



Province of Alberta

## **PUBLIC WORKS ACT**

Revised Statutes of Alberta 2000  
Chapter P-46

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# **PUBLIC WORKS ACT**

## Chapter P-46

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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) "Crown" means Her Majesty the Queen in right of Alberta;
- (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.

RSA 2000 cP-46 s1;2002 c21 s2

**Contracts****Contracts**

**2(1)** Any contract or undertaking that is considered necessary or advisable for the purpose of carrying out the functions, duties or powers of the Minister may be entered into on behalf of the Crown by the Minister, the Deputy Minister or any employee authorized to do so by the Minister.

(2) Repealed 2002 c21 s3.

RSA 2000 cP-46 s2;2002 c21 s3

#### **Tenders**

**3** When it appears practical or expedient to the Minister to do so, the Minister may by invitation or public notice call for tenders for the construction, demolition, alteration and repair of and the supplying of materials for public works.

RSA 1980 cP-38 s3

#### **Security**

**4** When the Minister so requires, every tender shall be accompanied with security in a form and amount satisfactory to the Minister, conditioned on the tenderer entering into a contract if that tender is accepted.

RSA 1980 cP-38 s4

#### **Notice of tenders**

**5** A notice calling for tenders shall state the place where and the time up to which tenders will be received, but the Minister may, by public notice, extend the time for receiving tenders.

RSA 1980 cP-38 s5

#### **Opening tenders**

**6** At the time and place fixed for receiving tenders, all tenders received shall be publicly opened and the amount of each tender shall then and there be made known.

RSA 1980 cP-38 s6

#### **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.

RSA 2000 cP-46 s7;2002 c21 s4

#### **Accepting of tender**

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

RSA 2000 cP-46 s8;2002 c21 s5

#### **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.

RSA 2000 cP-46 s9;2002 c21 s6

**10** Repealed 2002 c21 s7.

#### **Completion of work**

**11(1)** A contract that specifies a date by which or a time within which any work is to be done or material is to be supplied may also provide for a penalty for failure to complete the work or supply the material by that date or within that time.

**(2)** The contract may provide for the penalty to be either or both of:

- (a) the actual loss or damages suffered by the Crown because of the failure;
- (b) a stipulated sum for each day that the work is unfinished or the material not supplied in full after the date or time agreed on, regardless of actual loss or damages.

**(3)** When a contract provides for a penalty as mentioned in this section, the amount of the penalty may be realized out of the security required under section 10 or it may be withheld from any money payable by the Crown under the contract, or both.

RSA 1980 cP-38 s11

#### **Payment for work**

**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), (3) Repealed 2002 c21 s8.

RSA 2000 cP-46 s12;2002 c21 s8

### Payment of Public Works Creditors

- 13** Repealed 2002 c21 s9.

#### 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.

RSA 2000 cP-46 s14;2002 c21 s10

**Payment of claim**

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

(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.

(2) If there is insufficient money due and payable to the contractor to permit the deduction, the surety, if any, shall to the extent of the security, pay to the Crown on demand an amount equal to the amount paid to the claimant by 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 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.

(5) Notwithstanding anything to the contrary in any other Act, a person having a claim under section 14 with respect to a public work has priority over any other claimant with respect to any money payable under the contract with the Crown for the construction, alteration, demolition, repair or maintenance of that public work.

RSA 2000 cP-46 s15;2002 c21 s11;2009 c53 s154

**List of creditors**

**16** The Crown may, in writing, require a contractor or any of the contractor’s subcontractors to send to it by registered mail within 15 days from the date of the mailing of the demand, a list of the names of and the amounts owing to the contractor’s or subcontractor’s creditors for labour, equipment, materials or services used or reasonably required for use in the performance of a contract or the subcontract, as the case may be.

RSA 1980 cP-38 s16

**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.

RSA 2000 cP-46 s17;2002 c21 s12

**18** Repealed 2002 c21 s13.

**Extension of time, etc.**

**19(1)** The Lieutenant Governor in Council may make orders

- (a) extending the periods of time referred to in sections 14, 15 and 16, and
- (b) providing for and requiring notices in addition to the notice mentioned in section 14.

**(2)** Any order made under subsection (1) may be made applicable in respect of any class or classes of contractor or subcontractor or to any class of public work.

RSA 1980 cP-38 s19

**Expropriation****Expropriation**

**20(1)** The Crown may acquire by expropriation any land required for, or that it is expedient or advantageous to acquire in connection with, a public work.

**(2)** When the Minister is of the opinion that the Crown can obtain, at a more reasonable price or to greater advantage than by acquiring a part only, the whole or a portion of any parcel of land of which a part may be expropriated by the Crown, the Crown may take the whole or the portion of the parcel.

RSA 1980 cP-38 s20

**Survey of land**

**21(1)** Land required for a public work shall be surveyed and marked on the ground by a qualified land surveyor who shall prepare a plan of it.

**(2)** Notwithstanding subsection (1), when land required for a public work

- (a) consists of a lot or parcel shown on a plan that is filed or registered under the *Land Titles Act*,
- (b) is the subject-matter of one certificate of title, or consists of one or more legal subdivisions within the meaning of the *Surveys Act*, or
- (c) can be described sufficiently without the necessity of a plan of survey or an additional plan of survey,

the land need not be surveyed but the Minister shall prepare a notification describing the lot, parcel, land or legal subdivision and stating that it is required for a public work.

**(3)** Subject to the *Expropriation Act*, the plan or notification need not be prepared before or at the time of the entry or taking possession of the land under the authority of this Act.

RSA 1980 cP-38 s21

**Right to enter**

**22** The Minister may, by the Minister's surveyors, engineers, foremen, agents, workers and servants,

- (a) enter on and take possession of any land required for a public work;
- (b) enter on any land and survey and take levels of the land and make any borings or sink any trial pits that the Minister considers necessary for a purpose relative to a public work;
- (c) enter on and take possession of any land that in the Minister's judgment is necessary for the use, construction, maintenance or repair of a public work or for obtaining better access to it;
- (d) enter with animals, equipment and machines on any land and
  - (i) deposit on that land soil, earth, gravel, trees, bushes, logs, poles, brushwood or other material found on land required for a public work,

- (ii) dig up, quarry and carry away earth, stones, gravel or other material required for a public work, and
- (iii) cut down and carry away trees, bushes, logs, poles and brushwood and remove them from the land for the making, construction, maintaining or repairing of a public work;
- (e) make and use any temporary roads to and from the timber, stones, clay, gravel or sand or gravel pits that are required by the Minister for the convenient passing to and from a public work during its construction or repair;
- (f) enter on land for the purpose of making proper drains to carry off the water from a public work, and for the purpose of keeping the drains in repair;
- (g) divert or alter temporarily or permanently the course of a waterway, watercourse, road, street or way or raise or lower its level to carry it over or under on the level of or by the side of a public work as the Minister considers expedient;
- (h) divert or alter the position of a water pipe, sewer or drain, or a telecommunication or electric transmission wire or pole.

RSA 1980 cP-38 s22

**Removal of fences**

**23(1)** When it is necessary or expedient in the constructing, demolishing, maintaining or repairing of a public work to take down or remove a wall or fence of an owner or occupier of land or premises adjoining the premises of a public work, the wall or fence shall be replaced as soon as the necessity that caused its taking down or removal has ceased.

**(2)** After the wall or fence has been replaced, the owner or occupier of the land or premises shall maintain the wall or fence to the same extent as the owner or occupier would by law be required to do if the wall or fence had never been taken down or removed.

RSA 1980 cP-38 s23

**Removal of gravel, etc.**

**24(1)** When gravel, stone, earth, sand, water or other material is taken for a public work from land at a distance from the public work, the Minister may lay down the necessary sidings, roads, water pipes, conduits or tracks over or through land intervening between the public work and the land on which the material or water is found.

(2) The powers contained in this section may at any time after the public work is constructed be used for the purpose of repairing and maintaining the public work.

RSA 1980 cP-38 s24

### **Public Works Development Areas**

#### **Public Works Development Areas**

**25(1)** When it is intended

- (a) to expend public money on the acquisition and development of any area of land for the purposes of the Crown or another public body in Alberta, and
- (b) to acquire all the land in that area over a period of time as it becomes available or is needed,

the Lieutenant Governor in Council may declare that area of land to be a Public Works Development Area.

(2) When a Public Works Development Area is established for the purposes of a public body other than the Crown and if that public body has the authority to expropriate land, then with respect to that Area,

- (a) the powers and obligations of the Crown under section 26, and
- (b) the power of the Minister under section 27,

must be undertaken by and in the name of the public body and not by the Crown and the Minister.

RSA 1980 cP-38 s25

#### **Acquisition of land**

**26(1)** Land within a Public Works Development Area must be acquired by the Crown

- (a) by purchase at any time the owner of the land is willing to sell it to the Crown,
- (b) by expropriation,
  - (i) when the owner of the land wishes the Crown to acquire it but agreement cannot be reached as to price, or
  - (ii) when the owner of the land requests that the land be expropriated or consents to expropriation,

or

- (c) by purchase or expropriation, when the land is required for or in connection with a public work.

**(2)** When the Crown is negotiating the purchase of land in a Public Works Development Area and the owner indicates that in the event of a sale the owner wishes to retain possession or the right to possession of the land for the time being or until it is required for or in connection with a public work, the Crown 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 Crown.

RSA 1980 cP-38 s26

### **Improvements**

**27** No person shall construct an improvement or reconstruct or add to an improvement on any land within a Public Works Development Area, except with the approval in writing of the Minister.

RSA 1980 cP-38 s27

### **Filing of plan**

**28(1)** When a Public Works Development Area is created, the Minister shall file a copy of the order in council and a plan of the Public Works Development Area with

- (a) the chief administrative officer of the municipality in which the Area is situated, and
- (b) the Registrar of Land Titles,

and shall give notice of the creation of the Area and of this section to all owners of land in the Area.

**(2)** The Registrar of Land Titles shall endorse on every certificate of title to land within a Public Works Development Area a notice that the land is within a Public Works Development Area and that this section applies in respect of that land.

RSA 1980 cP-38 s28;1994 cM-26.1 s642(61);1996 c32 s5(43)

### **Land owner's obligations**

**29** A person who holds or acquires an interest in land within a Public Works Development Area holds or acquires that interest subject to sections 26 to 28.

RSA 1980 cP-38 s29

**Conflict of provisions**

**30** Where any conflict exists between sections 25 to 29 and any Act, regulation or bylaw, those sections prevail.

RSA 1980 cP-38 s30

**Miscellaneous****Declaration as public work**

**31(1)** The Lieutenant Governor in Council may declare to be a public work any real or personal property that has been constructed, purchased or otherwise acquired by anyone at the public expense or on which public money has been expended.

**(2)** Title to property declared to be a public work under subsection (1) vests from the time of declaration in the Crown and that property is to be under the control of the Minister designated by the Lieutenant Governor in Council.

RSA 1980 cP-38 s31

**Land for highway**

**32** When land is acquired by the Crown for a highway through agreement with the owner, title to the land may be registered in the name of the Crown by the filing of the plan or notification and it is not necessary to register a transfer of that land.

RSA 1980 cP-38 s32

**Offences and penalties**

**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 \$1000 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 \$1000 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 \$1000 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.

RSA 2000 cP-46 s33;2002 c21 s14

### **Regulations**

**34** The Lieutenant Governor in Council may make regulations respecting any matters that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

RSA 1980 cP-38 s34



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