

1975 Bill 69
(Second Session)

First Session, 18th Legislature, 24 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 69

THE WATER RESOURCES AMENDMENT ACT, 1975

THE MINISTER OF THE ENVIRONMENT

First Reading

Second Reading

Third Reading

BILL 69

1975

(Second Session)

THE WATER RESOURCES AMENDMENT ACT, 1975

(Assented to , 1975)

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

1. *The Water Resources Act is hereby amended.*
2. *Section 2, subsection (1) is amended*
 - (a) *by striking out clause 3 and substituting the following clause:*
 3. “Controller of Water Resources” means the employee in the Department designated in writing by the Minister as the Controller of Water Resources;
 - (b) *by adding the following clause after clause 9:*
 - 9.1 “engineer” means a professional engineer within the meaning of *The Engineering and Related Professions Act*;
3. *Section 3 is struck out.*
4. *Section 4 is struck out.*
5. *Section 5, subsection (5) is amended by adding at the end thereof the words “without a permit, interim licence or licence”.*

Explanatory Notes

1. This Bill will amend chapter 388 of the Revised Statutes of Alberta 1970.

2. Definition of "engineer" added and obsolete definition removed. Section 2, subsection (1), clause 3 presently reads:

2. (1) In this Act,

3. "chief engineer" means the chief engineer provided for in this Act;

3. Section 3 will be incorporated into section 76 of the Act as amended by this Bill. Section 3 reads as follows:

3. (1) The discharge of one cubic foot of water per second is the unit of measurement of flowing water.

(2) The cubic foot and acre foot are the units of measurement and quantity, and the acre foot is equivalent to 43,560 cubic feet.

4. Removes an obsolete section. Section 4 presently reads:

4. Companies formed prior to the first day of April, 1931, to promote or operate works for the supply, utilization or disposition of water, and companies and persons promoting or operating such works prior to the first day of April, 1931, are, except as to the power of companies to issue bonds, debentures, or other securities, subject to the provisions of this Act and the regulations made hereunder.

5. This amendment will clarify the operation of the subsection. Section 5 (4) and (5) read as follows:

(4) The provisions of this Act do not affect the right of a person owning or occupying any land that adjoins a river, stream, lake or other body of water upon provincial lands, to use such quantity of that water as he requires for domestic purposes on the land.

(5) A person in the exercise of the right referred to in section (4) may pump or otherwise convey water for domestic purposes to fill a tank, cistern, trough or a small dugout.

6. Section 6 is amended

- (a) as to subsection (1), clause (b) by striking out the words "water, or" and by substituting the words "water or which are or may be or may become capable of diverting water, or",*
- (b) by striking out subsection (2) and by substituting the following:*

(2) The Minister or any person authorized in writing by him may, without incurring any liability therefor, enter upon any lands and remove, breach, destroy or otherwise render ineffective

- (a) any works constructed without a permit, interim licence or licence or any works not constructed in accordance with the permit, interim licence or licence issued therefor or in respect of which the permit, interim licence or licence has been cancelled, or
- (b) any dam constructed by beaver or any natural obstruction whether formed by blown soil, debris, vegetation or otherwise,

where those works or that dam diverts or interferes with the flow of any water in Alberta.

(3) The Minister or any person authorized in writing by him may, without incurring any liability therefor, enter upon any land and fill or otherwise dam or block any excavation, ditch or canal in respect of which no permit, interim licence or licence has been issued or that was not constructed in accordance with the permit, interim licence or licence issued therefor or in respect of which the permit, interim licence or licence has been cancelled.

(4) The cost of any work done by the Minister, or by any person authorized by him, in removing, breaching or otherwise rendering ineffective any works pursuant to subsection (2), clause (a), or blocking or filling any excavation, ditch or canal pursuant to subsection (3), constitutes a debt due to the Crown by the person who constructed the works or made the excavation, ditch or canal with or without a permit, interim licence or licence or whose permit, interim licence or licence has been cancelled.

6. The amendment to subsection (1), clause (b) will include works which divert water incidentally. Subsection (2) is being amended to ensure that it applies to unauthorized works as well as natural works and new subsection (3) and subsection (4) relate thereto. Section 6 (1) (b) and (2) presently read:

6. (1) No person shall

(b) construct or cause to be constructed any works for the diversion of water,
or

except under the authority of this Act, the regulations or a licence, interim licence or permit issued under this Act.

(2) The Director of Water Resources or any person authorized by him may, without incurring any legal liability therefor, enter upon any land and breach or destroy any dam or works, or any dam constructed by beaver or any natural obstruction whether formed by blown soil, debris, vegetation or otherwise, that diverts or interferes with the flow of any water in the Province otherwise than under the provisions of this Act and the regulations.

7. Section 11 is amended

(a) as to subsection (1) by striking out clause (a) and by substituting the following:

- (a) a licence to divert and use water for any or all of the following purposes:
 - (i) domestic purposes;
 - (ii) municipal purposes;
 - (iii) irrigation and other agricultural purposes;
 - (iv) industrial purposes;
 - (v) water-power purposes;
 - (vi) other like purposes;

(b) as to subsection (2) by striking out the words "Such applications have precedence" and by substituting the words "Applications for licences or permits under subsection (1) have priority as between themselves",

(c) by striking out subsections (3), (4), (5) and (6) and by substituting the following:

(3) Where two or more applications for licences under subsection (1) for water from a common source are filed on the same date, they shall be assigned priority as between themselves in accordance with the purpose applied for and subject to the order in which the purposes for which a licence may be acquired are set forth in subsection (1).

(4) Where a person requires water from a common source for a purpose that in the order in which purposes for which a licence may be acquired are set forth in subsection (1) precedes the purpose for which water from that source has been allocated under an interim licence or licence, that person may apply to the Minister

- (a) to have that interim licence or licence cancelled, in whole or in part, to the extent necessary to meet his requirements, and
- (b) for a licence for his purpose having the same priority as that interim licence or licence.

(5) Where the Minister approves an application under subsection (4), the interim licence or licence may be cancelled in whole or in part, as the Minister considers proper, and the applicant may be issued a licence under subsection (1) for his purpose in accordance with his application and, notwithstanding section 37, subsection (1), such licence shall have the same priority as the wholly or partly cancelled interim licence or licence.

(6) The holder of the interim licence or licence that has been cancelled in whole or in part under

7. This amendment will change the priority of water use and clarify the operation of the section. Section 11 presently reads:

11. (1) Upon application being made therefor as provided in this Act and the regulations, a person may acquire, subject to any valid and subsisting rights,

(a) a licence to divert and use water for any or all of the following purposes:

- (i) domestic purposes;
- (ii) municipal purposes;
- (iii) industrial purposes;
- (iv) irrigation purposes;
- (v) water power purposes;
- (vi) other purposes;

(2) Such applications have precedence according to the dates of their filing with the Minister, and they shall be numbered consecutively in the order in which they are filed.

(3) Where two or more applications for licences under subsection (1) are filed on the same date they have precedence in the following order: first, domestic purposes; second, municipal purposes; third, industrial purposes; fourth, irrigation purposes; fifth, water-power purposes; and sixth, other purposes.

(4) Any person requiring water for a purpose that under the provisions of subsection (3) has precedence over the purpose for which any water is used, the right to the use of which was acquired under the provisions of this Act, the Irrigation Act (Canada) or the Dominion Water Power Act, may apply to the Minister to have such right cancelled in whole or in part.

(5) If the Minister approves of an application made under subsection (4)

- (a) the right shall be cancelled or diminished accordingly, and
- (b) the applicant for the cancellation may apply, under the provisions of this Act, for a grant of the water for the preferred purpose, which grant may, with the approval of the Minister, be given the same priority as the right that it replaces had.

(6) The owner or owners of the cancelled right, and the owner or owners of any other right that may be affected, are entitled to be compensated by the applicant for any loss or damage sustained by him or them in consequence of the cancellation.

(7) A licensee of water for irrigation purposes, or any person who has acquired from a licensee water for such purposes, is entitled to use the water for domestic purposes.

subsection (5) and any person who lawfully obtained water from the holder are entitled to be paid compensation by the applicant for any loss or damage sustained by him or them as a result of the cancellation, in whole or in part, of the interim licence or licence.

(7) Where the applicant and the parties described in subsection (6) are unable to agree as to the compensation payable, the compensation payable shall be determined in such manner as the Minister may authorize.

8. The following section is added after section 12:

12.1 (1) Notwithstanding any other provision of this Act or any interim licence or licence issued under this Act, the Lieutenant Governor in Council may, under any conditions declared by him to constitute an emergency, in all or any specified area of Alberta and for such period of time as he may specify, by order,

(a) suspend the operation of any interim licence or licence issued under this Act, or

(b) designate the purposes for which, and quantities of which, water may be used,

or both.

(2) Holders of interim licences or licences affected by an order under subsection (1) are entitled to compensation for any losses incurred as a result of the operation of the order and that compensation shall be determined in such manner as the Lieutenant Governor in Council may authorize.

8. This section will give emergency overriding powers to the Lieutenant Governor in Council.

9. Section 14 is amended

- (a) as to subsections (3), (4), (5) and (10) by striking out the words "a preliminary" wherever they occur and by substituting in each case the words "an exploration",*
- (b) as to subsections (7) and (9) by striking out the words "an interim" wherever they occur and by substituting in each case the word "a".*

10. Section 16, subsection (2) is amended by adding after the word "date" the words "unless a longer or shorter term is prescribed in the interim licence".

11. Section 17 is amended by striking out the words "In the case of a diversion involving the construction of works of an estimated cost not in excess of ten thousand dollars, the" and by substituting the word "The".

12. Section 18 is amended by adding after the words "requisite permission" the words "or order".

13. Section 20, subsection (3), clause (d) is amended by striking out the words "the chief engineer" and by substituting the words "an engineer of the Department authorized by the Minister to do so".

9. Section 14, subsections (3), (4), (5), (7), (9) and (10) presently read:

(3) The Minister may in his discretion grant to the applicant a preliminary permit upon such conditions as he thinks fit authorizing the applicant to make all necessary examinations and surveys to prepare plans and sections, showing the extent of the proposed operations and the lands that will be affected by reason of any proposed diversion.

(4) The term of a preliminary permit shall be one year from its date but the Minister may from time to time extend the term for a period not exceeding one further year.

(5) The person to whom a preliminary permit is granted is entitled with such assistants as are necessary to enter into and upon any public or private lands to take levels, make surveys, and do other necessary work for the purpose of completing the examination and survey authorized by the permit.

(7) The applicant, after completing the preliminary examination and survey, may file with the Minister an application for an interim licence, in such form and containing such particulars as the Minister may require, setting out the nature and extent of the proposed diversion or works.

(9) Except in the case of a diversion for water-power, the applicant shall, with his application for an interim licence, file with the Minister

(a) a full description, with such detailed plans and specifications as the Minister may require, of all works that are necessary for the utilization of the diverted water, and

(b) in respect of any proposed canal, ditch, reservoir or other works that it is proposed to construct upon, along, across or under any road allowance, or any public highway, square or other public place that may be affected by the works, the permission in writing

(i) from the municipal or other authorities having jurisdiction over the road allowance, public highway, square or other public place, or

(ii) from the Board as provided in section 20,

if such permission can then be obtained.

(10) Notwithstanding anything in this Act, no person is entitled to apply for a licence under section 11, subsection (1) to divert and use ground water unless he has

(a) obtained a preliminary permit under this section pertaining to an examination and survey of the source of such ground water, and

(b) has complied with the preliminary permit, this section and the regulations, and subsections (2) to (7) apply to the application and the preliminary permit.

10. Section 16 (2) presently reads:

(2) The term of an interim licence shall be one year from its date but the Minister may from time to time extend the term

(a) for a period not exceeding one further year, and

(b) if he is satisfied that the completion of the works has been retarded by physical conditions over which the holder of the interim licence has no control, for such additional period or periods as he thinks fit.

11. Section 17 presently reads:

17. In the case of a diversion involving the construction of works of an estimated cost not in excess of ten thousand dollars, the Minister may, if he considers it expedient and fit and proper to do so, waive the requirement for giving public notice of the filing of the application and plans, as required by section 15, and of the proof of publication of the notice as required by section 16.

12. Section 18 presently reads:

18. If, as respects any road allowance, public highway, square or other public place, the permission of the municipal or other authorities, or the order of the Board, cannot be obtained until the works are authorized, the Minister may authorize their construction, subject to the condition that before the works are constructed upon, along, across, or under the road allowance, public highway, square or other public place, the requisite permission shall be obtained and filed with the Minister.

13. Section 30, subsection (3), clause (d) presently reads:

(3) The Board may, by order,

(d) direct that detailed plans, drawings and specifications of any structures, equipment or appliances required shall before construction or erection be submitted to and approved by the chief engineer.

14. Section 21, subsections (1) and (2) are amended by striking out the word “final” wherever it appears.

15. Section 22 is struck out and the following section is substituted:

22. (1) A permit, exploration permit, interim licence or licence may be issued by the Minister, the Controller of Water Resources or any other person authorized by the Minister in writing to do so.

(2) An extension of the term of a permit, exploration permit, interim licence or licence may be granted by the Minister, the Controller of Water Resources or any other person authorized by the Minister in writing to do so.

16. Section 25 is struck out and the following section is substituted:

25. Notwithstanding any provision of this Act or the regulations, the Minister may, if he considers it expedient to do so and subject to such terms and conditions as he may prescribe, grant permission to an applicant for a licence for the temporary diversion and use of water by the applicant or for the temporary supply of water by the applicant to others.

17. Section 27, subsection (1) is amended by striking out the words “the chief” and by substituting the word “an”.

18. Section 29 is struck out and the following section is substituted:

29. For the purposes of the construction of works or any undertaking authorized under this Act, the holder of an interim licence or licence may, in accordance with Part 3, expropriate any lands or any estate or interest in lands required by him for his works or undertaking.

14. Section 21 presently reads:

21. (1) Every permit, interim licence and final licence issued pursuant to this Act shall specify therein the land or the undertaking to which the licence to divert water is to be appurtenant.

(2) Every permit, interim licence and final licence and all property and easements acquired pursuant thereto and all works constructed thereunder are appurtenant to the land or the undertaking specified in the licence and are inseparable therefrom and pass therewith upon any demise, devise, alienation, transfer or other disposition of the land or undertaking whether by operation of law or otherwise, unless the Lieutenant Governor in Council orders to the contrary in any case specified in the order.

15. Section 22 presently reads:

22. (1) A permit, interim licence or licence that the Minister is empowered to issue under this Act may be issued on behalf of the Minister by the Director of Water Resources.

(2) An extension of the term of a preliminary permit or interim licence may be granted on behalf of the Minister by the Director of Water Resources.

16. Section 25 presently reads:

25. Notwithstanding any provision of this Act or of the regulations, the Minister may, if he considers it expedient and fit and proper to do so, permit the diversion and use of water by an applicant to whom an interim licence has been granted, or the supply of water to others by the applicant, during the construction of the works, but any permit granted by the Minister so to divert or use or supply water shall make the applicant subject to all the provisions of this Act that apply to licensees.

17. Section 27 (1) presently reads:

27. (1) Any works authorized under this Act shall, if the Minister so determines, be constructed subject, during construction, to inspection by the chief engineer or any other officer to be named by the Minister.

18. This amendment is consequential to amendments to Part 3 of the Act whereby all expropriation will now be in accordance with The Expropriation Act. Section 29 presently reads:

29. For the purposes of the construction of works authorized under this Part the applicant has the powers of expropriation set out in Part 3, so far as such powers are applicable to the undertaking of the applicant and are not inconsistent with the other provisions of this Act or with the authority given to the applicant.

19. Sections 30, 31, 32 and 34 are struck out.

20. Section 33 is amended by striking out all the words after the word “appliances”.

21. Section 35 is amended

- (a) as to subsection (1) by striking out the words “the chief” and by substituting the word “an”,*
- (b) as to subsection (2)*
 - (i) by striking out the words “the chief engineer” and by substituting the words “the engineer or other officer”,*
 - (ii) as to clause (c) by striking out the words “for the irrigation of lands that are not the property of the applicant, and” and by substituting therefor the words “by the applicant to other persons, and”,*
- (c) as to subsection (3) by adding after the words “to which he is entitled,” the words “subject to such conditions as the Minister prescribes,”.*

19. This amendment relates to the amendments to section 29 and Part 3. Sections 30, 31, 32 and 34 presently read:

30. (1) A licensee may take and acquire, and for that purpose has all the powers of expropriation set out in Part 3,

- (a) lands required for any works authorized under this Part, as such lands are shown by the maps and plans filed with the Minister, and whether such lands are vested in the Crown, another licensee, a railway company, or any other person whomsoever, and
- (b) any interest in or right or privilege affecting the lands referred to in clause (a).

(2) Notwithstanding subsection (1) the Minister may, in connection with the acquisition under this section

- (a) of any lands that are vested in another applicant or licensee, or in any railway company, or
- (b) of any interest in or right or privilege affecting the lands referred to in clause (a),

impose such terms and conditions as he thinks proper in the public interest.

31. Where any authorized works require the flooding or other use of land, incidental to the undertaking, and such land is owned by a person other than the Crown, the applicant or licensee may, with the consent of the Minister, expropriate the land.

32. A person may take and acquire under section 30 lands required by him for works to be constructed to connect with and to obtain and carry water from or to works that have been already authorized and plans of which have been filed as required by the Irrigation Act (Canada) or this Act, upon

- (a) filing with the Minister a description and plans of the connecting works, together with evidence in writing that the owner of the works that have been already authorized has consented to water being diverted from or carried to such works by means of the connecting works, and
- (b) obtaining the permission of the Minister for the construction of the connecting works.

34. The Minister, or such officer as he designates, is, in case of dispute, the sole arbiter as to the area of land that may be taken by a licensee without the consent of the owner for any purpose in the construction and maintenance of the works.

20. Consequential to repeal of section 30. Section 33 presently reads:

33. A licensee may, for the purposes of his undertaking, construct or acquire electric, telegraph and telephone lines or any other contrivances for the transmission of messages through or along wires, rods, tubes or other appliances, and may acquire under section 30 any land necessary for the construction and operation of such lines or contrivances.

21. Section 35 presently reads:

35. (1) Upon the expiration of the time fixed for the construction of any works, or at any time before that date if the construction is sooner completed, an inspection shall be made by the chief engineer or such other officer as the Minister appoints.

(2) If the chief engineer upon the inspection is satisfied

- (a) that the works have been completed in accordance with the application,
- (b) that the right of way for the works has been obtained,
- (c) that agreements have been entered into for the supply of water for the irrigation of lands that are not the property of the applicant, and
- (d) that the works as constructed are capable of carrying and utilizing a stated quantity of water.

he shall issue and forward to the Minister a certificate setting out the facts.

(3) Upon receipt of the certificate the Minister shall issue a licence to the applicant for the quantity of water to which he is entitled, and the licence shall be recorded in the Department.

22. Section 36 is amended

(a) as to subsection (1)

(i) in clause (a) by adding after the word "engineer's" the words "or other officer's",

(ii) by striking out the words "chief engineer" and by substituting the words "Controller of Water Resources",

(b) as to subsections (2), (4) and (5) by striking out the words "chief engineer" and by substituting the words "Controller of Water Resources",

(c) by adding the following subsection after subsection (6):

(7) Where a licence issued under subsection (2) is cancelled, the easement created under subsection (5) is terminated and the Controller of Water Resources shall direct the Registrar of Land Titles to cancel the endorsement of the registration of the certificate issued in respect of the licence from the certificate of title to any lands against which the certificate was registered and the Registrar shall cancel the endorsement accordingly without fee.

23. Section 44 is struck out and the following section is substituted:

44. (1) Where it appears to the Minister that the holder of an interim licence or licence has failed or is failing to comply with any provision of this Act, the regulations or his licence or to keep his works in a proper or safe condition, the Minister may cause an investigation to be made with respect thereto.

(2) If the Minister is satisfied from the investigation of the licensee's failure to comply as provided in subsection (1) or to keep his works in a proper or safe condition, the Minister may order the licensee to take immediate action to remedy the failure to comply or to restore his works to a proper or safe condition.

(3) Where the licensee does not comply with an order under subsection (2), the Minister may

(a) make a further order

(i) suspending the licence of the licensee for such period of time as is specified in the order, or

(ii) cancelling the licence,
in either case reciting the facts leading to the making of the further order, or

(b) apply by way of motion on notice for an order directing the licensee to comply with the order.

22. Section 36 presently reads:

36. (1) Where

- (a) it appears from the application filed or the engineer's inspection that land other than that on which the works are located is or will be flooded,
- (b) the registered owner of the land that is or will be flooded, and any purchaser thereof who has filed a caveat, have by writing consented to the construction of the works and the flooding of the land, and
- (c) a right of way has not been obtained as required by section 35, subsection (2),

the chief engineer may issue a certificate setting out the facts and forward it to the Minister.

(2) Upon receipt of the certificate the Minister may issue a licence, and when such licence is issued the chief engineer shall forthwith issue and forward to the Registrar of Titles for the land registration district in which the lands are situated, a certificate

- (a) stating that the licence has been issued,
- (b) stating the date of the licence and the name and address of the licensee,
- (c) containing a description of the land on which the works are located, and
- (d) containing a description of the portion of the land that will be affected by the works.

(3) In any certificate issued under subsection (2) the lands shall be described by reference to the legal description of the lands affected or by reference to a plan or plans registered in the land titles office.

(4) A certificate issued under subsection (2) shall be signed by the chief engineer in the presence of a witness who shall duly attest it, but no other formality is required as a condition of the acceptance of the certificate for registration.

(5) Upon receipt of the duly attested certificate of the chief engineer, the Registrar shall without fee register the certificate against the land therein described, and thereupon an easement is created whereby the owner of the servient tenement grants to the owner of the dominant tenement the right to use his land for the purposes and to the extent shown in the application or plans.

(6) Such right runs with the land and is binding upon the owner of the servient tenement, his heirs, executors, administrators and assigns.

23. Empowers the Minister to suspend or cancel any licence in respect of which there is or has been a failure to comply with a directive of the Minister. Section 44 presently reads:

44. (1) When a complaint, under oath of the complainant and of at least one witness, is made to the Minister by a consumer of water who has paid his rates, that a licensee, who has engaged or is under obligation to supply him with water, is failing to do so, or is failing to keep his works in proper condition, the Minister or some person or officer appointed by him for the purpose may make immediate inquiry and take all necessary steps to ascertain the truth of the complaint.

(2) If the Minister considers the complaint established, he may order and direct that the licensee shall take forthwith such action as the Minister considers necessary in order, as far as possible, to remove the cause of complaint.

(3) If the licensee fails to obey the order, the Minister shall forthwith issue a certificate to that effect, reciting all the facts.

(4) A judge of the Supreme Court of Alberta shall, upon the production of such certificate, hear and determine the matter in a summary manner, and may order the licensee to proceed with all dispatch to take such measures as the judge considers necessary in the premises.

(5) The refusal or neglect to obey any order made by the judge under this section may be treated and punished as contempt of court, and such other proceedings may be had and taken thereon as in the case of non-compliance with any other mandatory order of the court or a judge thereof.

(4) An application under subsection (3), clause (b) shall set out the facts relating thereto, be filed with the Clerk of the Supreme Court and be served on the licensee not less than 14 days before the returnable date shown on the notice.

(5) A licensee whose licence has been suspended or cancelled under subsection (3), clause (a) may, within 30 days of receipt of the order, appeal the suspension or cancellation to a judge of the Supreme Court.

(6) The appeal shall be by way of motion on notice, filed with the Clerk of the Supreme Court, and setting out the grounds of appeal and shall be served on the Minister not less than 14 days before the returnable date shown on the notice.

(7) The judge hearing the application of the Minister under subsection (3) or the appeal under subsection (5) may make such directions respecting any evidence to be presented at the hearing or appeal and render such judgment as he considers proper, including the making of an order requiring the licensee to take immediate action to remedy any failure to comply with an order under subsection (2).

(8) The refusal or neglect of a licensee to obey an order made by a Court under this section may be treated and punished as a civil contempt of court, and such other proceedings may be had and taken thereon as in the case of non-compliance with any other mandatory order of the court.

(9) A person whose licence has been suspended or cancelled shall be deemed to be a licensee for the purposes of subsections (5), (7) and (8).

24. Section 49 is amended

(a) as to subsection (1)

(i) by striking out the words "The Lieutenant Governor in Council, if it is at any time deemed advisable" and by substituting the words "The Minister if he considers it",

(ii) by striking out the words "domestic or irrigation purposes" and by substituting the words "any purpose",

(b) as to subsection (2) by adding after the words "such undertaking or works" the words ", taken over for irrigation purposes,"

(c) as to subsection (3) by adding after the words "taken over" the words "for irrigation purposes".

24. This amendment will broaden the scope of section 49, subsection (1) and clarify the operation of subsections (2) and (3). Section 49, subsections (1), (2), (3) and (4) presently read:

49. (1) The Lieutenant Governor in Council, if it is at any time deemed advisable in the public interest to do so, may for domestic or irrigation purposes construct, acquire, purchase or take over and operate or otherwise dispose of any undertaking or works whether proposed, under construction or completed.

(2) For the purpose of operating any such undertaking or works and providing the necessary revenue therefor and generally for carrying on the business of the undertaking or works, the Minister has all the powers, privileges and immunities of a board of directors of an irrigation district under The Irrigation Act (Alberta) and all the powers and duties of a licensee under this Act.

(3) In any case where the undertaking or works acquired, purchased or taken over are not the property of an irrigation district, the Minister has power to define and enumerate from time to time the parcels of land that are to be served by the undertaking or works, and thereafter, with respect to such lands and each parcel thereof, has all the powers of a board of directors of an irrigation district under The Irrigation Act (Alberta) to the same extent as if such lands or such parcel were included in an irrigation district.

(4) If the Minister and the licensee are unable to agree upon the compensation to be paid for the works, the amount of compensation to be paid for them shall be ascertained by arbitration under The Arbitration Act.

25. Section 50 is amended

- (a) as to subsection (1) by striking out the words "The Lieutenant Governor in Council may, upon the recommendation of the Minister," and by substituting the words "The Minister may",*
- (b) as to subsections (2), (3) and (4) by striking out the words "Lieutenant Governor in Council" wherever they occur and by substituting in each case the word "Minister",*
- (c) as to subsection (4) by striking out the words "order in council" and by substituting the words "order of the Minister".*

26. Section 52 is amended

- (a) as to subsections (1) and (3) by striking out the words "a preliminary" wherever it occurs and by substituting the words "an exploration",*
- (b) as to subsection (4) by adding after the word "permit," wherever it occurs the words "exploration permit,".*

27. Section 53 is amended by striking out subsection (2) and by substituting the following:

- (2) The Minister shall not cancel a licence pursuant to subsection (1), clause (a) unless there has been submitted to him reports of at least two inspections*
 - (a) made at reasonable intervals by one or more employees of the Department authorized by the Minister to do so, and*
 - (b) showing that at the time of each inspection the licensee appeared to have ceased to exercise the rights granted under his licence and that there was nothing to indicate that any exercise had been made of those rights between inspections.*

28. Section 61 is amended by striking out subsection (1).

25. Section 50 (1), (2), (3) and (4) presently read:

50. (1) The Lieutenant Governor in Council may, upon the recommendation of the Minister, take over and operate the irrigation works of a licensee where

(a) the licensee has ceased to operate the works or to operate them in such a manner as to give that supply of water for irrigation that all the persons who have the right to receive water from the licensee are entitled to receive, or

(b) the licensee has become bankrupt or insolvent.

(2) Upon taking over the works the Lieutenant Governor in Council is entitled to recover and receive all sums then accrued due to the licensee from any person under any contract with the licensee for the supply of water.

(3) So long as the Lieutenant Governor in Council continues to operate the works the Lieutenant Governor in Council is entitled to recover and receive from water users all sums that they would have been under an obligation to pay in respect of the water supply if the licensee had continued the operation of his works.

(4) Where the Lieutenant Governor in Council has taken over any works under this section the licensee is entitled to resume the possession and operation thereof at any time within two years of the date of the order in council authorizing the taking over, upon

(a) paying to the Minister the total amount of any loss incurred by the Lieutenant Governor in Council in the operation of the works, and

(b) satisfying the Lieutenant Governor in Council of his ability to carry on the works.

26. Section 52 presently reads:

52. (1) The Minister may cancel a preliminary permit if he is satisfied that the permittee is not diligently and continuously carrying out the examination and survey authorized by the permit.

(2) The Minister may cancel an interim licence if he is satisfied that the licensee is not diligently and continuously carrying out the construction of the works authorized by the interim licence.

(3) No cancellation shall be made by the Minister under subsection (1) or (2) unless the permittee or licensee has been given at least thirty days' notice of the Minister's intention to cancel the preliminary permit or interim licence and the permittee or licensee within that period fails to submit proof satisfactory to the Minister that he is diligently and continuously carrying out the examination and survey or construction of the works, as the case may be.

(4) The Minister may cancel a permit, interim licence or licence if he is requested to do so by the holder of the permit, interim licence or licence.

27. This amendment will make the operation of subsections (1) and (2) more flexible. Section 53 presently reads:

53. (1) The Minister may

(a) subject to subsection (2), cancel a licence where he is satisfied that the licensee has ceased to exercise the rights granted under his licence, or

(b) cancel a licence or amend a licence to decrease the amount of water that may be diverted thereunder, where he is satisfied that the licensee has wasted any water diverted under the authority of that licence.

(2) The Minister shall not cancel a licence pursuant to subsection (1), clause (a) unless there has been submitted to him the reports of at least two inspections made by the Director of Water Resources or an engineer of the Department

(a) pertaining to inspections of which two were made at least 12 months apart, and

(b) showing that at the time of each inspection the licensee appeared to have ceased to exercise the rights granted under his licence and that there was nothing to indicate that any exercise had been made of the rights between inspections.

28. The Commissioners for Oaths Act deals with this subject matter. Section 61, subsection (1) presently reads:

61. (1) All affidavits, oaths, solemn declarations or affirmations required to be taken under this Act or the regulations, may be taken before the chief engineer, or any person specially authorized by the Minister to take them, or any other person authorized to take affidavits in the Province.

29. Section 72 is struck out.

30. Section 75, subsection (1) is amended by adding after the words "The Lieutenant Governor in Council may" the words "authorize the Minister to".

31. Section 76, subsection (1) is amended

(a) by striking out all that part of the subsection preceding subclause (i) of clause (b) and by substituting the following:

76. (1) The Lieutenant Governor in Council may make regulations

(b) by renumbering subclauses (i) to (xxxiii) as clauses 1 to 33 respectively,

(c) by striking out renumbered clause 4 and by substituting the following:

4. prescribing the units of measurement of water and the method or type of method or instrument for measuring water for the purposes of this Act and the regulations,

(d) in renumbered clause 26

(i) by renumbering paragraphs (A) to (C) as subclauses (i) to (iii) respectively,

(ii) in renumbered subclause (iii) by striking out the words "paragraph (B)" and by substituting the words "subclause (ii)",

(e) by striking out the word "and" at the end of renumbered clause 32 and by striking out renumbered clause 33 and substituting the following clauses:

33. prescribing any method or system for the classification of rivers, streams, lakes or other waters in all or any part of Alberta, and

29. This subject matter is covered by section 18 of this Bill.
Section 72 presently reads:

72. (1) A licensee may, for the purpose of the authorized undertaking and with the consent in writing of the Minister, take and acquire by expropriation

- (a) any lands other than provincial lands, or
 - (b) any interest in lands other than provincial lands,
- that the Minister deems necessary for the authorized undertaking.

(2) The provisions of this section extend to any person who, prior to the first day of April, 1931, had obtained from the Minister of the Interior under the Dominion Water Power Act or the Dominion Lands Act a licence to carry out an undertaking in the Province and who under the provisions of the licence and those Acts or either of them had the right and power to enter upon, use, occupy, take and acquire any lands other than provincial lands or any interest in lands other than provincial lands.

(3) This section does not apply to lands belonging to a railway company if the lands are used or required by the company for the purposes of its railway.

30. Section 75, subsection (1) presently reads:

75. (1) The Lieutenant Governor in Council may enter into arrangements or agreements with any province or provinces or with the Government of Canada and any province or provinces for the establishment and constitution of a board which, when established and constituted, shall examine, study, report upon and advise on the control and use

- (a) of inter-provincial boundary waters,
- (b) of boundary waters between the Province and the Northwest Territories, and
- (c) water in any stream
 - (i) that flows through more than one of the provinces, or
 - (ii) through one or more than one of the provinces and the Northwest Territories.

31. Section 76, subsection (1), clauses (a) and (b), subclauses (i), (iv), (xxxii) and (xxxiii) read as follows:

76. (1) The Lieutenant Governor in Council

- (a) may appoint a Director of Water Resources to carry out this Act and the regulations and orders in council made under this Act, and may also appoint such engineers, inspectors, officers and clerks as he considers necessary, and prescribe their respective duties and remuneration, and
- (b) may from time to time make such regulations and orders not inconsistent with this Act as are necessary to carry out the provisions of this Act according to their obvious intent, or to meet any cases that arise, and for which no provision is made in this Act, and such regulations and orders form part of this Act, and without restricting the generality of the foregoing, may make regulations
 - (i) prescribing the particulars to be set out in applications and plans filed by applicants,
 - (iv) defining the manner in which the measure of water shall be arrived at,
 - (xxxii) governing the registration of wells under section 99, and
 - (xxxiii) for any other purpose considered necessary for carrying out the provisions of this Act.

34. prescribing requirements for the safety of any works including, but not restricted to,
- (i) the making and filing by the licensee of the works of plans, reports, and other records required by the Minister in connection with the design, construction, operation, maintenance, inspection and removal of any works;
 - (ii) provisions for safety inspections of any works by the Minister and the licensee and the matters to be inspected;
 - (iii) provisions for authorizing the Minister to direct the licensee of any works to make such repairs, improvements, changes, or alterations in respect of the works as the Minister deems necessary for the safety of the works or of any person or property affected thereby;
 - (iv) authorizing the Minister, upon failure of the licensee to make repairs, improvements, changes or alterations directed by the Minister, to make the repairs, improvements, changes or alterations and declaring the costs incurred by the Minister in respect thereof to be a debt to the Crown;
 - (v) authorizing the Minister during an emergency or for the purpose of making repairs, improvements, changes or alterations under subclause (iv) to enter upon any lands on which the works are located and to take control of any works;
 - (vi) provisions for the orderly abandonment and removal of any works that are no longer required.

32. Section 77 is amended

(a) by adding the following subsection after subsection (3):

(3.1) The Minister may order any person to remove, breach, destroy, or otherwise render ineffective

(a) any works placed, erected or constructed without a permit, interim licence or licence under this Act, or

(b) any works that are no longer required or for which the permit, interim licence or licence has been cancelled, or

(c) any obstruction to the flow of water caused in any manner.

(b) as to subsection (5) by striking out the words “and (3)” and by substituting the words “, (3) and (3.1)”.

33. The following section is added after section 77:

77.1 The Minister may enter into a lease or other agreement with the council of a municipal district, county, city, town, new town, village or summer village or with the Minister of Municipal Affairs, in the case of an improvement district or special area, to provide for the management or administration of any lands that are owned or controlled by the municipal district, county, city, town, new town, village or summer village or the Minister of Municipal Affairs in the case of improvement districts or special areas, where those lands are to be used for any undertaking or for the construction, operation or maintenance of any works.

32. New subsection (3.1). Section 77 (1), (2), (3) and (5) presently read:

77. (1) The Minister may direct or order the adoption of any such measures and proceedings for promoting the beneficial use of water and for controlling and regulating the diversion and application and use thereof as he finds necessary or expedient and as are consistent with the provisions of this Act, and in particular, may direct or order

- (a) that gauges, weirs, meters, or other devices for water or water-power measurement be established in rivers, streams, lakes, conduits, or channels, whether natural or otherwise,
- (b) that high water marks be placed on rivers, streams, lakes or other waters, and
- (c) that steps be taken to secure the analysis of the waters of rivers, streams, lakes or other waters.

(2) The Minister may direct or order

- (a) that examinations or surveys be made
 - (i) of all streams, and
 - (ii) of the sources of water supply, for irrigation, water-power or any other purposes,
- (b) that all necessary investigations be made in connection with
 - (i) the beneficial use of the water supply, and of sites suitable for water-power, or for ponds, basins or reservoirs for water storage,
 - (ii) the utilized and available water-power and the maximum water-power that can be made available by storage, regulation or other artificial means, and
 - (iii) the amounts of water that are available for irrigation or other purposes,
- (c) that estimates be made of the extent and location of irrigable lands or lands required in connection with the development of water-power, and
- (d) the lands be determined that it is necessary to reserve from general sale and settlement in order that they may be utilized for purposes within the purview of this Act.

(3) The Minister may direct or order

- (a) that such steps be taken as he thinks necessary for the protection of the sources of water supply and the prevention of any act likely to diminish or injure the supply, and
- (b) that the flow or quantity of water used, and of the output of electrical or other form of energy produced from the water used, by any licensee or other person, be ascertained.

(5) In connection with any of the matters referred to in subsections (1), (2) and (3) the Minister, or any person appointed by him for the purpose, has free access to all works, books, plans and records in so far as they relate to an undertaking, and may make such observations, take such measurements and do such other things upon, within or with respect to such books, plans or records or with respect to such undertaking as are considered necessary or expedient for

- (a) ascertaining the quantity of water stored, diverted or used, or capable of being stored, diverted or used,
- (b) ascertaining the amount of power developed or capable of being developed,
- (c) ascertaining the condition of the works,
- (d) determining whether the conditions to be observed or performed by any licensee, lessee or other person, are being satisfactorily observed and performed, or

(e) any other purpose connected with the administration of this Act, and the findings of the Minister, with respect to the quantity of water stored, diverted or used, or capable of being stored, diverted or used, or the amount of power developed, are final.

33. New. Authorizes the Minister to enter into agreements with municipalities owning land for works or undertakings in relation thereto.

34. Section 79, subsection (3) is amended by striking out the figure “82” and by substituting the figure “90”.

35. Sections 82, 84 and 85 are struck out.

36. Section 86 is amended

- (a) by striking out subsection (1),*
- (b) as to subsection (2) by striking out the words “any interest” and by substituting the words “any estate or interest”.*

37. Section 87 is amended

- (a) as to subsection (1) by striking out the words “83 to 86” and substituting the words “83 and 86”,*
- (b) as to subsection (2) by striking out the words “sections 72, 73 and 83 to 86” and by substituting the words “sections 73, 83 and 86”,*
- (c) as to subsection (3) by striking out the words “section 72, 73 or 83 to 86” and by substituting the words “section 73, 83 or 86”.*

34. Consequential to repeal of section 82 and substitution of new section 90. Section 79 (3) presently reads:

(3) For the purpose of acquiring such right of way the Minister has, when necessary, the power of expropriation of any lands required for the right of way, and may proceed with the expropriation in the manner provided in section 82.

35. The repeal of section 82 is consequential to addition of new section 90 and the repeal of sections 84 and 85 will remove the requirement to obtain a certificate of approval to expropriate. Sections 82, 84 and 85 presently read:

82. (1) Where the Minister is authorized by this Act to expropriate land, he has all the powers of expropriation that are conferred by The Public Works Act upon the Minister of Housing and Public Works for the acquisition of land for a public work.

(2) In any case where upon cancellation by the Lieutenant Governor in Council or by the Minister pursuant to this Act a person becomes entitled to compensation, the provisions of The Expropriation Act relating to proposed payments and to ascertainment and payment of compensation for lands taken for a public work apply.

84. (1) Where a licensee desires or proposes to acquire by expropriation any lands or any interest therein for a right of way or for a site for the purposes of his undertaking, he shall first make application to the Minister for approval of the intended route of the right of way or intended site, as the case may be.

(2) The licensee shall forward with his application for approval of the intended route or site such plans and other information as the Minister may from time to time prescribe.

(3) Upon considering the application the Minister shall have regard to all the circumstances that appear to him to be relevant and in particular, but not so as to limit the generality of the foregoing, shall have regard to

- (a) the recommendations, if any, of the Director of Water Resources or The Alberta Power Commission, as the case may require,
- (b) the objection of an interested party,
- (c) any public interest that in the opinion of the Minister might be affected by the granting or refusal of his approval, and
- (d) the needs and general good of the residents of the Province as a whole.

(4) The decision of the Minister as to whether a person is or is not an interested party within the meaning of subsection (3), clause (b) is final.

85. The Minister may grant a certificate of his approval to the intended route or site, and extend thereof, or may refuse his approval, or the Minister may approve the intended route or site subject to such changes in the plan, details or extent thereof as he deems advisable in the public interest, and the decision of the Minister thereon is final and not subject to review in any court or other tribunal.

36. Consequential to repeal of sections 84 and 85. Section 86 presently reads:

86. (1) Upon receiving a certificate of approval from the Minister, the licensee may take and expropriate for the purposes of a right of way or site, as the case may be, so much of the lands or interest therein as may be approved by the Minister for the route or site.

(2) The manner in which and the terms upon which a licensee may exercise the right to take and expropriate any lands or any interest in lands

- (a) shall be in accordance with the terms of any agreement effected between the licensee and the owner of any such lands or interest therein, and
- (b) in the absence of any such agreement shall be as set forth in The Expropriation Act.

37. Consequential. Section 87 presently reads:

87. (1) Subject to subsection (2), in sections 83 to 86 "licensee" includes any applicant for a licence under this Act.

(2) Upon the commencement of The Hydro and Electric Energy Act, sections 72, 73 and 83 to 86 do not apply in respect of transmission lines as defined in that Act.

(3) Proceedings under section 72, 73 or 83 to 86 commenced before the commencement of The Hydro and Electric Energy Act in respect of transmission lines as defined in that Act may be continued and completed as if that Act had not been enacted.

38. Section 90 is struck out and the following section is substituted:

90. The Minister may acquire by purchase or by expropriation pursuant to *The Expropriation Act* any lands or any estate or interest in lands required for any works or undertaking to be constructed by him or on his behalf under this Act.

39. Section 91 is amended by striking out subsection (2).

40. Section 96 is amended as to subsection (5)

- (a) by striking out the figure "80" and substituting the figure "90",*
- (b) by striking out the words "any land or interest in land" and by substituting the words "any lands or estate or interest in lands".*

41. The following section is added after section 96:

96.1 (1) In this section "water control project" means any works or undertaking constructed, operated and maintained for the purpose of controlling any lake or stream or stabilizing the water level of any lake or stream.

(2) For the purpose of paying for its share of the cost of a water control project fixed in an agreement under section 96, a local authority described in section 96, subsection (1.1), clause (a) or (b) may impose an assessment called a "special local water control benefit assessment" which shall be assessed against each parcel of land in the vicinity of the lake or stream that is to be or is controlled or stabilized by the water control project.

(3) Each parcel referred to in subsection (2) shall be assessed whether or not the parcel abuts on the lake or stream that is or is to be controlled or stabilized or whether or not the parcel is increased in market value or is otherwise specially benefited by reason of the water control project.

(4) The amount assessed against each parcel shall be sufficient to raise a fair, just and equitable proportion of the total sum to be raised by the special local water control benefit assessment having regard to the benefit to other parcels of land specially benefited by the water control project.

(5) The special local water control benefit assessment may be made on the basis of a rate per foot frontage of the

38. All expropriations by the Minister will be under this new section and in accordance with The Expropriation Act, Section 90 presently reads:

90. (1) The Minister may acquire by purchase or expropriation any land or interest in land required for the construction of works or undertakings to be constructed pursuant to section 89.

(2) For the purpose of expropriating any land or interest in land required for the construction of works or undertakings the Minister may proceed in the manner provided in section 82.

39. Section 91 presently reads:

91. (1) The Minister may enter into a contract with any person or corporation that is necessary or advisable in the construction, operation, maintenance, repair or control of any works or undertakings constructed or to be constructed under this Part.

(2) No deed, contract or writing shall be deemed to be binding on the Province or held to be the act of the Minister unless signed by the Minister or the Director of Water Resources.

40. Consequential to the addition of new section 90 of the Act. Section 96 (5) presently reads:

(5) The Minister may purchase or expropriate any land or interest in land required for the construction of a work or undertaking to be constructed pursuant to an agreement made pursuant to subsections (1) and (2), and for the purpose of expropriating any land or interest in land so required may proceed in the manner provided in section 80.

41. New. Will permit local authorities to assess lands benefiting from water level or flood control projects.

parcel of land so benefited or on a fixed sum per parcel of land benefited and, if the latter, the fixed sum need not be converted into a rate per foot frontage of the parcel of land so benefited.

(6) Sections 165 and 179 to 183 of *The Municipal Taxation Act* apply mutatis mutandis to an assessment under this section.

42. Section 99 is amended

- (a) *by striking out the words "June 30, 1973" wherever they occur in subsections (1), (5) and (6) and by substituting the words "June 30, 1978",*
- (b) *as to subsection (1) by striking out the words "Director of Water Resources" and by substituting the words "Minister, Controller of Water Resources or the employee of the Department authorized by the Minister in writing for that purpose",*
- (c) *as to subsection (2) by striking out clause (a) and by substituting the following:*
 - (a) *filed in the form prescribed by the Minister,*
and
- (d) *by striking out subsection (3) and by substituting the following:*

(3) Upon payment of the prescribed fee the well of the applicant shall be registered by the Minister, the Controller of Water Resources or an employee of the Department authorized in writing to do so by the Minister.

43. No preliminary permit, permit, interim licence or licence issued or any consent given or approval granted under this Act or any annual permit issued under The Ground Water Control Act shall be deemed to be invalid by reason only that it was not signed by the Director of Water Resources or the Minister or that it was signed by a person purporting to be the Director of Water Resources.

44. The Ground Water Control Act is amended as to section 2 by striking out clause (c) and by substituting the following clause:

- (c) "Director" means the Controller of Water Resources designated pursuant to *The Water Resources Act*;

45. The Expropriation Act is amended as to section 26, subsection (2), clause (c) by striking out the words "section 86 of".

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

42. Section 99 presently reads:

99. (1) Where a person owns a well for the supply of water used for any purpose other than domestic purposes and the ground water was put to use before the commencement of this section, that person shall on or before June 30, 1973 apply to the Director of Water Resources to have the well registered.

(2) An application under subsection (1) shall be

- (a) filed with the Director in the form prescribed by the Director, and
- (b) made in accordance with the regulations.

(3) The Director, upon payment to him of any prescribed fee, shall register the well of the applicant.

(4) Where a well is registered under this section, the Minister may issue a licence under Part 1 in respect of that well as though the application for registration of the well had been an application for a licence in respect of the well.

(5) Where the Minister issues a licence in respect of a well registered under this section, the licence shall, unless the Minister otherwise decides, have priority according to the date on which the well first came into production, except that, if the application for registration is made after June 30, 1973, the priority of any licence shall be determined by the date of filing the application.

(6) A person who is required to register a well under subsection (1) shall be deemed to be the holder of a licence to divert and use water from that well

- (a) until June 30, 1973, and
- (b) if he registers the well in accordance with subsection (1), until a licence is issued to him under subsection (4).

43. New.

44. Amends chapter 162 of the Revised Statutes of Alberta 1970.

45. Amends chapter 27 of the Statutes of Alberta, 1974. Section 26 (2) presently reads:

(2) The Surface Rights Board has jurisdiction with respect to expropriations under this Act authorized under or pursuant to

- (a) The Pipe Line Act, or
- (b) The Water, Gas, Electric and Telephone Companies Act, or
- (c) section 86 of The Water Resources Act, or
- (d) The Hydro and Electric Energy Act.