

2009 Bill 19

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Second Session, 27th Legislature, 58 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 19**

## **LAND ASSEMBLY PROJECT AREA ACT**

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THE MINISTER OF INFRASTRUCTURE

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## **BILL 19**

2009

### **LAND ASSEMBLY PROJECT AREA ACT**

*(Assented to , 2009)*

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

#### **Definitions**

- 1** In this Act,

- (a) “associated regulation” means a regulation made under section 3 that applies with respect to a project area order;
- (b) “bylaw” means a bylaw of a municipality;
- (c) “certificate of title” means the record of the title to land that is maintained by the Registrar;
- (d) “chief administrative officer” means
  - (i) the chief administrative officer of a city, town, village, summer village or municipal district,
  - (ii) the Deputy Minister of the Minister responsible for the *Municipal Government Act*, in the case of an improvement district, or
  - (iii) the Deputy Minister of the Minister responsible for the *Special Areas Act*, in the case of a special area;
- (e) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (f) “registered owner” means the person registered in a land titles office as the owner of the fee simple in the land;
- (g) “Project Area” means an area of land that has been designated as a Land Assembly Project Area under section 2(1);
- (h) “project area order” means an order made under section 2(1);
- (i) “public project” means a public project referred to in section 2(2);
- (j) “Registrar” means the Registrar of Land Titles.

**Land Assembly Project Area**

**2(1)** If in the opinion of the Lieutenant Governor in Council one or more areas of land are required for a public project and the land is intended to be acquired by the Crown over a period of time, the Lieutenant Governor in Council, on the recommendation of the Minister, may by order designate that area or those areas of land as a Land Assembly Project Area.

**(2)** For the purpose of this Act and the regulations, a project is a public project if the project is any, or a combination of any, of the following:

- (a) a project related to the transportation of people or goods;
- (b) a project to confine to a corridor of land pipelines, pipes or other conduits, poles, towers, wires, cables, conductors or other devices, including any ancillary structures;
- (c) a project related to the conservation or management of water;
- (d) a project designated by the Lieutenant Governor in Council as a public project.

**(3)** The Lieutenant Governor in Council may not designate an area of land as a Project Area with respect to a public project unless the Minister

- (a) has prepared a plan, in accordance with the regulations, of the proposed project,
- (b) has made the plan of the proposed project available to the public in accordance with the regulations,
- (c) has provided the registered owners of land within the proposed Project Area with notice of the proposed project in accordance with the regulations, and
- (d) has consulted, in accordance with the regulations, with the registered owners of land within the proposed Project Area.

**(4)** Where a project area order is amended to add land to a Project Area that does not exceed the maximum amount of land determined under the regulations, subsection (3)(c) and (d) apply only to the registered owners of the land being added and of any land adjacent to the land being added.

**(5)** A Project Area shall not include any land within a Metis settlement.

#### **Control, restriction and prohibitions**

**3(1)** Notwithstanding any other Act or regulation, where the Lieutenant Governor in Council designates an area of land as a

Project Area, the Lieutenant Governor in Council may, with respect to the Project Area, make regulations

- (a) respecting the control, restriction, prohibition or approval of any kind of use, development or occupation of land in the Project Area;
- (b) authorizing the Minister to consent to or approve any particular kind of use, development or occupation of land in the Project Area or to exempt any particular kind of use, development or occupation of land from the operation of any provision in the regulations made pursuant to clause (a);
- (c) respecting the removal of any buildings, improvements, materials or animals from the Project Area, and respecting the payment of compensation by the Crown for any loss resulting from the removal;
- (d) respecting the control, restriction or prohibition of the exercise of any power referred to in the regulations by a Minister of the Crown, government official or government agency;
- (e) respecting the control, restriction, prohibition or approval of the dumping, deposit or emission within the Project Area of any substance referred to in the regulations;
- (f) making any or all of the provisions of the *Surface Rights Act* inapplicable to any Crown land in the Project Area;
- (g) respecting the prohibition, with respect to any Crown land in the Project Area, of any expropriation to which the *Expropriation Act* applies;
- (h) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or incidental to the use, development or occupation of land in the Project Area.

**(2)** In subsection (1)(d), “government agency” means a corporation that is an agent of the Crown in right of Alberta, and any corporation, commission, board or other body empowered to perform quasi-judicial or governmental functions and whose members are appointed by an Act of the Legislature, the Lieutenant

Governor in Council or a Minister of the Crown or any combination of them.

**(3)** A regulation made under this section may apply to one or more Project Areas.

**Notice of project area orders and associated regulations**

**4(1)** The Minister

- (a) shall send a notice of the project area order and its associated regulation, together with a certified copy of the project area order and a certified copy of the associated regulation, to the chief administrative officer of each municipality which, or a part of which, is in the Project Area,
- (b) shall file a notice of the project area order and its associated regulation, together with a certified copy of the order and a certified copy of the associated regulation, with the Registrar and, on its being filed, the Registrar shall endorse a memorandum of the notice on each certificate of title pertaining to land within the Project Area, and
- (c) shall, in accordance with the regulations, send to each person shown on the certificate of title as having a subsisting estate or interest in land in the Project Area, at the last address shown for that person on the certificate of title, a notice of the project area order and its associated regulation, together with a copy of the project area order and a copy of the associated regulation.

**(2)** If a project area order is amended or repealed,

- (a) the Minister shall send a notice of the amending or repealing order, together with a certified copy of the amending order or repealing order, to the chief administrative officer to whom a notice of the project area order was sent under this section, and if the effect of the amending order is to include a further municipality or a part of a further municipality in the Project Area, to the chief administrative officer of that further municipality,
- (b) the Minister shall file a notice of the amending or repealing order, together with a certified copy of the

amending order or repealing order, with the Registrar, and the Registrar shall, on receiving the Minister's notice,

- (i) in the case of an amending order,
  - (A) if the effect of the amending order is to remove land from a Project Area, cancel the memorandum of any previous notice under this subsection on each certificate of title pertaining to the land so removed, and
  - (B) if the effect of the amending order is to add land to a Project Area, endorse on each certificate of title pertaining to the land added a memorandum of any previous notice under this section and the notice under this subsection,

and

- (ii) in the case of a repealing order, cancel the memorandum of any previous notice under this subsection on each certificate of title pertaining to the land previously within the Project Area.

**(3)** When an associated regulation that applies with respect to a Project Area is amended or repealed, the Minister shall

- (a) send a notice of the amending or repealing regulation to the chief administrative officer of each municipality which, or a part of which, is in the Project Area, together with a certified copy of the amending or repealing regulation,
- (b) send a notice of the amending or repealing regulation to the Registrar, together with a certified copy of the amending or repealing regulation, and
- (c) send, in accordance with the regulations, to each person shown on the certificate of title as having a subsisting estate or interest in land in the Project Area, at the last address shown for that person on the certificate of title, a notice of the amending or repealing regulation, together with a copy of the amending or repealing regulation.



(4) The validity or operation of a regulation referred to in this section is not dependent on the filing or sending of any notice or document under this section.

#### **Acquisition of land**

**5(1)** Land within a Project Area may be acquired by the Crown by purchase or expropriation.

(2) Land acquired under this section is under the administration of the Minister unless, before or after the acquisition, the Lieutenant Governor in Council directs that it is under the administration of some other Minister.

#### **Obligations of person with interest in Project Area land**

**6** A person who holds or acquires an estate or interest in land in a Project Area holds or acquires that estate or interest subject to this Act and the regulations.

#### **Enforcement orders**

**7(1)** Where, in the Minister's opinion, a person has contravened a regulation made under section 3, the Minister may serve that person with an enforcement order.

(2) An enforcement order under subsection (1) may

- (a) direct a person to cease the contravention specified in the order,
- (b) direct a person to stop doing something, or to change the way in which the person is doing it,
- (c) direct a person to take any action or measures the Minister considers necessary to remedy the contravention, including, without limitation, the following:
  - (i) the removal or demolition of a structure that has been erected or placed in contravention of the regulation;
  - (ii) the restoration of the land to the condition it was in before the contravention occurred,
- (d) state a time within which the person must comply with the directions, and

- (e) state that if the person does not comply with the directions within a specified time, the Minister will take the directed action or measures at the expense of the person.
- (3)** An enforcement order must contain the reasons for making it and, subject to section 8, must be served on the person to whom it is directed.
- (4)** The Minister may, by order,
- (a) amend a term or condition of, add a term or condition to or delete a term or condition from an enforcement order, or
  - (b) cancel an enforcement order.
- (5)** A copy of an order issued under subsection (4) must, subject to section 8, be served on the person to whom the original enforcement order is directed.
- (6)** An enforcement order may be filed with the clerk of the Court of Queen's Bench and, on being filed, is enforceable as if it were a judgment of the Court.
- (7)** If the person to whom an enforcement order is directed fails to comply with the enforcement order, the Minister may take whatever action or measures the Minister considers necessary to carry out the terms of the enforcement order, and the costs of the action or measures taken by the Minister shall be paid by that person.
- (8)** For the purposes of this section, the costs referred to in subsection (7) include, without limitation, any costs incurred in investigating and responding to
- (a) any matter to which the enforcement order relates, or
  - (b) the failure to comply with the enforcement order.
- (9)** Costs under this section are recoverable by the Crown
- (a) in an action in debt against the person to whom the enforcement order is directed, or
  - (b) by order of the Minister directing any person who has purchased land from the person to whom the enforcement order is directed to pay to the Minister instead of to the

vendor an amount not exceeding the amount owing in respect of the costs.

**(10)** A purchaser who pays an amount to the Minister under subsection (9)(b) is discharged from any obligation to pay that amount to the vendor.

**Service of enforcement order**

**8(1)** An enforcement order under section 7 is sufficiently served if it is

- (a) personally served on the person to whom it is directed,
- (b) sent by mail addressed to the person to whom it is directed at the last known address for that person, or
- (c) in the case of a registered owner of land, sent by mail to the address for the registered owner shown on the certificate of title.

**(2)** If an enforcement order under section 7 cannot be served in accordance with subsection (1), a person designated by the Minister may apply to a judge of the Court of Queen's Bench, in person or by telecommunication, for an order for substitutional service.

**(3)** An application for substitutional service is to be supported by evidence setting out why the order cannot be served in accordance with subsection (1) and proposing a method of service that is likely to bring notice of the enforcement order to the person who is to be served.

**(4)** In making a substitutional service order, the judge shall direct, on any terms that the judge considers appropriate, any one or more of the following methods of substitutional service that the judge is satisfied is likely to bring notice of the order to the person who is to be served:

- (a) serving a member of the person's family or another person who is able to bring the enforcement order to the person's attention;
- (b) serving a person with whom the person resides or leaving the enforcement order at the place where the person resides;

- (c) posting the enforcement order in a public place;
- (d) publishing the enforcement order in a newspaper;
- (e) sending the enforcement order by electronic mail to the person's e-mail address;
- (f) any other method the judge considers appropriate.

#### **Joint and several liability**

**9** Where an enforcement order is issued to more than one person, all persons named in the order are jointly responsible for carrying out the terms of the order and are jointly and severally liable for payment of the costs referred to in section 7.

#### **Appeal of enforcement order**

**10(1)** A person to whom an enforcement order is directed with respect to a matter under section 7(2)(a) or (b) may appeal the enforcement order to an appeal body referred to in or established under the regulations.

**(2)** A notice of appeal must be submitted not later than 7 days after receipt of a copy of the enforcement order, but the appeal body may, on application made before or after the expiry of that period, extend that period where the appeal body is of the opinion that there are sufficient grounds to do so.

**(3)** Subject to subsection (4), submitting a notice of appeal does not operate to stay the enforcement order.

**(4)** The appeal body may, on the application of a party to a proceeding before the appeal body, stay an enforcement order in respect of which a notice of appeal has been submitted.

**(5)** Where an application for a stay relates to the issuing of an enforcement order and is made by the person to whom the order is directed, the appeal body may, if it is of the opinion that an immediate and significant adverse effect may result if certain terms and conditions of the order are not carried out,

- (a) order the Minister to take whatever action or measures the Minister considers to be necessary to carry out those terms and conditions and to determine the costs of doing so, and

- (b) order the person to whom the order is directed to provide security in accordance with the regulations in the form and amount the appeal body considers necessary to cover the costs referred to in clause (a).

#### **Registration of orders**

**11(1)** The Minister may submit a certified copy of an enforcement order to the Registrar.

**(2)** On receiving a certified copy of an enforcement order under subsection (1), the Registrar shall endorse a memorandum of the order on the certificate of title to the land to which the order relates.

**(3)** Notwithstanding any other Act, an endorsement under this section does not lapse and shall not be cancelled except on the receipt by the Registrar of a notice in writing from the Minister requesting the cancellation.

**(4)** On the making of an endorsement under this section, the Minister shall notify in writing the registered owner of the land to which the enforcement order relates and all other persons who have a subsisting estate or interest in the land.

#### **Injunction re commission of offence**

**12(1)** Where, on the application of the Minister, it appears to the Court of Queen's Bench that a person has done, is doing or is about to do any act or thing constituting or directed toward the commission of an offence under this Act, the Court may issue an injunction ordering any person named in the application

- (a) to refrain from doing that act or thing, or
- (b) to do any act or thing that it appears to the Court may prevent the commission of an offence under this Act or the regulations.

**(2)** At least 48 hours' notice of the application must be given to the party or parties named in the application unless the Court is of the opinion that the urgency of the situation is such that giving notice would not be in the public interest.

### **Limitation on expropriation**

**13** Nothing done or omitted to be done in accordance with this Act or the regulations made under it constitutes an expropriation for the purposes of the *Expropriation Act* or otherwise at law.

### **Offence**

**14(1)** A person who contravenes an enforcement order under section 7 is guilty of an offence and liable,

- (a) in the case of an individual, to a fine of not more than \$100 000 or to imprisonment for a period of not more than 2 years, or to both a fine and imprisonment, or
- (b) in the case of a corporation, to a fine of not more than \$1 000 000.

**(2)** No person shall be convicted of an offence under subsection (1) if that person establishes on the balance of probabilities that the person took all reasonable steps to prevent commission of the offence.

**(3)** A prosecution under this Act may not be commenced later than 2 years after the date on which the offence was committed.

### **Regulations**

**15** The Lieutenant Governor in Council may make regulations

- (a) respecting the contents and form of plans of proposed projects;
- (b) respecting the manner in which the plan of a proposed project is to be made available to the public under section 2(3)(b);
- (c) respecting the manner in which notice under section 2(3)(c) is to be given;
- (d) respecting the manner in which consultation under section 2(3)(d) is to be conducted;
- (e) determining the maximum amount of land for the purpose of section 2(4);

- (f) authorizing the Minister to expropriate on behalf of the Crown any estate or interest in land if the Minister considers it necessary to do so for the purpose of enforcing or carrying out the provisions of this Act or the regulations or an enforcement order under this Act;
- (g) designating a body as the appeal body for the purposes of this Act or respecting the establishment of an appeal body for the purposes of this Act;
- (h) respecting the form and contents of a notice of appeal;
- (i) respecting the conduct of proceedings before the appeal body;
- (j) respecting the security required for the purpose of section 10(5)(b);
- (k) prescribing, with respect to any provision of any regulation under this Act, that its contravention constitutes an offence;
- (l) prescribing penalties for offences against any regulations under this Act;
- (m) respecting any other matter or thing the Lieutenant Governor in Council considers necessary or incidental to the carrying out of this Act or the regulations.

**Coming into force**

**16** This Act comes into force on Proclamation.

