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Alberta Bill 19 and Bill 50 – Controversial? Certainly! Effective? Let's Wait and See

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Much of the political controversy in the 2009 Spring Session of Alberta's Legislature surrounded Bill 19. Bill 50 has been similarly contentious during the debates of the Fall Sittings of the Legislature.

At the highest policy levels, the Province has been grappling with issues arising from increased industrial activity and urbanization. The Government has been seeking to balance the need for long-term and coordinated planning, with local autonomy and private land rights.

On May 26, 2009, Bill 19 received Royal Assent as the "*Land Assembly Project Area Act*, 2009, c.L-2.5." It has not yet been proclaimed in force. It was significantly redrafted by Government following its initial reading in the Legislature.

The Act permits Cabinet to designate any lands in the Province of Alberta as a "Project Area". Cabinet is permitted to do so only for the purpose of transportation corridors (which may include utility corridors); and water management and conservation projects (s.2). Designation is, in effect, "super zoning" overriding municipal bylaws and pre existing land designation.

The rules applicable to each designation will be specific to each designated area, and are not spelled out in the Act. Rather, they will be set forth in regulations approved by Cabinet at the time of designation. The regulations may operate as an effective "freeze" on the lands within the designated area. The legislation specifically permits the regulations to include the prohibition of use and development, the directed removal of buildings and improvements, materials and animals, and may set specific criteria (except for land value) for compensation for loss.

Given that the effects of designation can be so comprehensive, what are the preconditions the Government must meet in order to impose a designation in the first place? Section 3 of the Act provides that the Provincial Government must prepare and publish a plan, and provide specific notice of the project to land owners within the proposed plan. Significantly, there is no requirement in the Statute to provide notice to adjacent land owners, or other interested parties, including municipalities (s.5). The preconditions require the Government to then engage in "consultation" with owners and, following such consultation, go forward either with designating the lands as part of a "plan area" or not, all within a two-year period. This is intended to prevent the unfairness of an indefinite freeze, being one of the major complaints surrounding the designation of transportation and utility corridors around the cities of Edmonton and Calgary in the 1970s.

To create fairness for the land owner, the Act establishes what is, in effect, an ongoing option for the owner to sell to the Crown at "market value" at any time from the point at which the land is designated as part of the Project Area. In other words, the land owner has the ability, but not the requirement, to "cash out" and leave. "Market value" has not been defined by the Statute. Rather, it can be as agreed between the parties, established by process agreed between the parties, or established by the Land Compensation Board or Court of Queen's Bench. It is fair to assume that pre-existing legal principles of evaluation, established in the case of forced takings, will apply.

Bill 50 is the "*Electric Statutes Amendment Act*, 2009", and it is understood by industry to be for the purpose of fast tracking development of new electric infrastructure. It passed its third reading by the Legislature on November 25, 2009. Although it has a number of collateral purposes, the key section, for the purposes of this article, is the addition of a Section 41.1 to the *Electric Utilities Act* (S.A. 2003, c.E-5.1). This new section permits Cabinet to designate proposed transmission facilities as "critical transmission infrastructure" if these facilities meet certain standards. One of these is that, in the opinion of Cabinet, the facilities are "critical to ensure the safe, reliable and economic operation of the interconnected electric system." In addition, a new schedule is added to the *Electric Utilities Act (supra)*, whereby Bill 50 designates several specifically proposed transmission facilities and substations as "critical transmission infrastructure." This includes two high voltage lines between Edmonton and Calgary; a transmission system from the south side of Edmonton to the Gibbons/Redwater region and from that region to Fort McMurray; a substation in the southeast area of Calgary; and a transmission facility from Genesee directly to Fort McMurray. While there are a number of consequential amendments, the key effect of such a Cabinet designation is that the Utilities Commission will no longer have the discretion on the ground of public interest, to refuse approval of a transmission or part of a transmission line designated as "critical" by the Act or cabinet (new s.19 of the *Hydro and Electric Energy Act*, R.S.A. 2000, c.H-16).

A recurring theme is evident from Bill 19, Bill 50 and the new Alberta *Land Stewardship Act*, S.A. 2009 A-26.8 (which will be reviewed in a subsequent communication). In all three, the general scheme has been to establish a more centralized regulatory structure. It is clear that the input of municipalities has been reduced. The rights of individual land owners may be curtailed in favour of the "common good" in designated areas. Finally, under both Bill 19 and Bill 50, major decisions have been moved into the political sphere. In each case, the key decision is to be made by Cabinet, rather than an arms' length regulatory body or local government, or the Legislature as a whole. Land use decisions are sometimes very contentious. There has been an understandable desire by politicians in the past to remove these decisions from the political sphere to regulatory authorities, or local authorities more in touch with local needs and currents. This trend has not been followed by these legislative initiatives.

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