

Bill No. 73 of 1947.

**A BILL TO PROVIDE FOR THE EXERCISE OF ANY
RIGHT OF ENTRY AND FOR THE DETER-
MINATION OF THE COMPENSATION
TO BE PAID THEREFOR**

NOTE.

This is a new Act. It replaces and enlarges the provisions formerly contained in Section 44 of *The Provincial Lands Act* and the regulations thereunder which were enforced by the Board of Public Utility Commissioners. It sets out the procedure by which the owner of mineral rights may obtain the use of the surface lands required to work his minerals. The Act also provides for the determination of the compensation to be paid to the surface owner.

Sections 4 to 7 of the Bill provide for the appointment of a Board of Arbitration consisting of not more than three members and for the powers and duties of the Board.

Section 8 provides that there shall be no right of entry, except by agreement or by an order of the Board.

Sections 9 and 10 provide for applications to the Board for the right of entry and for the procedure in such applications.

Section 11 provides for immediate entry in certain conditions.

Under section 12 the Board determines what land the mineral operator requires, and what compensation he shall pay.

Sections 13 to 16 deal with the form of the order, how it will be implemented and payment of costs.

Section 17 provides for termination of the right of entry on such terms and conditions as to restoration of the property as the Board may direct.

Sections 18 and 19 provide for enforcement of a Board order in the same manner as a judgment of the Supreme Court.

Section 21 provides that anyone who exercises a right of entry in contravention of this Act is guilty of trespass and section 22 provides that in case of conflict the provisions of this Act as to right of entry prevail.

Section 23 transfers all applications for right of entry pending before the Board of Public Utility Commissioners to the Board of Arbitration under this Act.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 73 of 1947.

An Act to Provide for the Exercise of any Right of Entry
and for the Determination of the Compen-
sation to be paid therefor.

(Assented to _____, 1947.)

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

SHORT TITLE.

1. This Act may be cited as "*The Right of Entry Arbitra-
tion Act.*"

INTERPRETATION.

2. In this Act unless the context otherwise requires,—

- (a) "Board" means the Board of Arbitration appointed pursuant to this Act;
- (b) "Director" means the Director of Lands of the Department of Lands and Mines;
- (c) "Local Authority" means the council of any city, town, village or municipal district, the divisional board of a school division, the board of trustees of a school district not being a school district included in a school division, the board of trustees of a municipal hospital district and the board of trustees of an irrigation district or a drainage district;
- (d) "Minerals" means all mines and minerals (both precious and base) whatsoever, and without derogating from the generality of the foregoing includes gold, platinum, silver, pitchblend and other minerals from which radium is or may be obtained, precious stones, copper, iron, tin, zinc, asbestos, salt, petroleum, oil asphalt, bituminous sands, natural gas coal, limestone, granite, slate, marble, sandstone, and any other stone which is or may be quarried for any industrial purpose, gypsum, clay, marl, gravel, sand and volcanic ash, and includes any hydro-carbon obtained by mining, separation, absorption or polymerization, or as a result of some operation or work, labour, study or skill or through chemical reaction, or by means of any other process or reaction;
- (e) "Minister" means the member of the Executive Council charged with the administration of this Act;

- (f) "Occupant" means any person other than the owner who is in actual possession of the land;
- (g) "Operator" means any person, company, syndicate, or partnership or the agent thereof, engaged in the work of searching for (including drilling), mining, getting, removing, producing, storing or transporting minerals.
- (h) "Owner" means the person who is registered under *The Land Titles Act* as the owner.

APPLICATION OF ACT.

3.—(1) This Act applies to all lands in the Province of Alberta.

(2) Without restricting the generality of the foregoing and notwithstanding the provisions of subsection (2) of section 3 of *The Alberta Forest Reserves Act* or of any other Act to the contrary, the provisions of this Act shall apply to lands owned by any person, corporation or local authority, Provincial lands and lands in any forest reserve.

APPOINTMENT AND POWERS OF BOARD.

4. There shall be a board to be styled the Board of Arbitration which shall consist of not more than three members appointed by the Lieutenant Governor in Council, one of whom shall be appointed as chairman.

5.—(1) The Board shall,—

- (a) keep a record of all proceedings conducted before it;
- (b) keep properly authenticated copies of every regulation and order made by the Board;
- (c) upon the application of any person and on payment of such fees as the Board may prescribe, deliver to the applicant a certified copy of any regulation or order made by the Board;
- (d) make rules of procedure and practice governing all hearings and proceedings before the Board and regulating the places and times of its sittings and such rules shall come into force from the date of their publication in *The Alberta Gazette*;
- (e) have the powers and duties given to it by this Act;
- (f) have all powers which may be conferred upon a commissioner pursuant to *The Public Inquiries Act*;
- (g) have such other powers and duties as may be determined by the Lieutenant Governor in Council;
- (h) receive such remuneration and be provided with such quarters, furniture and facilities as may be approved and provided from time to time by the Lieutenant Governor in Council.

(2) The Board, with the approval of the Lieutenant Governor in Council, may appoint such officers, clerks, or serv-

ants as it may deem necessary and such persons so appointed shall receive such remuneration as shall be determined by the Lieutenant Governor in Council.

(3) The Board may,—

- (a) hold its sittings at such place or places in the Province as may from time to time be deemed expedient;
- (b) enter upon or authorize any person to enter upon and inspect any place, building, works or other property;
- (c) appoint or direct any person to make an inquiry and report upon any matter before the Board.

6. Where sittings of the Board, or of any member thereof, are appointed to be held in any city, town or place in which a court house is situate, the member presiding at any such sitting shall have, in all respects, the same authority as a judge of the Supreme Court with regard to the use of the court house and other buildings or apartments set apart in the judicial district for the administration of justice; but subject to the prior right of the court and of judicial and administrative offices to use such buildings and apartments for the purposes of the administration of justice.

7. The Board shall, in the month of January in each year submit to the Minister a report showing briefly,—

- (a) applications to the Board and the dispositions thereof;
- (b) such other matters as the Minister may from time to time direct.

RIGHT OF ENTRY.

8. No operator shall have the right of entry, user or taking of the surface of any land for the removal of minerals or for or incidental to any mining, or drilling operations; or for the laying of pipe lines and erection of tanks, stations and structures on such lands until he shall have obtained the consent of the owner of such surface rights and the occupant thereof, or shall have become entitled to entry by reason of an order of the Board made pursuant to this Act.

9.—(1) Where surface rights required by an operator for any of the purposes mentioned in this Act are vested in some person other than the Crown and the operator cannot acquire by agreement the right of entry upon the said surface rights so required, the operator may make application to the Board for the acquisition of such interest in the surface rights as may be necessary for the efficient and economical performance of his operations, and the operator shall serve a copy of such application upon the owner of the land, and upon the occupant thereof.

(2) Where surface rights required by an operator are held under any lease or other form of terminable grant from

the Crown, or have been disposed of by the Crown pursuant to any Act or Regulation which contemplates the issue of a notification for such surface rights, the operator shall make application to the Board for the acquisition of such interest in the surface rights as may be necessary for the efficient and economical performance of his operations, and a copy of such application shall be filed by the operator with the Deputy Minister of Lands and Mines, and the operator shall serve a copy of such application upon the occupant of the land.

(3) Where the surface rights required by an operator are held by the Crown and no person other than the Crown has any interest therein, the operator shall make application to the Board for the acquisition of such interest in the surface rights as may be necessary for the efficient and economical performance of his operations, and a copy of such application shall be filed by the operator with the Deputy Minister of Lands and Mines.

10.—(1) Upon the receipt of any such application, the Board shall fix a date for the hearing and may require the operator to give to any person registered in the Land Titles Office as having any interest in the land and to any lessee or occupant of the land and to any other person, such notice of the hearing in such manner as the Board may direct.

(2) Notice in writing shall be given to the Deputy Minister of Lands and Mines five days before the hearing of any application relating to Crown lands or to lands held under any lease or other form of terminable grant from the Crown, or to lands disposed of by the Crown pursuant to any Act or Regulation which contemplates the issue of a notification.

(3) The Board shall proceed in accordance with its rules of procedure and practice to hear the application.

(4) The Board shall not be bound by the rules of legal evidence.

(5) At any hearing the submissions and evidence of the Department of Lands and Mines may be given either verbally by a representative present at the hearing, or in writing.

(6) The Board may adjourn any application from time to time for such length of time as the Board in its discretion deems expedient or advisable.

11. Notwithstanding anything contained in this Act or in the rules of procedure and practice of the Board, at any time after the commencement of the said proceedings before the Board, the operator may upon giving all parties affected three clear days' notice of his application, apply to the Board for leave to enter forthwith upon and use the said surface for any or all the purposes set forth in section 8 hereof and the Board may, if it deems it proper so to do grant such application upon the operator providing security sufficient in the

opinion of the Board to protect all the rights and privileges of the owner and occupant thereof, and it may be a term of such security that the operator shall proceed without any unnecessary delay with his said application before the Board.

12.—(1) The Board shall determine,—

- (a) what portion of the surface rights the operator requires for the efficient and economical performance of the operations;
- (b) the exact position thereof;
- (c) the amount of compensation which shall be payable and the person to whom such payment shall be made; and
- (d) such other conditions as the Board may deem necessary in connection with the granting of the right of entry.

(2) The Board, in determining the amount of compensation may consider,—

- (a) the value of the land;
- (b) the amount of land which may be permanently damaged by the operator's operations;
- (c) the adverse effect of the right of entry on the remaining land;
- (d) compensation for severance;
- (e) compensation for the nuisance, inconvenience and noise which may be caused by or arise from or in connection with the operations;
- (f) such other factors as the Board may from time to time deem proper, relevant or applicable.

13.—(1) The award and order of the Board made in writing shall be final and there shall be no appeal therefrom.

(2) In the case of lands other than Crown lands, upon the filing of the award and order of the Board with the Registrar of the Land Titles Office of the Land Registration District in which the land is situate, there shall be vested in the operator such interest in the land other than the fee simple as is set out in the said award and order, and the Registrar upon such filing and upon payment of the proper fees shall make an entry of the award and order on the certificate of title and do all such other things as shall be necessary to give effect to the award and order.

(3) In the case of Crown Lands or lands held under any lease or other form of terminable grant from the Crown, upon the filing of the award and order of the Board with the Director, there shall be vested in the operator such interest in the land other than the fee simple as is set out in the said award and order and the Director upon such filing and upon payment of the proper fees shall issue such leases and do all such things as shall be necessary to give effect to the award and order.

(4) Where the Board has granted a right of entry on Crown lands or on lands held under any lease or other form of terminable grant from the Crown or on lands disposed of by the Crown pursuant to any Act or Regulation which contemplates the issue of a notification in the case of Provincial lands the lease shall be issued pursuant to *The Provincial Lands Act*, and in the case of lands in a forest reserve the lease shall be issued pursuant to *The Forest Reserves Act*, and in any case the Minister of Lands and Mines may impose such further conditions from time to time as he may deem necessary.

14. An order of the Board need not show upon its face that any proceedings or notice was had or taken, or that any circumstances existed, necessary to give it jurisdiction to make the order.

15. The Board may re-hear an application before deciding it and may review, rescind, change, alter or vary any decision or order made by it.

16.—(1) The costs of and incidental to any proceeding before the Board, except as herein otherwise provided, shall be in the discretion of the Board, and may be fixed in any case at a sum certain or may be taxed.

(2) The Board may order by whom and to whom any costs are to be paid, and by whom the same are to be taxed and allowed.

(3) The Board may prescribe a scale under which such costs shall be taxed.

17.—(1) If at any time after the expiration of one year from the date of an award and order of the Board granting any right of entry, the operator has ceased to use the land for the removal of minerals or for or incidental to his mining or drilling operations, either the operator or the owner or occupant of the land may apply to the Board for an order terminating the right of entry.

(2) Upon the receipt of any such application, the Board shall fix a date for the hearing and may require the applicant to give such notice to such persons and in such manner as the Board may direct.

(3) The Board shall hear and determine the application and may make an order terminating the right of entry.

(4) Any order so made may,—

(a) direct the operator to restore the lands as nearly as may be possible to the same condition that they were in prior to the exercise of the right of entry and for that purpose may direct the operator to remove structures, fill excavations, and to do all such other things as the Board may deem proper; and

(b) impose a penalty on the operator for failure to perform the directions contained in the order.

(5) Any order so made may be filed with the Registrar of the Land Titles Office for the Land Registration District in which the land is situate, and upon filing and upon payment of the proper fees the Registrar shall make all necessary entries and do all such things as shall be necessary to give effect to the order.

18. A certified copy of any order of the Board signed by the chairman shall be admitted as evidence of the award and order by the Board without any proof of the authenticity of the signature of the chairman or any proof whatsoever.

19. A certified copy of any order of the Board may be filed in the office of the Supreme Court and upon payment to the Clerk of the said Court of the proper fees, the order shall be entered as a judgment of the Supreme Court and may be enforced according to the ordinary procedure for enforcement of a judgment of the Supreme Court.

20. Every Registrar of Land Titles and every department of the Government shall furnish, without charge, to the Board, such certificates and certified copies of documents as the Board may in writing require, and the Board or any person duly authorized in writing by the Board may, at any time, search in the public records of any Land Titles Office without charge.

21. Any person who, in the exercise of any such right of entry, taking or user as aforesaid, enters upon, takes or uses any of the surface of any land in contravention of any of the provisions of this Act and the regulations hereunder, shall be deemed to have thereby committed a trespass and shall be liable in damages or otherwise for the trespass to any person who is the owner or the occupant entitled to the possession of the surface of the land.

22. In case there is any conflict between the provisions of this Act or of any regulations made pursuant to this Act and anything contained in any grant, conveyance, lease, license or other instrument, whether made before or after the coming into force of this Act, with respect to the right of entry, user or taking of the surface of any land incidental to any mining or drilling operations as aforesaid, the provisions of this Act and the regulations hereunder shall prevail.

23.—(1) All applications relating to the right of entry or compensation therefor made pursuant to section 44 (2) of *The Provincial Lands Act* and the regulations thereunder now pending before the Board of Public Utility Commissioners shall be heard and disposed of by the Board of Arbitration under the provisions of this Act.

(2) All such applications shall be deemed to have been made to the Board of Arbitration and in accordance with the provisions of this Act.

24. This Act shall come into force on the day upon which it is assented to.

FOURTH SESSION
TENTH LEGISLATURE
11 GEORGE VI
1947

BILL

An Act to Provide for the Exercise of
any Right of Entry and for the De-
termination of the Compensation
to be paid therefor.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MAYNARD.

EDMONTON:
A. Shnitka, King's Printer
1947