

Bill No. 80 of 1949.

A BILL TO AMEND THE RIGHT OF ENTRY
ARBITRATION ACT.

NOTE.

This Bill amends *The Right of Entry Arbitration Act*, being chapter 24 of the Statutes of Alberta, 1947.

Section 2, which is the interpretation section, is amended as to the definition of "Director" by changing the reference from the Department of Lands and Mines to the Department of Lands and Forests, which is necessary by reason of the division of the Department of Lands and Mines into two new Departments. The definition of "minerals" is also amended by adding uranium to the list of minerals included within the definition.

Section 5 (2) is slightly amended to enable the Board, with the approval of the Lieutenant Governor in Council, to assign such duties as it may deem necessary to the officers, clerks or servants of the Board.

Section 8 (1) is amended. At common law the right of entry on the surface of a parcel of land only arose by reason of the ownership of minerals beneath the surface of that parcel. In other words, the owner of minerals beneath a parcel of land had a right arising from the fact of his ownership of the minerals to go on the surface of the parcel of land in order to recover his minerals. The purpose of the amendment is to make it clear that this Act was not intended to broaden the common law right of entry but merely to provide the administrative machinery by which the existing right arising by reason of ownership of minerals may be exercised.

Section 9 is amended. Subsections (2) and (3) presently provide that where an application for right of entry on Crown lands is made, a copy of the application shall be served upon the Deputy Minister of Lands and Mines. By reason of the division of the Department it is now necessary to provide that the copy of the application shall be served upon the Deputy Minister of Lands and Forests. Special areas have been taken over by the Department of Municipal Affairs and where the application for right of entry relates to Crown lands in a special area the application has to be served on the Deputy Minister of Municipal Affairs.

Section 10 (2) and (5) are similarly amended by making references to the Department of Lands and Forests and the Department of Municipal Affairs.

A new subsection (7) is added to section 10. This subsection provides that the Board shall not grant a right of entry on any lands within a forest reserve until the consent of the Minister of Lands and Forests has been obtained. This is particularly necessary in the case of those forest reserves coming within the jurisdiction of the Eastern Rockies Forest Conservation Board.

The present section 11 is amended, renumbered as subsection (1) and a new subsection (2) is added. Subsection (1) is amended to require seven clear days' notice of an application for an immediate right of entry to be served on all parties affected. At present only three clear days' notice is required. In some cases it is impossible for an operator who desires a right of entry to give notice to all parties affected as some of them, who may have registered interests in a parcel of land, may have disappeared and be impossible to trace. In such a case subsection (2) provides that the Board may hear the application after the operator has given such notice to the parties affected as may be prescribed in writing by the Board.

Section 12 (1) (a) is amended slightly so that the wording of this paragraph will correspond with the wording of section 8.

Section 13 (4) is struck out and a new subsection (4) is substituted. The purpose of the amendment is to change the references to *The Provincial Lands Act* and the Minister of Lands and Mines to references to *The Public Lands Act* and the Minister of Lands and Forests.

A new subsection (5) is added to section 13 which provides a means for the enforcement of orders of the Board. The subsection provides that orders of the Board may be enforced by the sheriff in the same manner as a writ of possession.

Section 16 is amended by the addition of a new subsection (4). This subsection provides that where an operator has incurred costs in obtaining possession due to refusal of the owner or occupant to comply with the order of the Board the operator may apply to the Board to deduct the amount of these costs from the compensation awarded to the owner or occupant.

Section 17 is amended. The section provides that the Board in its order terminating the right of entry may direct the operator to remove structures, fill excavations and otherwise restore the site as nearly as possible to its original condition. The effect of the amendment is that the operator is required to satisfy the Board that its directions have been carried out before the Board makes an order terminating the right of entry.

The Bill comes into force on the first day of April, 1949, which is the date the division of the Department of Lands and Mines into two new Departments becomes effective.

KENNETH A. MCKENZIE,
Acting Legislative Counsel.

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

BILL

No. 80 of 1949.

An Act to amend The Right of Entry Arbitration Act.

(Assented to _____, 1949.)

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

1. *The Right of Entry Arbitration Act*, being chapter 24 of the Statutes of Alberta, 1947, is hereby amended as to section 2,—

- (a) by striking out the word “Mines”, where it occurs in paragraph (b), and by substituting the word “Forests”;
- (b) by adding immediately after the word “pitchblend”, where it occurs in paragraph (d), the word “uranium”.

2. The said Act is further amended as to section 5 by adding immediately after the word “servants”, where it occurs in subsection (2), the words “and may assign to them such duties”.

3. The said Act is further amended as to section 8 by adding immediately after the words “removal of minerals”, where they occur in subsection (1), the words “contained in or underlying the surface of such land”.

4. The said Act is further amended as to section 9 by striking out the word “Mines”, wherever it occurs in subsections (2) and (3), and by substituting the words “Forests, or in the case of lands in a special area, with the Deputy Minister of Municipal Affairs”.

5. The said Act is further amended as to section 10,—

- (a) by striking out the word “Mines”, where it occurs in subsection (2), and by substituting the words “Forests, or in the case of lands in a special area, to the Deputy Minister of Municipal Affairs”;
- (b) by striking out the word “Mines”, where it occurs in subsection (5) and by substituting the words “Forests, or the Department of Municipal Affairs, as the case may be,”;
- (c) by adding immediately after subsection (6) the following new subsection:

“(7) The Board shall not grant a right of entry on any lands contained within the boundaries of any forest reserve established under *The Alberta Forest Reserves Act* until the consent in writing of the Minister of Lands and Forests has been obtained.”.

6. The said Act is further amended as to section 11,—

- (a) by renumbering the same as subsection (1) ;
- (b) by striking out the word “three”, where it occurs in subsection (1), and by substituting the word “seven”;
- (c) by adding immediately after subsection (1) the following new subsection:

“(2) In any case where the operator is unable to give all parties affected seven clear days’ notice of his application as required by subsection (1) he may make his application to the Board after giving such notice to the parties affected as may be prescribed in writing by the Board.”.

7. The said Act is further amended as to section 12 by adding immediately after the words “requires for”, where they occur in paragraph (a) of subsection (1), the words “or incidental to”.

8. The said Act is further amended as to section 13 by striking out subsection (4) and by substituting the following:

“(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 public lands the lease shall be issued pursuant to *The Public Lands Act*, and in the case of lands in a forest reserve the lease shall be issued pursuant to *The Alberta Forest Reserves Act*, the Minister of Lands and Forests may impose such further conditions from time to time as he may deem necessary.

“(5) Any order of the Board granting a right of entry may be enforced by the sheriff or the sheriff’s bailiff or any other person under his written direction in the same manner as a writ of possession issued upon the order of a court or judge.”.

9. The said Act is further amended as to section 16 by adding immediately after subsection (3) the following new subsection:

“(4) In any case where the Board has granted an order giving a right of entry to an operator and the owner or occupant has refused to allow the operator to enter upon and use the lands to which he is entitled as described in the order the operator may apply to the Board to deduct from the compensation awarded to the owner or occupant the costs

incurred by the operator of and incidental to obtaining entry upon and use of the land pursuant to the provisions of the order, and the amount to be deducted, if any, shall be in the discretion of the Board.”.

10. The said Act is further amended as to section 17,—

- (a) by striking out subsection (3) ;
- (b) by striking out the words “Any order so made may”, where they occur in subsection (4), and by substituting the words “The Board shall hear the application and the Board may” ;
- (c) by adding immediately after subsection (4) the following new subsection :

“(4a) Upon being satisfied that the directions, if any, given under subsection (4) have been carried out by the operator, the Board may make an order terminating the right of entry.”.

11. This Act shall come into force on the first day of April, 1949.

No. 80

FIRST SESSION
ELEVENTH LEGISLATURE
13 GEORGE VI
1949

BILL
An Act to amend The Right of Entry
Arbitration Act.

Received and read the

First time

Second time

Third time

HON. MR. MAYNARD.
