

1970 Bill 120

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ~~ALBERTA~~

BILL 120

An Act to amend The Expropriation Procedure Act

THE MINISTER OF MINES AND MINERALS

First Reading

Second Reading

Third Reading

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An Act to amend The Expropriation Procedure Act

(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. *The Expropriation Procedure Act* is hereby amended.

2. Section 2 is amended

(a) by striking out clause (b) and by substituting the following:

(b) "Board" means

(i) with respect to Part 2, the Public Utilities Board, and

(ii) with respect to Part 3, the Board of Arbitration or the Public Utilities Board, as the case may be;

(b1) "Board of Arbitration" means the Board of Arbitration appointed under *The Right of Entry Arbitration Act*;

(b) by adding the following clause after clause (j):

(j1) "Public Utilities Board" means the Public Utilities Board constituted under *The Public Utilities Board Act*;

3. Section 22, subsection (2) is amended by striking out the word "public".

4. The following sections are added after section 31:

31a. Except as provided in section 31b, the Public Utilities Board has jurisdiction with respect to expropriations under this Part.

31b. The Board of Arbitration has jurisdiction with respect to expropriations under this Part authorized under or pursuant to

Explanatory Notes

1. This Bill amends chapter 30 of the Statutes of Alberta, 1961. The primary purpose of this Bill is to transfer jurisdiction from the Public Utilities Board to the Board of Arbitration appointed under The Right of Entry Arbitration Act with respect to expropriation proceedings for pipe lines, power lines, telephone lines, and for dam sites, reservoirs, etc. required by a company under The Water Resources Act. The main provision to effect this transfer is found in the amendment in clause 4 of this Bill.

The Public Utilities Board presently has jurisdiction in expropriations under Parts 2, 3 and 4 and all other amendments to the Act in this Bill are made for the purpose of distinguishing between the Public Utilities Board on the one hand and the Board of Arbitration on the other.

2. Section 2, clause (b) presently reads:

2. In this Act,

.....

(b) "Board" means the Public Utilities Board constituted under The Public Utilities Board Act;

See the note to clause 1.

3. Section 22, subsection (2) presently reads:

(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 3 as if it were a company within the meaning of Part 3.

The amendment clarifies that gas and other utilities would be included.

4. Part 3 deals with expropriations for pipe lines, power lines and other works made by companies, i.e., by persons other than the Crown or a municipality. The amendment will transfer jurisdiction as to expropriations for pipe lines, power lines and telephone lines and for dam sites, reservoirs, etc. required by companies under The Water Resources Act to the Board of Arbitration.

- (a) *The Pipe Line Act, 1958*, or
- (b) *The Water, Gas, Electric and Telephone Companies Act*, or
- (c) section 84d of *The Water Resources Act*,

where such expropriation proceedings are commenced on or after July 1, 1970.

5. Section 35, subsection (2), clause (a) is amended by striking out the words “and when necessary” and by substituting the words “including when necessary”.

6. Section 39, subsection (1) is amended by adding after the words “may apply to the Board” the words “that granted the order”.

7. Section 43, subsection (3), clause (b) is amended by striking out the words “under Part 2, 3 or 4, the Board” and by substituting the words “under Part 2, 3 or 4 to the Public Utilities Board, that Board”.

8. Section 47, subsection (1), clause (a) is amended by striking out the word “Board” and by substituting the words “Public Utilities Board”.

9. Section 48 is struck out and the following sections are substituted:

48. The provisions of Part 1 of *The Public Utilities Board Act*, relating to the powers of the Public Utilities Board, the procedure of that Board and the enforcement of orders of that Board, apply to proceedings and orders of that Board under this Act in so far as they do not conflict with the provisions of this Act.

48a. The provisions of *The Right of Entry Arbitration Act* relating to the powers of the Board of Arbitration, the procedure of that Board and the enforcement of orders of that Board apply *mutatis mutandis* to proceedings and orders of that Board under this Act in so far as they do not conflict with the provisions of this Act.

10. Section 52 is amended by adding after the words “Part 1, 2, 3 or 4” the words “other than an order of the Board of Arbitration”.

11. The following section is added immediately after section 52:

5. This change clarifies that interest in lands includes any necessary right of way. Section 35, subsection (2), clause (a) presently reads:

(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,

6. This amendment will remove uncertainty as to the Board that would deal with termination orders. Section 39, subsection (1) presently reads:

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

7. Section 43, subsection (3), clause (b) presently reads:

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

.....

(b) if the application was made under Part 2, 3 or 4, 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.

This provision will not apply to cases before the Board of Arbitration because disputes as to which persons are entitled to the compensation will be subject to appeal under the proposed section 52a.

8. Orders of the Board of Arbitration will be enforced under new section 48a.

9. Section 48 presently reads:

48. The provisions of Part 1 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 2, 3 and 4 of this Act in so far as they do not conflict with the provisions of this Act.

Section 48a is added to provide that the provisions of chapter 290 of the Revised Statutes relating to the powers, procedures and enforcement of orders of the Board of Arbitration will apply to orders under Part 3.

10. Section 52 deals with appeals to the Appellate Division as to compensation, but compensation orders of the Board of Arbitration will be subject to appeal to the district court under the proposed section 52a, in the same way that compensation orders under The Right of Entry Arbitration Act are subject to appeal.

11. Section 52a deals with appeals from orders of the Board of Arbitration pertaining to compensation to the district court. The procedure is the same as in section 21 of The Right of Entry Arbitration Act.

52a. (1) An order of the Board of Arbitration under Part 3 may be appealed to the district court as to the amount of money payable and the person to whom the money is payable.

(2) The party appealing shall,

- (a) within 30 days after the date of the order declaring the amount of money payable, cause a notice of appeal to be filed in the office of the clerk of the district court, in the judicial district in which the land is situated, and
- (b) not later than 10 days after the filing of the notice of appeal, serve the Board and the other parties to the order appealed from or their respective solicitors with a copy thereof, by personal service or by registered mail.

(3) The Board of Arbitration, upon being served with a copy of the notice of appeal, shall forthwith transmit to the clerk of the district court a certified copy of the application, the interim order and the order appealed from.

(4) The clerk of the district court upon receiving the certified copies of the documents referred to in subsection (3) shall,

- (a) set down the appeal for hearing at the next sittings of the district court, and
- (b) within 10 days after the appeal has been set down for hearing notify the Board of Arbitration and the parties or their respective solicitors of the date of the hearing by registered mail addressed to them at their addresses set out in the notice of appeal.

(5) An appeal to the district court shall be in the form of a new hearing.

(6) The district court

- (a) has the power and jurisdiction of the Board of Arbitration in determining the amount of money payable and the person to whom the money is payable,
- (b) shall determine the amount of money payable and the person to whom the money is payable,
- (c) shall, in its judgment,
 - (i) confirm the order of the Board, or
 - (ii) direct that the order of the Board be varied and thereupon the Board without any further hearing shall vary its order in accordance with the judgment,and
- (d) shall make such directions as to costs of the appeal as it considers just.

(7) A judgment under subsection (6) shall be served upon the Board of Arbitration.

(8) By leave of a judge of the Appellate Division of the Supreme Court of Alberta, any party may appeal from the judgment of the district court to the Appellate Division and the rules and practice applicable to appeals to the Appellate Division apply.

12. Section 53, subsection (3) is amended by striking out the word "Board" and by substituting the words "Public Utilities Board".

13. *The Water, Gas, Electric and Telephone Companies Act* is amended as to section 29, subsection (1) by striking out the words "*The Expropriation Procedure Act*" and by substituting the words "*The Arbitration Act*".

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

12. Section 53, subsection (3) presently reads:

(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 3.

13. Consequential. Corrects an erroneous reference.