail upon the protection area officer and the chairman of the Protection Area Appeal Board

- (a) within 14 days after notice of the decision is mailed to him, or
- (b) within 14 days of the date the application is deemed refused.

(2) The Protection Area Appeal Board

- (a) shall hold a hearing within 30 days from the receipt by it of the letter of appeal,
- (b) shall ensure that reasonable notice of the hearing is given to the appellant and all persons who in its opinion may be affected, and
- (c) shall consider each appeal having due regard to the circumstances and merits of the case and to the purpose of the establishment of transportation protection areas and shall be bound in its deliberations by all relevant by-laws.

(3) In the conduct of hearings a Protection Area Appeal Board is not bound by the technical rules of evidence, but

- (a) shall conduct the hearing in accordance with such rules as may be prescribed by the Board,

15. Permits.

16. Application for permit.

17. Protection Area Appeal Board.

- (b) shall afford to every person concerned the opportunity to be heard, to submit evidence and to hear the evidence of others, and
 - (c) shall make and keep a written record of its proceedings, which may be in the form of a summary of the evidence presented to it at hearings.
- (4) In determining an appeal, the Protection Area Appeal Board
- (a) may confirm, reverse or vary the decision appealed from as it considers proper and desirable in the circumstances, and
 - (b) shall render its decision in writing to the appellant within 30 days from the date on which the hearing is held.

18. (1) Subject to subsection (2), upon a question of jurisdiction or upon a question of law an appeal lies from a decision of the Protection Area Appeal Board to the Appellate Division of the Supreme Court of Alberta.

(2) Leave to appeal shall be obtained from a judge of the Appellate Division upon application made within 30 days after the making of the decision of the Protection Area Appeal Board and upon notice to the proposed respondent and to the Protection Area Appeal Board and the costs of the application shall be in the discretion of the judge.

(3) Upon leave being obtained the party appealing shall, within 10 days after the appeal has been set down, give notice thereof to the respondent.

19. (1) The owner of any property within a transportation protection area shall, at least 60 days before completing any sale of the property, serve notice of the proposed sale upon the city clerk and the owner may complete the sale after the 60-day period if the city has not

- (a) matched the offer to purchase, in which case the owner shall sell to the city, or
- (b) commenced expropriation proceedings.

(2) Where the owner of any property within a transportation protection area completes the sale of such property without giving the city 60 days' notice of the proposed sale, the sale is valid but the consideration paid for the property shall not be admitted in evidence of its value on behalf of the owner in any proceedings by the city to obtain such property or in any claim for compensation for injurious affection.

18. Appeal to Appellate Division of the Supreme Court.

19. Sale of land.

(3) Where the city is negotiating the purchase of land in a transportation protection area and the owner indicates that in the event of a sale he wishes to retain possession of the land for the time being, the city 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 city.

(4) Where in the process of acquiring land in a transportation protection area it appears the city can acquire a larger area of land, a portion of which is in the transportation protection area, from any particular owner, or the whole of a lot or parcel of land, a portion of which is in the transportation protection area, at a more reasonable price or on more advantageous terms than those upon which it could obtain the part immediately required for its purposes, the city may acquire the larger area.

20. (1) The city may acquire land within a transportation protection area as it is required or in advance of its being required.

(2) Land within a transportation protection area may be acquired by the city

- (a) by purchase, where the owner of the land and the city agree as to the price, or
- (b) by expropriation, where the owner of the land and the city cannot agree as to the price or where the owner of the land requests that the land be expropriated or consents to expropriation, or
- (c) by gift.

21. In determining the compensation payable for acquisition of land, no account shall be taken of

- (a) any development carried out subsequent to establishment of a transportation protection area which is not covered by a permit pursuant to section 14, or
- (b) any enhancement or depreciation in the value of the property which is attributable to its inclusion in a transportation protection area.

22. Land acquired by the city may, subject to section 19, subsection (3), in the period before it is required for development

- (a) be rented, or
- (b) be used in any other way

by the city but any use of the land shall be in accordance with the ultimate requirement of the land for the most economical and efficient construction of the transportation system.

20. Acquisition of land.

21. Determining compensation.

22. Temporary use of acquired land.

PART 3

CONTROL OF ACCESS, PARKING AND ADJACENT DEVELOPMENT

23. All highways included in the transportation system pursuant to section 5 are controlled streets.

24. (1) No person has

- (a) any right of direct access between a controlled street and any land adjacent thereto, or
- (b) any right of easement, light, air or view to, from or over a controlled street.

(2) Notwithstanding any other Act, no person is entitled as of right to any compensation solely by reason of the designation of a street as a controlled street, or of land as a transportation protection area.

25. The city council may make by-laws

- (a) prescribing terms and conditions applicable to the granting of permits under this Part,
- (b) exempting any means of access to or from a controlled street from the requirements of a permit under this Part,
- (c) permitting parking on any controlled street or portion of any controlled street, and
- (d) prohibiting, except under the authority of a permit,
 - (i) the placing, constructing, enlarging, extending, or erecting or re-erecting of a building, structure, fixture, road, excavation or other development, whether on, above or below ground, including power, telecommunication and utility lines and gas and oil transmission lines where the lines are not city owned, and
 - (ii) the display of machinery, motor vehicles, or other articles, whether placed for storage or wreckage or for the purpose of advertising for sale

within such distance from a controlled street as the by-law may prescribe.

26. (1) Notwithstanding any other Act, the city may by by-law at any time close

- (a) any street providing access to or from a controlled street, or
- (b) any means of access between a controlled street and land adjacent to a controlled street.

23. Controlled streets.

24. Rights limited.

25. By-laws.

26. Access.

- (2) No person shall construct or maintain a means of access to or from a controlled street unless
- (a) a permit authorizes the construction or maintenance, or
 - (b) the by-laws exempt the construction and maintenance from the requirements of a permit, or
 - (c) the means of access was in existence prior to the designation of a controlled street pursuant to *The Public Highways Development Act* or pursuant to this Act, and has not been subsequently closed by the city pursuant to *The Public Highways Development Act* or subsection (1).
- (3) No person shall enter upon or leave a controlled street except by way of
- (a) a street connecting with a controlled street, or
 - (b) a means of access existing pursuant to a permit, or
 - (c) a means of access exempted under the by-laws from the requirements for a permit, or
 - (d) a means of access in existence prior to the designation of a controlled street pursuant to *The Public Highways Development Act* or this Act, and which has not been subsequently closed by the city pursuant to *The Public Highways Development Act* or subsection (1).

27. (1) Subject to subsections (2) to (5), where a means of access was maintained in accordance with this Part and the by-laws and is subsequently closed pursuant to section 26, the city shall compensate each owner of the adjacent land for the loss resulting to him from the closing of the means of access.

- (2) The aggregate amount of compensation payable in an individual case shall not exceed the difference between
- (a) the appraised value of the adjacent land prior to the closing of the means of access, and
 - (b) the appraised value of that land after the closing of the means of access
- together with an amount of not more than 10 per cent of the difference so determined.

(3) Where, prior to its closing, the means of access was maintained pursuant to a permit, the payment of compensation is subject to the terms of the permit.

(4) Where a direct means of access is closed and a service or frontage road or other alternate means of access is provided, no compensation shall be paid under this section.

27. Compensation for closing.

(5) Where a direct means of access is closed and an alternate means of access is provided as under subsection (4), no compensation shall be paid for any circuitry of travel that results therefrom.

(6) A claim for compensation under this section shall be made by filing the claim and particulars thereof with the city clerk not later than one year from the date of closing of the means of access by the city and, if the city is not able to agree with the owner on the amount of compensation, the compensation shall be determined by the Public Utilities Board as of the date of closing of the means of access.

28. The city may by notice served by registered mail addressed to the address shown on the certificate of title in the land titles office or the tax rolls of the city, whichever is more recent, require an owner of land to move, remove or alter

- (a) any means of access constructed or maintained on the land providing direct access to a controlled street, or
- (b) any thing placed, erected, enlarged, extended, re-erected, constructed or displayed on the land within the distance from a controlled street prohibited in the by-laws made under section 25,

as specified in the notice and within the time prescribed in the notice.

29. (1) An owner who complies with a notice given under section 28 is entitled to compensation from the city for his reasonable expense in moving, removing or altering any thing as required by the notice unless it is or was

- (a) constructed or maintained in contravention of section 26, or
- (b) placed, erected, enlarged, extended, re-erected, constructed or displayed in contravention of the by-law under section 25.

(2) A claim for compensation under this section shall be made by filing the claim and particulars thereof with the city clerk not later than one year from the date of service of the notice and, if the city is not able to agree with the owner on the amount of compensation, the compensation shall then be determined by the Public Utilities Board.

30. (1) Where notice has been served pursuant to section 28 and the owner fails to comply with the notice within the time specified in the notice, or any extension thereof, the city may direct any person to enter upon the land and do or cause to be done any acts that were required to be done by the notice.

28. Notice to remove.

29. Compensation for compliance with notice.

30. Failure to comply.

(2) The city may charge the costs of the work done pursuant to subsection (1) against the owner of the land and recover the costs as a debt due to the city or charge the costs against the land concerned as taxes due and owing in respect of that land and recover the costs as such.

31. (1) Any person who fails to comply with the notice given to him under section 28 is guilty of an offence punishable on summary conviction.

(2) Upon conviction for an offence, the convicting magistrate shall, in addition to the penalty imposed, order the person convicted to move, remove, or alter within a period specified in the order, the thing in respect of which he is convicted.

(3) A person who fails to comply with an order made against him under subsection (2) is guilty of a further offence and liable to a fine of not more than \$25 for each day during which the breach of the order continues.

31. Offence and Penalty.

PART 4

GENERAL

32. (1) Subject to the approval of the Lieutenant Governor in Council, the Minister and a city may enter into an agreement

- (a) providing for any matter in respect of which the council may make by-laws pursuant to sections 14, 25 and 26, and
- (b) providing that any by-laws made under sections 14, 25 and 26 shall as of a specified effective date be in accordance with the agreement.

(2) Where an agreement provides for any matter referred to in subsection (1), clause (b), any by-law that is on or after the specified effective date not in accordance with the agreement is inoperative with respect to the terms of the section or sections concerned.

(3) Where the city does or omits to do any thing in breach of an agreement providing for any of the matters referred to in subsection (1) or purports to do any act under a by-law that is inoperative by virtue of subsection (2), the Supreme Court of Alberta on the application by the Crown may grant an order to restrain the city from doing any act in breach of the agreement or to compel the doing of any act that will remedy its breach of the agreement or its unlawful act, as the case may be.

33. (1) The Minister may make such regulations as are necessary to carry out the provisions of this Act according to their intent to meet cases that arise and for which no provision is made by this Act.

(2) Without restricting the generality of subsection (1), the Minister may make regulations

- (a) prescribing the terms of reference for preparation of transportation study reports pursuant to section 4,
- (b) prescribing the form of the by-law establishing the urban transportation system pursuant to section 5,
- (c) prescribing the approvals by the Minister required for the various stages of development of designs, plans and specifications as they are developed for the urban transportation system,
- (d) prescribing the procedure for awarding contracts for the construction of transportation facilities,
- (e) prescribing the formula for determining the portion of the costs of construction of transportation facilities to be borne by the Crown, and

32. Agreement relating to by-laws.

33. Regulations.

- (f) prescribing the expenditures chargeable to establishment of a transportation facility.

34. *The Land Titles Act* is amended as to section 64 by striking out subsection (2) and by substituting the following:

(2) Land mentioned in any certificate of title issued under the provisions of *The Tax Recovery Act*, Part 4 of *The Irrigation Act, 1968* or Part 4 of *The Drainage Districts Act*, or in any certificate of title based upon a foreclosure order, notwithstanding the provisions of any other Act is, by implication and without any special mention therein, subject to

- (a) any easement or incorporeal right, a memorandum of which has been made under the provisions of sections 70 and 71,
- (b) any instrument registered under section 71, subsection (4),
- (c) any condition or covenant running with or annexed to the land and registered under section 52,
- (d) any caveat protecting any such easement, incorporeal right, condition or covenant, duly filed, and
- (e) a notice endorsed pursuant to section 11 of *The City Transportation Act*,

if the registration, endorsement or filing, as the case may be, was made prior to the registration of the judge's adjudication upon the rate enforcement return under *The Irrigation Act, 1968* or *The Drainage Districts Act*, or to the date of the mortgage with respect to which a foreclosure order was made, as the case may be.

35. This Act comes into force on July 1, 1970.

34. Consequential. Section 64, subsection (2) presently reads as follows:

(2) Land mentioned in any certificate of title issued under the provisions of The Tax Recovery Act, Part 4 of The Irrigation Act, 1968, or The Drainage Districts Act, Part IV, or in any certificate of title based upon a foreclosure order, notwithstanding the provisions of any other Act is, by implication and without any special mention therein, subject to

- (a) any easement or incorporeal right, a memorandum of which has been made under the provisions of sections 70 and 71,
- (b) any instrument registered under subsection (4) of section 71,
- (c) any condition or covenant running with or annexed to the land and registered under section 52, and
- (d) any caveat protecting any such easement, incorporeal right, condition or covenant, duly filed,

if the registration or filing, as the case may be, was made prior to the registration of the judge's adjudication upon the rate enforcement return under The Irrigation Act, 1968 or The Drainage Districts Act, or to the date of the mortgage with respect to which a foreclosure order was made, as the case may be.