
Second Session, 18th Legislature, 25 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 71

THE SURFACE RIGHTS AMENDMENT ACT, 1976

HONOURABLE MR. McCRAE

First Reading

Second Reading

Third Reading

Printed by the Queen's Printer for the Province of Alberta, EDMONTON

BILL 71

1976

THE SURFACE RIGHTS AMENDMENT ACT, 1976

(Assented to _____, 1976)

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

1. *The Surface Rights Act is hereby amended.*

2. *Section 1 is amended*

(a) by striking out clause (g) and by substituting the following:

(g) "operator" means

(i) the person or unincorporated group of persons having the right to a mineral or the right to work the same, or the agent thereof, or

(ii) with reference to a pipeline, power transmission line or telephone line, the person empowered to acquire an interest in land for the purpose of the pipeline, power transmission line or telephone line under *The Pipeline Act, 1975, The Hydro and Electric Energy Act* or *The Water, Gas, Electric and Telephone Companies Act*, as the case may be;

(b) by adding the following clauses after clause (h):

(h.1) "pipeline" means

(i) a pipeline as defined in *The Pipeline Act, 1975* and to which that Act applies, or

Explanatory Notes

1. This Bill will amend chapter 91 of the Statutes of Alberta, 1972.
2. Section 1, clause (g) presently reads:

1. *In this Act,*

- (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;*

The Surface Rights Board presently has jurisdiction in respect of expropriations for pipelines, power transmission lines and telephone lines by virtue of section 26, subsection (2) of The Expropriation Act. The aim of the amendments to section 1 and the other related amendments in this Bill is to transfer such expropriations to The Surface Rights Act so that, while the Board would retain its jurisdiction in respect of those expropriations, The Surface Rights Act would apply to them instead of The Expropriation Act.

(ii) mains, pipes or other devices

(A) that are required for conveying, transmitting, supplying or distributing gas or water or sewage services, and

(B) to which sections 30 to 32 of *The Water, Gas, Electric and Telephone Companies Act* apply;

(h.2) "power transmission line" means

(i) a transmission line as defined in *The Hydro and Electric Energy Act* and to which that Act applies, or

(ii) wires, conductors, poles or other devices

(A) that are required for conveying, transmitting, supplying or distributing electricity, and

(B) to which sections 30 to 32 of *The Water, Gas, Electric and Telephone Companies Act* apply;

(c) by adding the following clause after clause (l):

(l.1) "telephone line" means wires, conductors, poles or other devices

(i) that are required for conveying, transmitting, supplying or distributing telephone services, and

(ii) to which sections 30 to 32 of *The Water, Gas, Electric and Telephones Companies Act* apply;

3. *Section 12 is amended*

(a) *as to subsection (1) by striking out clauses (b) and (c) and by substituting the following:*

(b) the construction of tanks, stations and structures for or in connection with a mining or drilling operation, or the production of minerals, or for or incidental to the operation of such tanks, stations and structures, or

3. Section 12(1) and (3), (a) and (b)(i) presently read:

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

(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.

(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

Section 12(1)(b) and (3)(b)(i) presently give the Surface Rights Board jurisdiction in relation to pipelines and power lines that are required in connection with mineral recovery operations only. The amendments will extend this jurisdiction to all pipelines, power transmission lines and telephone lines, as defined in the proposed new clauses being added to section 1 of the Act: see section 2 of this Bill. The proposed clause (b) is a recasting of the present clause (c).

(c) the construction of a pipeline, or for or incidental to the operation of a pipeline, or

(d) the construction of a power transmission line, or for or incidental to the operation of a power transmission line, or

(e) the construction of a telephone line, or for or incidental to the operation of a telephone line,

(b) as to subsection (3), clause (b), subclause (i) by striking out the words "a pipe line, power line, or",

(c) by adding the following subsection after subsection (4):

(5) The Board may make an order granting right of entry in respect of the surface of land required for a pipeline, a power transmission line or a telephone line.

4. Section 13, subsection (1) is amended by striking out the words "pipe lines" and by substituting the word "pipelines".

5. Section 14 is amended by adding after subsection (2) the following:

(3) The Supreme Court may, on the application by the operator by way of originating notice, issue such order as may be necessary to enable the operator or any person employed or engaged by the operator to exercise his rights under subsection (1).

6. Section 18 is amended

(a) as to subsection (1), clause (b), by adding the words "except in the case of a pipeline, power transmission line or telephone line," before the words "after seven clear days",

(b) as to subsection (1) by adding after clause (b) the following:

(c) in the case of a pipeline, power transmission line or telephone line, after 21 clear days have elapsed from the date of personal service, or 28 days from the date of any substituted service, on the respondent, of

4. This amendment will make the reference correspond to the defined term "pipeline".

5. Section 14(1) presently reads:

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.

The proposed subsection (3) is similar to section 63 of The Expropriation Act. Section 28 of The Surface Rights Act allows for the enforcement of a Board order through the Supreme Court but there is presently doubt as to whether the Court has any power to enforce the statutory rights of the operator to conduct surveys, etc.

6. Section 18(1) and (4) presently reads:

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.

(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.

- (i) a copy of the application, and
- (ii) a notice in Form B in the Schedule.

(c) as to subsection (4), by striking out the word "shall" and by substituting the word "may".

7. Section 23 is amended

(a) by adding the following subsection after subsection (2):

(2.1) Upon application therefor, the Board shall, after determining the amount of compensation under subsection (1), determine such additional amount of compensation as, in the opinion of the Board, is necessary in order to enable the owner or purchaser to relocate his residence in accommodation that is at least equivalent to the accommodation on the land affected by the right of entry order, and in fixing the additional amount of compensation the Board shall include the increase in cost between the date on which the right of entry order was made and the time when the new accommodation could reasonably be obtained.

(b) by adding the following subsection after subsection (5):

(6) The Board may order the operator to pay interest at such rate as the Board considers just with respect to all or any part of the compensation payable under the compensation order and any interest so payable is recoverable in the same manner as the compensation.

8. Section 29, subsection (1) is amended by striking out the word "cerified" and by substituting the word "certified".

9. Section 37 is amended by striking out subsection (2) and by substituting the following:

(2) This section applies only to the following classes of surface leases, namely,

- (a) surface leases that do not relate to pipelines, power transmission lines or telephone lines, where the terms of the leases commence on or after January 1, 1972, and

7. (a) The new subsection (2.1) allows for the adoption by the Board of the "home for a home" principle where relocation is necessitated and is similar to the provisions of section 45 of The Expropriation Act. Section 23(1) presently reads:

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.

(b) Interest payment on compensation payable.

8. Corrects a typographical error.

9. Section 37(2) presently reads:

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

Section 37 deals with reviews every five years of rental rates under private surface leases. The amendment is consequential to the amendments being proposed to sections 1 and 12. Insofar as section 37 relates to surface leases for pipelines, power transmission lines and telephone lines it will apply only to those surface leases whose terms commence on or after January 1, 1977 and which provide for the payment of rentals on a yearly or other periodic basis.

- (b) surface leases that relate to pipelines, power transmission lines or telephone lines, where the terms of the leases commence on or after January 1, 1977.

10. Section 38 is amended by striking out subsection (2) and by substituting the following:

(2) The Board has jurisdiction to hear and determine a dispute under this section only if

- (a) the application is made in writing to the Board by a party to the dispute within six months of the last date on which damage is alleged to have occurred, and
- (b) the amount of compensation claimed by the owner or occupant does not exceed the sum of \$2,000.

11. The Expropriation Act is amended as to section 26, subsection (2)

(a) by striking out clauses (a) and (b), and

(b) by striking out clauses (c) and (d) and by substituting the following:

*(c) section 29 of *The Water Resources Act*, or*

*(d) *The Hydro and Electric Energy Act* with respect to power plants.*

12. The Hydro and Electric Energy Act is amended as to section 30 by striking out clause (b) and by substituting the following:

*(b) by expropriation under *The Expropriation Act*, in the case of a power plant, or*

*(c) by proceedings under *The Surface Rights Act*, in the case of a transmission line.*

13. The Pipeline Act, 1975 is amended

(a) as to section 1, clause 6

(i) by striking out the word "lines" and by substituting the word "line", and

10. Section 38(1) and (2) presently read:

38. (1) Subject to subsections (2) to (4), the Board may hold a hearing and make an order with respect to a dispute between the operator and an owner or occupant who are parties to a surface lease or the operator and a respondent under a right of entry order as to the amount of compensation payable by the operator

(a) for damage caused by or arising out of the operations of the operator to any land of the owner or occupant, or

(b) for any loss 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 right of entry order, 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 or right of entry order.

(2) The Board has jurisdiction to hear and determine any dispute under this section only if

(a) the application under this section is made in writing to the Board by a party to the dispute within 120 days of the last date on which the damage is alleged to have occurred, and

(b) the amount of compensation claimed by the owner or occupant does not exceed the sum of \$1000.

11. This section will amend 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 Pipeline Act, 1975, or

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

(c) The Water Resources Act, or

(d) The Hydro and Electric Energy Act.

See the note to section 2 of this Bill.

12. This section will amend chapter 49 of the Statutes of Alberta, 1971. Section 30 presently reads:

30. Where an operator requires an estate or interest in land for the purposes of a power plant or a transmission line, the estate or interest may be acquired

(a) by negotiation with the owner, or

(b) by expropriation under The Expropriation Act.

See the note to section 2 of this Bill.

(ii) by adding the word "or" at the end of subclause (v) and by adding the following subclause:

*(vi) water where the pipe forms part of any works or undertaking constructed under the authority of an interim licence or licence issued pursuant to *The Water Resources Act*,*

(b) as to section 48, subsection (1), by striking out all of the clauses following clause (a) and by substituting the following:

*(b) by proceedings under *The Surface Rights Act*.*

*(c) as to section 48, subsection (3) by striking out the word "expropriation" and by substituting the words "proceedings under *The Surface Rights Act*",*

(d) as to section 49

*(i) by adding after the words "under *The Expropriation Act* for the purposes of his pipeline" the words "pursuant to proceedings commenced before January 1, 1977," and*

(ii) by striking out the words "right for entitlement" in clause (a), subclause (i) and by substituting the words "right or entitlement".

*14. *The Water, Gas, Electric and Telephone Companies Act* is amended by striking out section 32 and by substituting the following:*

32. Where the company receives a certificate of approval from the Minister and requires an interest in land for the purposes of the right of way, the interest may be acquired in lands owned by the Crown or by any other person

(a) by negotiation with the owner, or

(b) by proceedings under *The Surface Rights Act*.

*15. Any proceeding commenced pursuant to *The Expropriation Act* before the commencement of this section with respect to any expropriation authorized under or pursuant to*

*(a) *The Pipeline Act, 1975*, or*

13. This section will amend chapter 30 of the Statutes of Alberta, 1975 (Second Session).

(a)(i): Corrects a typographical error.

(a)(ii): Section 1, clause 6 defines "fluids line". The addition of subclause (vi) will exclude from that class of pipeline any water pipeline forming part of the works or undertaking of a licensee under The Water Resources Act. The result will be that the expropriation of rights of way for such water pipelines will come under The Expropriation Act as part of the total works or undertaking and not under The Surface Rights Act. This will avoid the necessity of having two separate proceedings under two Acts in respect of the same project.

(b), (c) and (d)(i): As to the amendments to sections 48 and 49, see section 2 of this Bill. Section 48(1) presently reads:

48. (1) Where an operator requires an interest in land for the purposes of his pipeline, the interest may be acquired in lands owned by the Crown or by any other person

(a) by negotiation with the owner, or

(b) by an order under The Surface Rights Act, if the operator is entitled to apply under that Act, or

(c) by an order under The Water, Gas, Electric and Telephone Companies Act, if the operator is a company within the meaning of that Act, or

(b) by a certificate of approval under The Expropriation Act.

(d)(ii): Corrects a typographical error.

14. This section will amend chapter 387 of the Revised Statutes of Alberta 1970. Section 32 presently reads:

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

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

(a) shall be in accordance with the terms of any agreement effected between the company 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.

15. Transitional.

(b) The Hydro and Electric Energy Act with respect to a transmission line, or

(c) The Water, Gas, Electric and Telephone Companies Act,

shall be continued to its conclusion and be treated for all purposes as though this Act had not come into force.

16. The Water Resources Act is amended

(a) by striking out the heading preceding section 49 and by substituting the following:

**Acquisition of Works by the Crown,
Cancellations and Forfeitures**

(b) as to section 81, subsection (1), by striking out the words "Sections 24 to 59" and by substituting the words "Sections 24 to 28 and sections 30 to 59".

17. This Act comes into force on January 1, 1977.

16. This section will amend chapter 388 of the Revised Statutes of Alberta 1970.

The present heading preceding section 49 is no longer entirely appropriate having regard to the nature of the provisions following it. The present heading reads "Expropriation of Works, Cancellation and Forfeiture by Government".

Section 81(1) presently reads:

81. (1) Sections 24 to 59 do not apply to water-power undertakings or to licences in respect of such undertakings.

The amendment to section 81(1) is aimed at removing an anomaly in the Act and will ensure that section 29 will apply to expropriations of land required for water-power undertakings. Section 29, as a result of amendments in 1975, is now the only provision of the Act authorizing expropriations by licensees under that Act.