

1972 Bill 64

First Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 64

The Surface Rights Act

THE MINISTER OF AGRICULTURE

First Reading

Second Reading

Third Reading

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BILL 64

1972

THE SURFACE RIGHTS ACT

(Assented to _____, 1972)

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

1. In this Act,

- (a) "Board" means the Surface Rights Board;
- (b) "compensation order" means an order providing for the payment of compensation and made
 - (i) under this Act or a former Act, or
 - (ii) by the Board of Public Utility Commissioners or a district court judge under regulations established pursuant to *The Provincial Lands Act* prescribing the conditions under which right of entry may be obtained upon land;
- (c) "former Act" means *The Right of Entry Arbitration Act*, being chapter 24 of the Statutes of Alberta, 1947, or *The Right of Entry Arbitration Act, 1952*, being chapter 79 of the Statutes of Alberta, 1952, or *The Right of Entry Arbitration Act*, being chapter 290 of the Revised Statutes of Alberta, 1955 and chapter 322 of the Revised Statutes of Alberta 1970;
- (d) "minerals" means all naturally occurring minerals, and without restricting the generality of the foregoing, includes
 - (i) gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sands, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite, granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl, but
 - (ii) does not include
 - (A) sand and gravel that belong to the owner of the surface of land under *The Sand and Gravel Act*, or

Explanatory Notes

General. This Bill will provide for a new Surface Rights Act to replace the present Right of Entry Arbitration Act, chapter 322 of the Revised Statutes of Alberta 1970. Among the new features in this Bill are the following:

1. The present three man Board of Arbitration is replaced by the Surface Rights Board which has a maximum seven members.
2. Prior notice is required before surveying is commenced and the operator is liable for any damage occurring in the course of surveying: see section 14.
3. Advances on compensation will be allowed prior to the making of a compensation order. As a result security deposits will be eliminated in view of other available safeguards and because of needless administrative expense: see note to section 18 (5).
4. The Surface Rights Board will have jurisdiction in certain cases to settle compensation for "off right of way damages", damages for losses of livestock and other personal property as a result of a company's operations, and compensation for rounding up livestock that stray as a result of a company's negligence: see sections 23(3) and 38. Similar provisions now in The Surface Reclamation Act are being transferred to this Bill so that jurisdiction in these cases will be switched from the Surface Reclamation Council to the Surface Rights Board.
5. The Bill provides for review of annual compensation under future Board orders and surface leases every five years. This is a new provision: see section 36.
6. The present procedure for the use of a waiver of notice and the letter of consent under the present Act will be combined so that waivers will no longer be used.

A section reference in an explanatory note is to the equivalent provision in the present Right of Entry Arbitration Act.

1. Definitions. Section 2. The new definition of "minerals" is derived from The Mines and Minerals Act.

- (B) clay and marl that belong to the owner of the surface of land under *The Clay and Marl Act*, or
- (C) peat on the surface of land and peat obtained by stripping off the overburden, excavating from the surface, or otherwise recovered by surface operations;
- (e) “Minister” means the Minister of Agriculture;
- (f) “occupant” means
 - (i) a person, other than the owner, who is in actual possession of land, or
 - (ii) a person who is shown on a certificate of title as having an interest in land, or
 - (iii) an operator granted right of entry in respect of land pursuant to a right of entry order, or
 - (iv) in the case of Crown land, a person shown on the records of the Department or other body administering the land as having an interest in the land;
- (g) “operator” means a person or unincorporated group of persons having the right to a mineral or the right to work the same, or the agent thereof;
- (h) “owner” means
 - (i) the person in whose name a certificate of title has been issued pursuant to *The Land Titles Act*, or
 - (ii) where no certificate of title has been issued, the Crown or other body administering the land;
- (i) “respondent” means an owner or occupant named as a respondent in an application to or in an order of the Board;
- (j) “right of entry” means the right of entry, user and taking of the surface of land;
- (k) “right of entry order” means an order granting right of entry and made
 - (i) under this Act or a former Act, or
 - (ii) by the Board of Public Utility Commissioners or a district court judge under regulations established pursuant to *The Provincial Lands Act* prescribing the conditions under which right of entry may be obtained upon land;
- (l) “surface lease” means a lease or other instrument under which the surface of land is being held for

any purpose for which a right of entry order may be granted under this Act and which provides for payment of compensation;

- (m) “vacant Crown land” means the surface of land owned by the Crown and in which no other person has any estate or interest.

2. (1) This Act applies to all lands in Alberta.

(2) Where there is a conflict between the provisions of this Act and anything contained in any grant, conveyance, lease, licence or other instrument, whether made before or after the coming into force of this Act, with respect to right of entry in respect of the surface of any land incidental to any mining or drilling operations, the provisions of this Act prevail.

Surface Rights Board

3. (1) There is hereby established a board called the “Surface Rights Board”.

(2) The Board shall consist of not more than seven members who shall be appointed by the Lieutenant Governor in Council.

(3) A member of the Board shall be designated chairman by the Lieutenant Governor in Council.

(4) The chairman and each member of the Board shall receive such remuneration as may be fixed by the Lieutenant Governor in Council.

4. In accordance with *The Public Service Act* there may be appointed a secretary, an assistant secretary, inspectors, land examiners and such other employees as are required to carry on the business of the Board.

5. (1) Any two members may perform any functions of the Board and when performing any such function have all the powers and jurisdiction of the Board.

(2) One member may perform the functions of the Board

- (a) where the Board consists of only that member, or
- (b) where the other member or members of the Board cannot act by reason of disability or of being absent on vacation or on leave of absence, or
- (c) in dealing with an application under and making an order pursuant to section 18, subsection (1), or
- (d) in giving a direction permitting substituted service of any document or in doing any act referred to in section 17, subsection (1), or

2. (1) Application of Act. Section 3.

(2) Prevalence of Act over conflicting provisions in other documents. Section 32.

3. Establishment of the Surface Rights Board. Section 4 (1), (2), (3). The present Board of Arbitration has three members.

4. Staff. Section 7.

5. Any two members may act as the Board and in specified circumstances, one member may act as the Board. Section 5.

- (e) in making an order terminating right of entry pursuant to section 25, subsection (5), or
 - (f) in any proceedings pertaining to the determination of compensation in cases involving vacant Crown land, or
 - (g) with the consent of the operator and the respondent, in any proceedings where a matter in issue is the amount of compensation payable by any operator or the person to whom the compensation is payable,
- and when performing any such function that member has all the powers and jurisdiction of the Board.

6. (1) Any order, direction or other document issued or made by the Board may be signed on behalf of the Board by the chairman or any other member of the Board, whether or not the person so signing participated in any proceedings giving rise to the order, direction or document.

(2) An order, direction or other document purporting to be signed by the chairman or a member of the Board on behalf of the Board shall be admitted in evidence as prima facie proof

- (a) that the order, direction or document is the act of the Board, and
- (b) that the person signing it was duly authorized to do so,

without proof of the appointment of the person so signing as chairman or a member of the Board, as the case may be, or of his signature.

General Powers and Duties of the Board and its Officers

7. (1) The Board shall

- (a) make rules of procedure and practice governing the hearings and proceedings before it and regulating the places and times of its sittings, and
- (b) cause records to be kept of its hearings and proceedings.

(2) The Board has

- (a) all the powers of a commissioner appointed under *The Public Inquiries Act*, and
- (b) such further powers and duties as may be determined by the Lieutenant Governor in Council.

8. The Board may

- (a) hold its sittings at such place or places in Alberta as it from time to time considers expedient, and
- (b) enter upon and inspect, or authorize any person to enter upon and inspect, any land, building, works or other property.

6. Signing of Board Orders etc. Section 28. Subsection (2) is new.

7. (1) Rules of practice, records. Section 8(1)(a) and (c).
(2) Additional powers. Section 8(2).

8. Sitzings of the Board. Inspections and inquiries. Section 9(1).

9. (1) The Board in conducting any hearing shall proceed in accordance with its rules of procedure and practice.

(2) The Board is not bound by the rules of law concerning evidence.

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

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

- (a) the applications to the Board and dispositions thereof received or made during the preceding year, and
- (b) such other matters as the Minister may from time to time direct.

11. (1) The secretary of the Board shall

- (a) keep properly authenticated copies of every order made by the Board;
- (b) have the custody and care of all records and documents belonging to or pertaining to the Board and filed in its office;
- (c) ensure that every order made by the Board is drawn pursuant to the direction of the Board and properly authenticated and filed in his office;
- (d) deliver to any person on request and on payment of the prescribed fee a certified copy of any order made by the Board;
- (e) perform such other duties as may from time to time be assigned or allocated to him by the Board;
- (f) obey all rules and directions given by the Board relating to the duties of the secretary.

(2) The assistant secretary of the Board may, subject to the directions of the Board, exercise and perform any of the powers and duties of the secretary.

Purposes for which Right of Entry May be Granted

12. (1) No operator has a right of entry in respect of the surface of any land for

- (a) the removal of minerals contained in or underlying the surface of such land or for or incidental to any mining or drilling operations, or
- (b) the laying of pipe lines for or in connection with any mining or drilling operations, or the production of minerals, or

9. Procedure at hearings. Section 17(1)(2)(4).

10. Annual report. Section 8(1)(b).

11. Duties of the Board's secretary. Section 10. Subsection (2) is new.

12. Circumstances under which right of entry may be obtained by way of a Board order for mineral operations. This Act and its predecessors replaces and regulates the common law right of a mineral owner to use the surface of land for his operations without the consent of the surface owner and subject only to the payment of compensation for actual damage to the surface.

Section 12(1) to (4). The wording of subsection (1) reverses an amendment made in 1963 with the result that the operator must either get the agreement of all owners and occupants or else join them all as respondents in his application for right of entry.

- (c) the erection of tanks, stations and structures for or in connection with a mining or drilling operation, or the production of minerals,

until the operator has obtained the consent of the owner of the surface of the land and of the occupant thereof, or has become entitled to right of entry by reason of an order of the Board pursuant to this Act.

(2) Notwithstanding anything contained in a grant, conveyance, lease, licence or other instrument, whether made before or after the commencement of this Act, and pertaining to the acquisition of an interest in a mineral, an operator thereby does not obtain the right of entry in respect of the surface of any land unless the grant, conveyance, lease, licence or other instrument provides a specific separate sum in consideration for the right of entry of the surface required for his operations, but this subsection does not apply in a case where the operator, prior to July 1, 1952, has for any of the purposes referred to in subsection (1), exercised the right of entry in respect of the surface of land in accordance with the provisions of a grant, conveyance, lease, licence or other instrument.

(3) The Board may make an order granting right of entry in respect of the surface of

- (a) the land in which the operator or his principal has the right to a mineral or the right to work a mineral, and
 - (b) such other land as in the opinion of the Board is necessary
 - (i) for a pipe line, power line, or a road to connect the operator's mining or drilling operations located on adjacent lands and to permit the operations to be operated jointly, and for the tanks, stations and structures to be used in the operations, or
 - (ii) to give the operator access to his mining or drilling operations from a public roadway or other public way, and egress from the operations to the public roadway or other public way, or
 - (iii) in the case of oil sands operations,
 - (A) for a road or roads to give the operator additional access to the operations and additional egress therefrom, or
 - (B) for the disposal of overburden incidental to the operations, or
 - (C) for the disposal of tailings and other materials resulting from the operations,
- irrespective of whether or not the owner or occupant of the other land is the owner or occupant of

the surface of the land in which the operator or his principal has the right to the mineral or the right to work the same.

(4) Where

- (a) a licence has been obtained to drill a well for the removal of a mineral contained in or underlying the surface of a tract of land, and
- (b) the orifice of the well will be located outside the tract,

the Board may grant the right of entry in respect of the surface of land outside the tract in the same manner and to the same extent as if the land were within the tract, irrespective of whether or not the owner or occupant of the surface of the land outside the tract is the owner or occupant of the surface of land within the tract.

13. (1) Where the surface of any land is required for the drilling or operating of a well, or for the necessary installations at or pipe lines to or from a well, the Board may make an order granting right of entry in respect of the surface of the land where the well is to be used for the purpose of

- (a) repressuring, recycling or pressure maintenance in a petroleum or natural gas field, pool or area, or
- (b) the storage or disposal of
 - (i) natural gas, or
 - (ii) processed or treated natural gas, or
 - (iii) products of petroleum or natural gas,or
- (c) the storage and disposal of water or any other substance produced from or to be injected in an underground formation, or
- (d) obtaining water for any operation mentioned in clause (a), (b) or (c).

(2) Where right of entry has been acquired by an operator under a right of entry order for any purpose mentioned in subsection (1), the operator has right of entry in respect of the surface of the land for any of the purposes mentioned in section 12, subsection (1).

(3) Where right of entry has been acquired by an operator under a right of entry order for any purpose mentioned in section 12, subsection (1), the operator has right of entry in respect of the surface of the land for any of the purposes mentioned in subsection (1) of this section.

(4) The provisions of this Act governing right of entry in respect of the surface of land for any purpose mentioned in section 12, subsection (1) apply in so far as they are

13. Right of entry for oil and gas conservation purposes. Section 19.

applicable to an application or an order for right of entry in respect of the surface of land for any of the purposes mentioned in subsection (1) of this section.

14. (1) Notwithstanding section 12, subsections (1) and (2) but subject to subsection (2) of this section, an operator proposing to undertake any of the operations mentioned in this Act, or any person employed or engaged by him, may enter upon any Crown or other land for the purpose of

- (a) making surveys or examinations on the surface of the land for fixing the site of the operation, and
- (b) setting out and ascertaining such portions of the surface of the land as are incidental to or necessary for the operation.

(2) An operator or any person employed or engaged by him who desires to enter on any land other than vacant Crown land for any of the purposes mentioned in subsection (1) shall make a reasonable attempt to give notice thereof to the person in possession of the land before entering thereon and the operator is liable to the owner or the occupant of the land, as the case may be, for any damage caused by him or that other person.

Application for Right of Entry

15. (1) Where the surface of any land required by an operator for any of the purposes mentioned in this Act is owned by the Crown or any other person, and the operator cannot acquire by agreement a right of entry upon the surface of the land required by him, the operator may make application to the Board for right of entry in respect of the surface of such land as may be necessary for the efficient and economical performance of his operations.

(2) An application to the Board for a right of entry order shall be in Form A in the Schedule or in a form to the like effect.

(3) The operator shall serve a copy of the application on the respondent.

16. Service of an application upon the Crown in right of Alberta shall be made by filing a copy of the application

- (a) with the Deputy Minister of the Department charged with the administration of the land, and
- (b) when the title for the lands shows that another Department has an interest in the land, with the Deputy Minister of that Department.

14. Surveys prior to obtaining right of entry. Section 12(7). This section will now require prior notice to be given of entry for surveys, and makes the operator liable for all damages caused in the course of surveying.

15. Application for right of entry where the operator is unable to acquire surface rights by agreement. Sections 11 and 13.

16. Service of application upon the Crown. Section 14.

- 17.** (1) Upon the receipt of an application, the Board
- (a) shall appoint a date for a hearing in respect of the application, and
 - (b) may require the operator to give such notice of the hearing in such manner as the Board directs
 - (i) to any person registered in the land titles office as having an interest in the land,
 - (ii) to any lessee or occupant of the land, and
 - (iii) to any other person.
- (2) A notice of the hearing of an application relating to lands of the Crown in right of Alberta, shall be given in writing
- (a) to the Deputy Minister of the Department charged with the administration of the land, and
 - (b) when the title for the land shows that another Department has an interest in the lands, to the Deputy Minister of that Department,
- at least five days before the hearing of the application.

18. (1) Notwithstanding section 17, after the filing of an application the Board may, if it considers it proper to do so, issue an order granting right of entry in respect of the surface of the land,

- (a) upon the operator filing with the Board a letter of consent in Form C in the Schedule signed by the respondent, or
 - (b) after seven clear days have elapsed from the date of personal service, or 14 days from the date of any substituted service, on the respondent, of
 - (i) a copy of the application, and
 - (ii) a notice in Form B in the Schedule.
- (2) In subsection (1), "substituted service" means any form of service other than personal service as may be directed by the Board in writing.

(3) Where the Board has issued a right of entry order under subsection (1), the Board shall hold a hearing to determine the compensation payable by the operator at such time and place as the Board considers advisable and for that purpose section 17 applies as though the hearing was in respect of the application for a right of entry order.

(4) Where the Board receives an objection after the serving of a notice in Form B in the Schedule on the respondent, the Board shall hold a hearing with respect to the application and objection at such time and place as the Board considers advisable in accordance with section 17.

17. Notice of hearing. Section 16.

18. Procedure for immediate entry in certain cases, with the compensation to be considered at a later hearing. This is the procedure used in almost all cases. Section 18.

Security deposits are eliminated. Since 1963 (when The Surface Reclamation Act was enacted) the Government has been called upon in only four cases to pay compensation under a Board Order where an operator defaulted. In three of the four cases the Government recovered the amounts from the operator. In the fourth case, involving \$150, no recovery has yet been made. This amount is so small in comparison with the expense of the Board in looking after security deposits, that the deposits are no longer considered a necessary safeguard.

(5) The Board may at any time after issuing an order under subsection (1) direct the operator to pay to a respondent a specific amount of money as an advance on the compensation the Board may subsequently determine is payable to that respondent.

Right of Entry Orders

19. The Board in a right of entry order

- (a) shall determine what portion of the surface of the land the operator requires for or incidental to the efficient and economical performance of the operations, and
- (b) may prescribe such other conditions as the Board considers necessary in connection with the granting of the order.

20. (1) A right of entry order is deemed to vest in the operator,

- (a) unless otherwise provided in the order, the exclusive right, title and interest in the surface of the land in respect of which the order is granted other than
 - (i) the right to a certificate of title issued pursuant to *The Land Titles Act*, and
 - (ii) the right to carry away from the land any sand, gravel, clay or marl or any other substance forming part of the surface of the land, and
- (b) to the extent necessary for his operations, the right to excavate or otherwise disturb any minerals within, upon or under the land without permission from or compensation to the Crown or any other person with respect to such minerals.

(2) Where an operator in his application represents that subsidence of the surface of the land may result from the mining of coal, the order of the Board may grant the right to disturb or interfere with the surface of the land irrespective of whether or not the operator will enter upon the surface in conducting his operations.

21. (1) Where the right of entry required by an operator relates to

- (a) vacant Crown land, or
- (b) land held of the Crown under a disposition that does not contemplate the issue of a certificate of title,

the application may be accompanied by a plan or map satisfactory to the Board showing

19. Board's jurisdiction in respect of right of entry orders.
Section 20(1)(a) and (c).

20. Rights granted under a right of entry order. Section 12(5)
and (6) of the present Act.

21. Immediate entry in cases of vacant Crown land. Section
15(1) (2).

- (c) the proposed location of the land in which the right of entry is required with its approximate dimensions and coloured or outlined in red, and
- (d) the quarter sections, or what would be the quarter sections if the land were surveyed under *The Surveys Act*, in which the land is situated.

(2) Notwithstanding sections 17 and 19, the Board may in its discretion issue an order granting the operator right of entry in respect of so much of the surface of any quarter section shown on the plan or map accompanying the application as may be necessary for his operations, and in the order the Board may,

- (a) stipulate that a further plan satisfactory to the Board or a plan of survey of the surface of the land, or any part thereof, in which right of entry has been acquired by the operator, be submitted to the Board within a specified time, and
- (b) prescribe such other terms and conditions as the Board considers necessary.

22. (1) Notwithstanding anything in this Act, an operator who has been granted a right of entry order under section 21 may enter into an agreement with any other person with respect to the use of the surface of the land referred to in the order for so long as the order is in effect.

(2) Where the other person referred to in subsection (1) is not himself an operator and is unable to reach an agreement pursuant to subsection (1) with the operator under the right of entry order, that person may apply to the Board to have the right of entry order amended for the purpose of conferring rights on the applicant with respect to the use by him of all or part of the surface of the land to which the right of entry order relates.

(3) The Board may grant an application under subsection (2) only if it is satisfied that

- (a) the land can be used by the applicant and the operator without undue interference with the operator's operations, and
- (b) having regard to all the circumstances, it is fair and proper to grant the application.

(4) Where the Board grants an application under this section, it shall

- (a) amend the right of entry order for the purpose of conferring on the applicant such rights in respect of the use of the land as it considers appropriate in the circumstances, and

22. In cases coming under section 21, the operator may enter into agreement with other persons for the use by them of the land. Subsection (1) is the equivalent of 15(3) of the present Act but the remainder of the section is new and allows the other person to come to the Board to obtain rights on that land in the absence of an agreement with the operator. The most frequent case where this occurs is where an operator has a right of entry order for a long roadway in remote forested areas and a lumber operator wishes to use the operator's road rather than build his own parallel to it, with additional destruction of timber etc., and unnecessary expense. A similar procedure has been in use for over 20 years under the Public Lands Licence of Occupation Regulations administered by the Department of Lands and Forests.

- (b) make an order determining the compensation payable by the applicant to the operator for those rights.
- (5) Where an application is granted under this section, the applicant shall not be made a respondent under the order.

Compensation Orders

23. (1) Where a right of entry order is granted, the Board shall also determine the amount of compensation payable and the person to whom the compensation is payable.

(2) The Board, in determining pursuant to subsection (1) the amount of compensation payable, may consider

- (a) the value of the land,
- (b) the loss of use by the owner or occupant of the area granted to the operator,
- (c) the adverse effect of the area granted to the operator on the remaining land of the owner or occupant and the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator,
- (d) the damage to the land in the area granted to the operator that might be caused by the operations of the operator, and
- (e) such other factors as the Board considers proper under the circumstances.

(3) In making a compensation order, the Board may also determine the amount of compensation payable by the operator

- (a) for damage caused by or arising out of the operations of the operator to any lands of the owner or occupant other than the area granted to the operator, if the operator and the owner or occupant concerned consent to the Board's jurisdiction in that matter;
- (b) for the loss of or damage to livestock or other personal property of the owner or occupant caused by or arising out of the operations of the operator;
- (c) for time spent or expense incurred by the owner or occupant in recovering any of his livestock which have strayed due to the act or omission of the operator;

and shall direct the person to whom the compensation is payable.

23. Compensation orders. Section 20(1)(b) and (2), (4) and (5) of the present Act. Subsection (3) is new and allows the Board to make compensation in matters other than for the surface rights expropriated by the operator, including compensation for “off right of way damage” where the operator has trespassed on land not covered by his right of entry order and the parties consent to the Board having jurisdiction. A similar provision presently in The Surface Reclamation Act will be repealed by this Bill.

(4) In determining the amount of compensation payable under subsection (1) the Board may fix certain amounts payable in such manner and over such periods of time as the Board may decide.

(5) Notwithstanding any other Act, where no thoroughfare exists on a road allowance prescribed under *The Surveys Act* and no disposition thereof has been made to any person, an operator has the right to use the road allowance for the purpose of gaining access to his drilling or mining operation without payment of compensation to the Crown or to the municipal corporation having the direction, control and management of the road allowance.

24. (1) Except as otherwise provided for in this section, an order of the Board made in writing is final and there is no appeal therefrom.

(2) The operator or any respondent named in a compensation order may appeal a compensation order to the district court as to the amount of compensation payable or the person to whom the compensation is payable or both.

(3) In this section, "compensation order" includes

- (a) an order of the Board to amend a compensation order in respect of the amount of compensation payable or the person to whom it is payable, and
- (b) an order of the Board for the replacement of a compensation order, if the new compensation order results in a change as to the amount of compensation payable or the person to whom the compensation is payable.

(4) The party appealing shall,

- (a) within 30 days after the date of the compensation order cause a notice of appeal to be filed in the office of the clerk of the district court, in the judicial district in which the land is situated, and
- (b) not later than 10 days after the filing of the notice of appeal, serve the Board and the other parties to the compensation order appealed from or their respective solicitors with a copy thereof, by personal service or by registered mail.

(5) The Board, upon being served with a copy of the notice of appeal, shall forthwith transmit to the clerk of the district court a certified copy of the application to the Board for a right of entry order, the right of entry order, the compensation order appealed from and the reasons given by the Board for its decision in making the compensation order.

24. Appeals from compensation orders to the district court and, with leave, to the Appellate Division of the Supreme Court. Section 21. Subsections (3) and (10) are new.

(6) The clerk of the district court upon receiving the certified copies of the documents referred to in subsection (5) shall

- (a) set down the appeal for hearing at the next sittings of the district court, and
- (b) within 10 days after the appeal has been set down for hearing notify the Board and the parties or their respective solicitors of the date of the hearing by registered mail addressed to them at their addresses set out in the notice of appeal.

(7) An appeal to the district court shall be in the form of a new hearing.

(8) The court

- (a) has the power and jurisdiction of the Board in determining the amount of compensation payable and the person to whom the compensation is payable,
- (b) shall determine the amount of compensation payable and the person to whom the compensation is payable,
- (c) shall
 - (i) confirm the order of the Board, or
 - (ii) direct that the compensation order be varied in accordance with its judgment,and
- (d) shall make directions as to costs of the appeal in accordance with subsection (10).

(9) By leave of a judge of the Appellate Division of the Supreme Court of Alberta, any party may appeal from the judgment of the district court to the Appellate Division and the rules and practice applicable to appeals to the Appellate Division apply, except as to costs.

(10) The costs of any appeal under this section

- (a) if the appeal is by the operator, shall be payable by him on a solicitor and client basis regardless of the result of the appeal, unless the court finds special circumstances to justify it to award costs on any other basis, or
- (b) if the appeal is by the owner or occupant,
 - (i) where the appeal is successful, shall be payable by the operator on a solicitor and client basis, and
 - (ii) where the appeal is unsuccessful, on a party and party basis to such party, if any, as the court in its discretion may direct.

(11) A judgment of the district court or the Appellate Division shall be served upon the Board, and thereupon the Board without any further hearing shall vary its order in accordance with the judgment.

Termination of Right of Entry Order

25. (1) If at any time after the expiration of two months from the date of a right of entry order, the operator has not commenced to use or has ceased to use the surface of the land, or any part thereof, the operator, the owner or the occupant may request the Board for an order terminating the right of entry order as to that land or part thereof.

(2) On receipt of a request referred to in subsection (1) the Board

- (a) shall appoint a date for an inquiry into all matters pertaining to the request, and
- (b) may require notice of the inquiry to be given in such manner as the Board may direct.

(3) The Board shall hold the inquiry and may make an order terminating the right of entry order as to the land or any part thereof.

(4) The Board shall not terminate the right of entry order as to the land or any part thereof until a reclamation certificate has been issued for that land in any case to which *The Surface Reclamation Act* applies.

(5) Where a reclamation certificate has been issued under *The Surface Reclamation Act* as to the land or any part thereof held under the right of entry order, the Board may, without any inquiry, make an order terminating the right of entry order entirely or as to the part of the land to which the reclamation certificate relates, as the case may be.

(6) Notwithstanding any of the provisions in subsection (1), (2) or (3), if it is indicated to the Board that the termination of a right of entry should be considered, the Board

- (a) may inquire into the matter, and
- (b) may, if the circumstances in the opinion of the Board so warrant, make an order terminating the right of entry order as to the land or any part thereof.

Board Orders Generally

26. Upon an order being issued by the Board, the secretary or an employee of the Board shall mail or deliver the order or a certified copy thereof to the respondent and the operator.

25. Termination or partial termination of right of entry order.
Section 27.

26. Parties to receive certified copies of orders. Section 22(1).

27. A copy of an order of the Board, certified as a true copy by the chairman or a member of the Board or the secretary, shall be admitted in evidence as prima facie proof of the order by the Board, without any proof of the appointment of the person so certifying or the authenticity of his signature or any other proof.

28. (1) A certified copy of a right of entry order may be filed in the office of the clerk of the Supreme Court.

(2) On payment of the fees prescribed by law, a right of entry order filed under subsection (1) may be enforced by

(a) the sheriff or the sheriff's bailiff, or

(b) any other person under the written direction of the sheriff,

in the same manner as a writ of possession issued upon the order of the Supreme Court.

(3) A certified copy of a compensation order may be filed in the office of the clerk of the Supreme Court or the district court of the district in which the land to which the order relates is situated.

(4) On payment of the fees prescribed by law, a compensation order filed under subsection (3) shall be entered as a judgment of the court in which it is filed, and may be enforced according to the ordinary procedure for enforcement of a judgment of that court.

29. (1) An order of the Board or a certified copy thereof may be filed with the Registrar for the appropriate land registration district who, on payment of the proper fee, shall register the order and endorse a memorandum of its registration on the certificate of title of the land affected.

(2) Where a certificate of title to land is endorsed with a memorandum of the registration of an order of the Board and a notice is given to the Registrar for the appropriate land registration district by a member of the Board stating that no part of the land described in the certificate is, according to the records of the Board, affected by the order referred to in the memorandum, the notice may be registered by the Registrar without fee, and upon registration, the endorsement of the memorandum on the certificate of title shall be cancelled.

30. An order of the Board need not show upon its face that any proceedings were taken or notice given or that any circumstances existed necessary to give the Board jurisdiction to make the order.

27. Certified copies of Board orders as evidence. Section 28.

28. Filing of Board orders in court and enforcement thereof. Sections 23 and 29 of the present Act. A compensation order may be filed in either district court or Supreme Court.

29. Registration in land titles office of copy of Board order. Section 22(2)(3).

30. Order need not show jurisdiction. Section 24.

General

31. (1) Every Registrar under *The Land Titles Act* and every Department of the Government shall furnish without charge to the Board any certificates and certified copies of documents that the Board requests in writing.

(2) The Board or a person duly authorized in writing by the Board may search at any time in the public records of a land titles office without charge.

32. A person who, in the exercise of a right of entry, enters upon, uses or takes any of the surface of land in contravention of any of the provisions of this Act

- (a) shall be deemed to have committed a trespass thereby, and
- (b) is 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.

33. (1) The costs of and incidental to the proceedings before the Board are 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 the costs are to be taxed and allowed.

(3) The costs may include all preliminary costs of the respondent necessarily incurred in reaching a decision whether or not to accept the compensation offered by the operator.

(4) Where

- (a) the Board has granted a right of entry order, and
- (b) the owner or occupant has refused to allow the operator to enter upon and use the lands to which the operator is entitled as described in the order,

the operator may apply to the Board to deduct from the compensation payable under the compensation order the costs incurred by the operator in and incidental to obtaining entry upon and use of the land pursuant to the provisions of the right of entry order.

(5) The amount of costs, if any, to be deducted under subsection (4) is in the discretion of the Board.

34. (1) Where an operator has failed to pay, within 30 days following the day on which it was due, any money under a compensation order or surface lease, the person entitled to receive the money may submit to the Board evidence of the failure.

31. Furnishing of certified copies of government documents to the Board. Section 31.

32. Entry on or use of land in contravention of the Act is treated as a trespass. Section 31.

33. Liability for costs in proceedings before the Board. Section 26(1)(2)(4)(5). Subsection (3) is new.

34. Recovery from the Government of compensation which an operator failed to pay. This section is being transferred to this Act from section 18 of The Surface Reclamation Act.

(2) Where the evidence submitted is satisfactory in the opinion of the Board with respect to the failure to pay, the Board may direct the Provincial Treasurer to pay out of the General Revenue Fund the amount of money to which the person is entitled.

35. The Board

- (a) may re-hear an application before deciding it;
- (b) may review, rescind, amend or replace a decision or order made by the Board;
- (c) may, without a hearing, amend an order of the Board with respect to an operator or respondent named therein,
 - (i) where there is a change of operator, upon receipt of evidence satisfactory to the Board of the change, or
 - (ii) where there is a change as to the owner or occupant of the land, upon receipt of proof of the change or upon receipt of proof of the change and a proper assignment of compensation from the owner or occupant to the new owner or occupant;
- (d) may, notwithstanding anything in this Act, and with or without a hearing, amend a compensation order to show as a respondent a person who is neither an owner or occupant of the land concerned, and to make compensation payable to that person, where the Board is satisfied that that person is legally entitled to receive the compensation that would otherwise be payable to an owner or occupant.

36. (1) In this section “rate of compensation” means the amount of compensation payable on an annual or other periodic basis under a compensation order.

(2) This section applies only to compensation orders made after January 1, 1972.

(3) For the purposes of this section, the term of a compensation order shall be computed from the date of the original right of entry order to which it relates.

(4) This section shall not be construed to limit the powers of the Board under section 35 to review, rescind, amend or replace compensation orders.

(5) Where a compensation order provides for payment of compensation on an annual or other periodic basis, the operator or a respondent may give notice that he desires to have the rate of compensation thereunder reviewed in

35. Board's powers to re-hear, review, amend and rescind orders.
Section 25. Clauses (c) and (d) are new.

36. New The Board will be empowered to review the annual rentals under compensation orders issued after January 1, 1972 at five year intervals. See section 37 for the equivalent section re surface leases.

accordance with this section, if the notice is given during the last three months of the fifth year of the term of the compensation order.

(6) A notice under subsection (5)

(a) shall be in writing and given

(i) to each respondent, where the operator gives the notice, or

(ii) to the operator and any other respondents, where a respondent gives the notice;

(b) may be given by mail.

(7) Upon the giving of the notice in accordance with subsection (6), the operator and the respondents shall enter into negotiations in good faith with respect to the rate of compensation to be paid in respect of years of the term subsequent to the fifth year.

(8) Where the operator and the respondent agree on a new rate of compensation under the compensation order, the operator and the respondent shall notify the Board in writing of the rate agreed upon, and thereupon the Board shall vary the compensation order accordingly.

(9) Where the operator and the respondent cannot agree on a new rate of compensation, the party desiring a review may make an application to the Board for a review of the rate of compensation but not later than the end of the three-month period following the expiration of the fifth year of the term of the compensation order.

(10) The application pursuant to subsection (9) shall

(a) state the amount the applicant believes to be a reasonable and fair rate of compensation, and

(b) be accompanied by any documents or material the applicant considers to be relevant to the application.

(11) Upon receipt of an application pursuant to subsection (9), the Board shall fix a date for the hearing of the application and notify the operator and the respondents of the date fixed.

(12) The Board shall hear the application and, upon conclusion of the hearing or as soon as conveniently may be, shall make an order confirming or varying the rate of compensation payable under the compensation order in respect of the years of the term subsequent to the fifth year.

(13) An order under subsection (12) confirming the rate of compensation payable under the compensation order may be appealed under section 24 as though the order were a compensation order.

(14) A notice may be given under this section during the last three months of the tenth year of the term of the compensation order or, thereafter, during the last three months of a year of the term thereof that is a multiple of five, and thereupon a reference in subsections (5) to (12) to the fifth year of the term shall be read as a reference to the year of the term in which the notice is given.

Board's Jurisdiction respecting Surface Leases

37. (1) In this section

- (a) "operator" means an operator who is obligated to pay compensation under a surface lease to a lessor;
- (b) "rate of compensation" means the amount of compensation payable on an annual or other periodic basis under a surface lease;
- (c) "lessor" means a party to a surface lease who is entitled to receive compensation under that surface lease.

(2) This section applies only to surface leases the terms of which commence on or after January 1, 1972.

(3) Where a surface lease provides for payment of compensation on an annual or other periodic basis, the operator or a lessor may give notice that he desires to have the rate of compensation thereunder reviewed in accordance with this section, if the notice is given during the last three months of the fifth year of the term of the surface lease.

(4) A notice under subsection (3)

- (a) shall be in writing and given
 - (i) to each lessor, where the operator gives the notice, or
 - (ii) to the operator and any other lessors, where a lessor gives the notice;
- (b) may be given by mail.

(5) Upon the giving of the notice in accordance with subsection (4), the parties to the surface lease shall enter into negotiations in good faith with respect to the rate of compensation to be paid in respect of years of the term subsequent to the fifth year.

(6) Where the operator and the lessor agree on a new rate of compensation under the surface lease, the operator and the lessor shall amend the lease in accordance with their agreement or enter into a new lease.

(7) Where the operator and the lessee cannot agree on a new rate of compensation, the party desiring a review may make an application to the Board for a review of the

37. New. The Board will be empowered to review the annual rentals under private surface leases at five year intervals where the terms of the leases commence on or after January 1, 1972.

rate of compensation but not later than the end of the three-month period following the expiration of the fifth year of the term of the surface lease.

(8) The application pursuant to subsection (7) shall set forth

- (a) the name and address of the operator,
- (b) the name and address of the lessor,
- (c) the rate of compensation under the surface lease, and
- (d) the amount the applicant believes to be a reasonable and fair rate of compensation,

and the application shall have attached thereto a copy of the surface lease and may be accompanied by any other documents or material the applicant considers to be relevant to the application.

(9) Upon receipt of an application pursuant to subsection (8) the Board shall fix a date for the hearing of the application, and notify the operator and the lessor of the date fixed.

(10) The Board shall hear the application and, upon conclusion of the hearing or as soon as conveniently may be, shall make an order confirming or varying the rate of compensation payable under the surface lease in respect of the years of the term subsequent to the fifth year.

(11) An order under subsection (10) may be appealed under section 24 as though it were a compensation order and the appeal related to the amount of compensation payable thereunder.

(12) Where the Board makes an order varying the rate of compensation under a surface lease, the order operates to amend the surface lease in respect of the rate of compensation thereunder, notwithstanding anything contained in the surface lease.

(13) A notice may be given under this section during the last three months of the tenth year of the term of the surface lease or, thereafter, during the last three months of a year of the term thereof that is a multiple of five, and thereupon a reference in subsections (3) to (10) to the fifth year of the term shall be read as a reference to the year of the term in which the notice is given.

38. The Board may, with the consent of the persons concerned, hold a hearing and make an order with respect to a dispute between an operator who is a lessee under a surface lease and an owner or occupant as to the amount of compensation payable

38. Jurisdiction of the Board in cases where there is no right of entry order involved but where the parties concerned consent to the Board deciding compensation payable by the operator for damages arising from his operations, including "off right of way damage". This is similar to section 20 of The Surface Reclamation Act which will be repealed by this Bill.

- (a) for damage arising out of the operations of the operator to the land of the owner or occupant that is not subject to the surface lease, or
- (b) for loss of or damage to livestock or other personal property of the owner or occupant arising out of the operations of the operator, whether or not the land on which the loss or damage occurred is subject to the surface lease, or
- (c) for time spent or expense incurred by an owner or occupant in recovering any of his livestock that have strayed due to the act or omission of the operator, whether or not the act or omission occurred on the land that is subject to the surface lease.

Transitional and Consequential

39. Wherever a reference is made to *The Right of Entry Arbitration Act* or the Board of Arbitration under that Act in any statutory provision not amended by this Act or in any regulation, order, direction or other instrument in force in Alberta, the reference shall be deemed to be to *The Surface Rights Act* or the Surface Rights Board, respectively.

40. Any order, rule, regulation, direction or other instrument made pursuant to a former Act and in force upon the commencement of this Act shall be deemed to be an order, rule, regulation, direction or instrument of the Surface Rights Board made pursuant to this Act.

41. Any proceeding commenced but not completed under the former Act prior to the commencement of this Act shall be continued and completed under this Act, as though it had been commenced under this Act.

42. (1) *The following enactments are amended*

- (a) *by striking out the words "The Right of Entry Arbitration Act" wherever they occur and by substituting the words "The Surface Rights Act", and*
- (b) *by striking out the words "Board of Arbitration" wherever they occur and by substituting the words "Surface Rights Board":*

The Department of the Environment Act, section 15, subsection (2), clause (f);

The Expropriation Procedure Act
section 2, clause (b), subclause (ii) and clause (c),
section 32, subsection (2),
section 48, subsection (2),

39. References to former Board and former Act in other Acts, regulations, and documents.

40. Orders etc., under a former Act are deemed to be made under the new Act.

41. Proceedings commenced under the old Act are to be completed under the new one.

42. Specific amendments to other Acts to replace references to the former Act and the former Board. The citations for the Acts amended are as follows:

The Department of Environment Act, S.A., 1971, c. 24
The Expropriation Procedure Act, R.S.A. 1970, c. 130
The Irrigation Act, R.S.A. 1970, c. 192
The Land Surveyors Act, R.S.A. 1970, c. 197
The Landmen Licensing Act, R.S.A. 1970, c. 202
The Mines and Minerals Act, R.S.A. 1970, c. 238
The Municipal Taxation Act, R.S.A. 1970, c. 251
The Pipe Line Act, R.S.A. 1970, c. 275
The Tax Recovery Act, R.S.A. 1970, c. 360

section 52,
section 53, subsections (1), (3), (4), (6) and
(7), and
Schedule, title 6;

The Land Surveyors Act, section 53, subsection (2),
clause (a), subclause (ii);

The Landmen Licensing Act, section 2, clause (c),
subclause (i);

The Mines and Minerals Act, section 53, subsection
(1);

The Pipe Line Act, section 41, clause (b).

(2) *The Irrigation Act* is amended as to section 157, sub-
section (4) by striking out clause (g) and by substituting
the following:

(g) right of entry orders (as defined in *The Surface
Rights Act*) registered under *The Land Titles Act*,
and

(3) *The Municipal Taxation Act* is amended as to sec-
tion 18, subsection (3) by striking out the words “an order
under *The Right of Entry Arbitration Act* or any other
Act” and by substituting the words “a right of entry order
(as defined in *The Surface Rights Act*) or an order made
under any other Act”.

(4) *The Tax Recovery Act* is amended as to section 23,
subsection (6) by striking out clause (e) and by substituting
the following:

(e) right of entry orders (as defined in *The Surface
Rights Act*) registered under *The Land Titles Act*.

43. *The Surface Reclamation Act* is amended

(a) as to section 2, subsection (1), clause (m), sub-
clause (i) by adding after the words “an order
granting right of entry and made by” the words
“the Surface Rights Board under *The Surface
Rights Act* or”,

(b) as to section 11, subsection (2) by striking out
clause (b) and by substituting the following:

(b) where the order was directed to the operator,
may be recovered by ordering the purchaser
from the operator of any production from any
mine, quarry or well of the operator to pay
to the Provincial Treasurer from the purchase
money an amount not exceeding the money so
paid under subsection (1) in lieu of paying the
operator, and such payment by the purchaser
operates as a discharge of the purchaser to pay
the operator the same amount.

43. Amends The Surface Reclamation Act, chapter 356 of the Revised Statutes of Alberta 1970. The contents of sections 18 to 21 are transferred to The Surface Rights Act.

(c) *by striking out section 12 and by substituting the following:*

12. (1) Notwithstanding anything in any other Act or in any surface lease or right of entry order in effect at or after June 1, 1963, but subject to subsection (2),

- (a) no surrender of a surface lease is effective or binding on any person, and
- (b) no expropriation board shall order the termination of a right of entry order,

in so far as the surrender or termination relates to any interest of the owner until a reclamation certificate has been issued pursuant to section 15 or 16 for the land to be affected by the surrender or termination.

(2) An expropriation board may order the termination of a right of entry order without a reclamation certificate in a case

- (a) where the parties to the order have entered into a surface lease with respect to the land affected by the order and have requested the termination, or
- (b) where the land affected by the order has been acquired or expropriated by the Crown or by a municipal corporation, or
- (c) where the expropriation board is satisfied that the operator has not exercised his rights under the order.

(d) *by striking out sections 18 to 21.*

44. The persons who hold the offices of chairman and members of the Board of Arbitration under *The Right of Entry Arbitration Act* immediately prior to the commencement of this Act become the chairman and members respectively of the Surface Rights Board without the necessity of an order in council appointing them.

45. The Expropriation Procedure Act is amended as to section 32 by adding the following subsection after subsection (2):

(2.1) Notwithstanding subsection (1), where any expropriation proceedings were commenced under this Part before the Public Utilities Board and were authorized pursuant to

- (a) *The Pipe Line Act*, or

44. Chairman and members continue.

45. This section amends chapter 130 of the Revised Statutes of Alberta 1970. This section relates to expropriation proceedings for power lines and pipe lines that were commenced before July 1, 1970, the date on which the Board of Arbitration assumed jurisdiction under Part 3 for those types of expropriations. Proceedings commenced prior to July 1, 1970 were to continue under the Public Utilities Board but this section will require that if any of those proceedings so continued are not completed when The Surface Rights Act comes into force, they will be transferred to the Surface Rights Board.

(b) *The Water, Gas, Electric and Telephone Companies Act*, or

(c) section 86 of *The Water Resources Act*,
and the proceedings have not been completed before the Public Utilities Board at the commencement of this subsection, the proceedings shall be transferred to and completed by the Surface Rights Board under *The Surface Rights Act* and for that purpose the Public Utilities Board shall as soon as practicable after the commencement of this subsection deliver to the Surface Rights Board all of its records relating to those proceedings.

Repeal

46. This Act repeals and replaces *The Right of Entry Arbitration Act*.

Commencement

47. This Act comes into force on a date or dates to be fixed by Proclamation.

46. Repeals chapter 322 of the Revised Statutes of Alberta 1970.

S C H E D U L E
FORM A
(Section 15)
THE SURFACE RIGHTS ACT
APPLICATION

In the matter of :

(land description)

B E T W E E N

(Applicant)

— and —

(Respondent(s))

of

(name and address of applicant)

hereby applies for a right of entry order in respect of the
surface of the following land :

(here give description and acreage of land required
or refer to a plan attached)

1. The applicant has the right to apply to the Surface
Rights Board for a right of entry order by virtue of

(here give particulars)

2. The applicant requires the land for the following pur-
pose(s)

3. The owner of the land is

(name)

(address)

4. The occupant(s) of the land is (are)

(name)

(address)

5. The applicant has been unable to reach an agreement
for the acquisition of the required interest in the surface
of the land with the respondent(s) because

6. The applicant requires (or does not require) immediate right of entry in respect of the surface of the land.

7. The applicant's address for service is
.....
.....

Dated at the of
in the Province of Alberta, this day of
19

.....
(Applicant)

TO: The Secretary
Surface Rights Board
(give full address of the Board)

FORM B
(Section 18)
THE SURFACE RIGHTS ACT
NOTICE

RE: (*land description*)

B E T W E E N

(Applicant)

— and —

(Respondent(s))

TAKE NOTICE that an application in the form hereto attached has been made to the Surface Rights Board pursuant to *The Surface Rights Act* for a right of entry order with respect to the above land.

AND FURTHER TAKE NOTICE that the Board may issue the order applied for at the expiration of SEVEN CLEAR DAYS from the date of service hereof without further notice to you unless, within that time, representations are made by you either in writing or in person to the Board at its offices in the City of Edmonton, Alberta.

Dated at of in
the Province of Alberta this day of,
19

.....
(Applicant)

TO:

FORM C
(Section 18)
THE SURFACE RIGHTS ACT
LETTER OF CONSENT

In the matter of
(land description)

B E T W E E N:

(Applicant)

- and -

(Respondent(s))

I, of
(name of respondent) (address)
acknowledge receipt of a copy of an application and plan,
dated the day of, 19.....

I consent to the Surface Rights Board issuing an order
granting right of entry in accordance with the application
and plan, provided that, if the application has not already
been filed with the Board, it is filed within twenty days
from the date of execution hereof.

It is understood that execution of this letter of consent
does not in any way affect my rights to compensation.

Dated at in the
Province of Alberta, this day of,
19

.....
(Witness) (Respondent)

.....
.....
(address and occupation of witness)

TO: The Secretary
Surface Rights Board
(give full address of the Board)