

*Bill 10*  
*Mr. Snelgrove*

## **BILL 10**

2002

### **PUBLIC WORKS AMENDMENT ACT, 2002**

*(Assented to , 2002)*

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

#### **Amends RSA 2000 cP-46**

**1 The *Public Works Act* is amended by this Act.**

**2 Section 1 is amended by repealing clauses (b) and (c) and substituting the following:**

- (b) “Minister” means, with respect to a public work, the Minister who is responsible for or otherwise administers that public work;
- (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 pursuant to a contract entered into by the Minister on behalf of the Crown or by an agent of the Crown.

**3 Section 2(2) is repealed.**

**4 Section 7 is repealed and the following is substituted:**

**Withdrawal of tender**

**7** The Minister shall in the tender documents provided by the Minister prescribe the conditions under which a tender may or may not be withdrawn.

**5 Section 8 is repealed and the following is substituted:**

**Accepting of tender**

**8** The Minister is not bound to accept the lowest or any tender.

**6 Section 9 is repealed and the following is substituted:**

**Failure to perform**

**9(1)** If a tenderer whose tender is accepted refuses or fails within the time period provided for in the tender documents

- (a) to enter into a contract with the Crown for the performance of the work or the supplying of the material covered by the tender, and
- (b) where the furnishing of security is required, to furnish the security for the performance of the contract,

the tenderer is liable to the Crown for the difference in the amount between the amount of the tender and the amount that the Crown contracts for with another person to perform the work or supply the material, as the case may be.

**(2)** Where the tender documents provide for the furnishing of security, the amount that a tenderer is liable for under subsection (1) is not to exceed the amount of that security.

**7 Section 10 is repealed.**

**8 Section 12(2) and (3) are repealed.**

**9 Section 13 is repealed.**

**10 Section 14 is repealed and the following is substituted:**

### **Notice of claim**

#### **14(1) When**

- (a) a person provides labour, equipment, material 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) that person is not paid by the party who is legally obliged to pay that person,

that person may send a notice of that person's claim to the Minister, or agent of the Crown that is responsible for the public work.

**(2)** In the case of a claim arising out of the performance of a contract entered into by the Crown for work on a highway or road as defined in section 1 of Schedule 14 of the *Government Organization Act*, the notice of claim must

- (a) be sent by registered mail not sooner than 30 days nor later than 90 days after the last day on which the labour, equipment, material or services were provided, and
- (b) set out the nature and amount of the claim in a form satisfactory to the Crown.

**(3)** The notice of claim, other than for a claim referred to in subsection (2), must

- (a) be sent by registered mail not later than 45 days after the last day on which the labour, equipment, material or services were provided, and
- (b) set out the nature and amount of the claim in a form satisfactory to the Crown.

### **11 Section 15 is amended**

**(a) by adding the following before subsection (1):**

**15(0.1)** In this section, "surety" means a person who guarantees to the Crown the payment of creditors.

**(b) by repealing subsection (4) and substituting the following:**

**(4)** Instead of paying the claimant as provided in this section, the Crown may, on originating notice, apply to the Court of Queen's Bench to pay the money into Court on the terms and conditions, if any, determined by the Court and, on the money being paid into Court, the Court may determine the persons who are entitled to the money and direct payment of the money in accordance with that determination.

**12 Section 17 is repealed and the following is substituted:**

**Display of claim procedures**

**17(1)** Every contractor shall, where practicable, display and keep displayed in a conspicuous place on the public work to which the contract relates

- (a) a copy of section 14, and
- (b) where a labour and material payment bond has been provided to the Minister, a copy of the bond.

**(2)** The fact that a labour and material payment bond does or does not exist is to be considered public information and, if a bond does exist, any particulars of that bond are to be considered public information and that information may be made known to any person who requests the information.

**13 Section 18 is repealed.**

**14 Section 33(1), (2) and (3) are amended by striking out "\$100" and substituting "\$1000".**

**15(1)** In this section, "section 14" means section 14 of the *Public Works Act* as enacted by section 10 of this Act.

**(2)** In section 14 the reference in subsection (3) to "45 days" is deemed to be a reference to "35 days" with respect to any contract with the Crown entered into before July 1, 2002 under which matters may arise for which a claim may be made under section 14.

**16 Section 10 comes into force on July 1, 2002.**

**Explanatory Notes**

**1** Amends chapter P-46 of the Revised Statutes of Alberta 2000.

**2** Section 1 presently reads:

*1 In this Act,*

*(a) "Crown" means Her Majesty the Queen in right of Alberta;*

*(b) "Minister" means*

*(i) the Minister of Infrastructure with respect to public works within that Minister's jurisdiction, and*

*(ii) any other Minister with respect to any public works within that Minister's 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 money otherwise than by way of subsidy only.*

**3** Section 2(2) presently reads:

*(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** Section 7 presently reads:

*7(1) 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 the tenderer's agent in fact.*

*(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 35 days after the time fixed for receiving tenders,*

*whichever first occurs.*

**5** Section 8 presently reads:

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

**6** Section 9 presently reads:

*9 If a tenderer whose tender is accepted refuses or fails within 15 days after a contract is offered to the tenderer for acceptance*

*(a) to enter into a contract with the Crown for the performance of the work or the supplying of material covered by that 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 the tenderer pursuant to section 4 and the security is forfeited to the Crown.*

**7** Section 10 presently reads:

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

- (a) for the due performance of the contract in accordance with the plans and specifications applicable to the contract,*
- (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.*

**8** Section 12 presently reads:

*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 in it, 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, the Minister*

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

*(3) When 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 the contractor under the subcontract until the subcontractor supplies the contractor with the required proof by statutory declaration.*

**9** Section 13 presently reads:

*13 In sections 14 to 19,*

- (a) “Crown” includes a board, commission or agency of the Crown;*
- (b) “subcontractor” means*
  - (i) a person not contracting directly with the Crown, but contracting with a contractor who holds a contract with the Crown, for the provision of labour, equipment, material or services to be used in performance of the contract with the Crown, and*
  - (ii) a person contracting with the person first mentioned in subclause (i) for the provision of equipment or both material and services to be used in the performance of the contract with the Crown;*
- (c) “surety” means a person who guarantees to the Crown the payment of creditors.*

**10** Section 14 presently reads:

*14(1) When*

- (a) a person, including a subcontractor, 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 the contractor’s or subcontractor’s obligation to do so,*



*that person may send a notice of the person's claim to the Minister, board, commission or agency of the Crown that is responsible for the public work.*

*(2) The notice of the claim in cases other than those provided for in subsection (3)*

- (a) shall be sent by registered mail not sooner than 30 days nor later than 90 days after the last day on which the labour, equipment, material or services were provided, and*
- (b) must set out the nature and amount of the claim against the contractor or subcontractor in a form satisfactory to the Crown.*

*(3) The notice of the claim, in the case of a claim arising out of the performance of a contract with the Crown (other than a contract with the Crown as represented by the Minister of Transportation and Utilities),*

- (a) shall be sent by registered mail not later than 35 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.*

**11** Section 15(1), (3) and (4) presently read:

*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 money due and payable to the contractor on any account or from the money or security, if any, deposited by the contractor with the Crown.*

*(3) In paying a claim under subsection (1), the Crown may act on 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 on them.*

*(4) Instead of paying the claimant as provided in this section, the Crown may pay the money into court and the court on the application of the claimant, the contractor or the surety shall*

*determine the persons entitled to the money and direct payment of it in accordance with the determination.*

**12** Section 17 presently reads:

*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.*

**13** Section 18 presently reads:

*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 to a fine of not less than \$10 and not more than \$100 for every day during which the default continues.*

**14** Section 33 presently reads:

*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 to a fine of not more than \$100 or to imprisonment for a term of not more than 2 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 to a fine of not more than \$100 or to imprisonment for a term of not more than 2 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 to a fine of not more than \$100 and in default of payment to imprisonment for a term of not more than 90 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.*

**15** Provides for transitional matters respecting the making of claims under section 14 of the Public Works Act.

**16** Coming into force.