

1968 Bill 77

First Session, 16th Legislature, 17 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 77

An Act to amend The Forests Act, 1961

THE MINISTER OF LANDS AND FORESTS

First Reading

Second Reading

Third Reading

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1968

An Act to amend The Forests Act, 1961

(Assented to _____, 1968)

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

1. *The Forests Act, 1961* is hereby amended.

2. Section 3*a* is amended by striking out subsection (2) and by substituting the following:

(2) The Director may determine the total amount of timber in a management unit that, in his opinion, may be cut annually without disturbing the desired relationship between forest growth and depletion and for that purpose may determine

- (a) the total amount of coniferous timber by volume, and
- (b) the total amount of deciduous timber by volume or area.

3. Section 6 is struck out and the following is substituted:

6. (1) The Minister, with the approval of the Lieutenant Governor in Council, may on behalf of the Crown enter into a forest management agreement with any person for a specified term.

(2) Subject to this Act, a forest management agreement under this section may grant to the holder of the agreement the right to enter upon and use the public lands described in the agreement to grow and harvest Crown timber on a perpetual sustained yield basis for the production or manufacture of pulp, plywood or other forest products.

(3) The public lands held under a forest management agreement or forest management lease and the Crown timber thereon are not liable to assessment or taxation for municipal, school or hospital purposes.

4. Section 10 is amended by striking out subsection (2).

Explanatory Notes

1. This Bill amends chapter 32 of the Statutes of Alberta, 1961.

2. Section 3a (2) presently reads:

(2) The Director may determine the total amount of timber in a management unit that, in his opinion, may be cut annually without disturbing the balance between forest growth and depletion.

Section 3a deals with the establishment of forest management units and the determination of timber quotas on the basis of the total amount of timber in the unit. The new subsection (2) will permit the Director of Forestry to determine the total amount of deciduous timber by area, because of the difficulty in calculating the amount of deciduous timber by volume.

3. Section 6 presently reads:

6. The Minister, with the approval of the Lieutenant Governor in Council, may enter into an agreement with a person for a forest management lease for the manufacture of pulp, plywood or other products.

Pulp agreements entered into after the commencement of this Bill will be called forest management agreements rather than a forest management lease, a term that is inappropriate to the nature of the rights granted.

4. Section 10 (2) presently reads:

(2) A licence or permit grants only the exclusive right to cut Crown timber of the kind and in the areas described in the licence or permit.

Subsection (2) has become obsolete because the practice of specifically describing the timber and the area in the licence or permit has proved impractical.

5. Section 11 is struck out and the following is substituted:

11. (1) A licensee or a permittee becomes the owner of timber authorized to be cut pursuant to his licence or permit when the timber is actually cut by him or on his behalf.

(2) Except as against the Crown, a licensee or permittee is entitled to compensation from any person who deprives him of his right to cut and recover any timber.

(3) Except as against the Crown, the property in all Crown timber on the lands contained in a forest management agreement or forest management lease during the term thereof is vested in the holder of the agreement or lease and that holder is, in respect of any loss of or damage to that Crown timber or improvements created by him on those lands, entitled to compensation from the person who caused the loss or damage.

(4) In the event that a licensee, permittee or the holder of a forest management agreement or forest management lease is deprived by the Crown of any acquired right or interest, the Minister shall determine the compensation to be made by the Crown in respect thereof.

6. Section 12 is repealed.

7. Section 41 is amended by striking out the word "August" and by substituting the word "May".

8. Section 45 is amended by adding the following subsection:

(3) No provision in this Part imposes any obligation or responsibility on the Minister to fight fires on any land.

9. Section 47 is amended by striking out subsections (1) and (2) and by substituting the following:

47. (1) The period from the first day of April to the 31st day of October in each year is the fire season for the purposes of this Act.

(2) The Minister may declare any period after the 31st day of October and before the first day of April in the following year to be a fire season for any area for the purposes of this Act.

5. Section 11 presently reads:

11. (1) Subject to the payment of Crown charges, property rights in timber of the kind set out in the licence or permit vest in a licensee or permittee during the term of the licence or permit when the timber is actually cut, whether the timber is cut by the licensee or permittee or someone else, either with or without consent.

(2) Crown charges for timber of the kind described in a licence or permit and cut from the area described in the licence or permit shall be paid by the licensee or permittee whether the timber is cut by the licensee or permittee, or someone else, with or without consent.

The change in subsection (1) was necessary because the practice of describing in the licence or permit the kind of timber specifically is not always used and the authorization is defined by an approved operating plan pursuant to the licence or permit. The new subsection (2) defines the interest of the licensee and permittee in respect of which he may claim compensation. The new subsection (3) serves the same purpose in respect of forest management agreements. Subsection (4) provides for compensation to be made by the Crown when any vested rights in the forest are curtailed by the Crown, e.g., for highway construction.

6. Section 12 presently reads:

12. A licensee or permittee may commence any appropriate legal action against any person who

- (a) unlawfully cuts any timber of the kind and from the area described in the licence or permit, or
- (b) is unlawfully in possession of such timber, or
- (c) does any act in derogation of any right granted to the licensee or permittee under the licence or permit.

This section is a restatement of a common law remedy. It is unnecessary, particularly when section 11 has been amended to emphasize and distinguish the property rights of timber operators.

7. Section 41 presently reads:

41. Notwithstanding anything contained in any general or special Act or in any order in council or regulation made pursuant thereto or in any licence, the Lieutenant Governor in Council may make regulations increasing or decreasing the Crown dues payable in respect of any kind or class of timber or increasing or decreasing the annual holding and forest protection charges payable in respect of quotas or licences, and such regulations may take effect on the first day of August immediately preceding or at a subsequent time that may be specified in such regulations.

The change in date is made to coincide with the annual operating year anniversary, as agreed with the Alberta Forest Products Association.

8. This is a new subsection. At the present time the Alberta Forest Service does not assume the responsibility of fighting fires in many areas that are obviously not its concern, e.g., farming areas in the south-east part of the Province. Assistance is given outside of the "forest protection area" on request if the Alberta Forest Service is not too involved with fires or fire danger in the "forest protection area".

9. Section 47 (1) and (2) presently read:

47. (1) The period from the first day of April to the thirtieth day of November in each year shall be known as the fire season.

(2) The Minister may declare any period after the thirtieth day of November in any year and before the first day of April in the following year to be a fire season for any area.

The amendment will exclude November from the normal fire season so as to encourage the burning of debris in that month without the necessity of a permit.

10. Section 48 is amended by striking out subsection (1) and by substituting the following:

48. (1) Upon application, an officer may issue a permit called a "fire permit" to set out fire in any part of the Province during a fire season.

11. Section 63 is amended by striking out subsection (1) and by substituting the following:

63. (1) For the purpose of controlling and extinguishing any fire, an officer, peace officer or any person authorized in writing by an officer may use any publicly or privately owned equipment and may request or summon the assistance of any male persons between the ages of 16 and 60 years, but station agents, trainmen, boat crews, radio, telegraph or telephone operators, linesmen, bus drivers, pilots and dispatchers on duty, medical doctors, postmasters, battery operators and physically unfit persons are not compellable to comply with any request or summons for assistance.

12. Section 65a is struck out and the following is substituted:

65a. (1) Except as provided in this section, during a fire season no person may set out an outdoor fire in any part of Alberta without first obtaining a fire permit.

(2) Unless expressly prohibited by an order of the Minister under subsection (3) at the time for a particular area, any person may set out an outdoor campfire for cooking and warming purposes if the fire is never left unattended.

(3) When in his opinion fire hazard control measures require it, the Minister may by order require the extinguishment and prohibit the lighting of any or all campfires in any designated part of Alberta.

(4) During a fire season a municipal district may, with the consent of the Minister, allow setting out of fires anywhere within its boundaries without the necessity of fire permits for that purpose but the Minister may withdraw his consent when it appears that the practice has resulted or may result in fires damaging a forest or other property.

13. Section 69 is amended by striking out subsections (2) to (4) and by substituting the following:

(2) A person who is guilty of an offence under this Part is liable upon summary conviction

(a) if the offence was a contravention of subsection (2) of section 63, subsection (1) of section 65a or section 65b and was committed in a forest protection area, to a fine of not less than \$100 and not more than \$1,000 and in default of payment

10. Section 48 (1) presently reads:

48. (1) Upon application, an officer may, in any area not contained within a municipal district, issue a permit called a "fire permit" to set out fire during a fire season.

At present, a forest officer can issue fire permits in municipalities only where the municipality appoints him as a fire guardian. The new subsection (1) will allow forest officers to issue fire permits in municipal districts without the necessity of the special appointment.

11. Section 63 (1) presently reads:

63. (1) For the purpose of controlling and extinguishing any fire, an officer or any person authorized in writing by an officer may use any privately owned equipment and may employ or summon the assistance of any male person between the ages of sixteen and sixty years, excepting only station agents, trainmen, boat crews, radio, telegraph or telephone operators, linesmen, bus drivers, pilots and dispatchers on duty, medical doctors, postmasters, battery operators or persons physically unfit.

"Peace Officer" is added to the section to allow conscription by any police officer. Publicly owned equipment may be required to fight fires.

12. Section 65a presently reads:

65a. (1) No person shall set out fire during a fire season for any purpose except cooking or obtaining warmth in any part of the Province without first obtaining a fire permit.

(2) Notwithstanding subsection (1), a municipal district may, with the consent of the Minister, allow the setting out of fire during a fire season within all or any part of the municipal district without a fire permit, but the Minister may withdraw his consent if he is satisfied that the setting of fires without a fire permit is causing damage to property or the forest.

A new provision is made authorizing the Minister to prohibit open campfires or any campfires in any area for any period when control of fire hazards requires this action.

13. Section 69 (2) to (4) presently read:

(2) A person who is guilty of an offence under this Part is liable upon summary conviction

(a) if the offence was committed in any part of the Province not designated as a forest protection area, to a fine of not less than \$25 and not more than \$300 and in default of payment to imprisonment for a term of not more than three months, or to both fine and imprisonment, or

(b) if the offence was committed in a forest protection area, to a fine of not less than \$100 and not more than \$1,000 and in default of payment to imprisonment for a term of not more than one year, or to both fine and imprisonment.

(3) The amount of any expenses for which a person is liable to the Minister under subsection (2) is recoverable as a debt due to the Crown.

(4) Where the amount claimed does not exceed \$300 and the proceedings are taken under The Summary Convictions Act in respect of the disobedience, refusal or neglect, the magistrate, upon making a conviction, may order payment of such amount to the Minister and every such order may be enforced in the same manner as a district court judgment.

Amendment of this penalty section prescribing the penalty of \$100 minimum is too high for minor offences. The amendment made in 1967, through inadvertence, has the effect of nullifying the provision for a magistrate to order the accused, upon conviction, to pay fire fighting costs up to a sum of \$300.

- to imprisonment for a term of not more than one year, or to both fine and imprisonment, or
- (b) to a fine of not less than \$25 and not more than \$300 and in default of payment to imprisonment for a term of not more than three months, or to both fine and imprisonment
 - (i) if the offence was a contravention of any of the provisions of this Part other than those referred to in clause (a) and was committed in a forest protection area, or
 - (ii) if the offence was a contravention of any of the provisions of this Part and was committed outside a forest protection area.
- (3) The magistrate, upon making a conviction under this section may, in addition to any fine or imprisonment imposed on the convicted person, order the convicted person to pay the Crown a sum not exceeding \$300 for the costs proven to the magistrate to have been incurred by the Crown in fighting the fire that resulted from the acts of the convicted person that led to his conviction.
- (4) An order by the magistrate under subsection (3) may be entered with the clerk of a district court and upon entry may be enforced by the Crown in the same manner as a judgment debt of the district court.

14. Section 70 is amended

- (a) as to clause (k) by striking out the words “in the forest protection area”,
- (b) by adding the following clauses:
 - (r) for the establishment, use and operation of forest recreation areas and facilities including picnic sites, observation sites, campgrounds, trailer sites, recreation trails and other improvements associated with public recreational use of forested areas,
 - (s) establishing training and certification programs for fire fighters, and
 - (t) establishing rates of pay for men and equipment used in fire fighting.

15. This Act comes into force on the day upon which it is assented to.

14. Section 70, clause (k) presently reads:

70. The Lieutenant Governor in Council may make regulations

.....

(k) prescribing the precautions to be taken in the disposal of oil,
gas or other waste in oil operations in the forest protection area,
.....