

1980 BILL 34

Second Session, 19th Legislature, 29 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 34

THE SURFACE RIGHTS AMENDMENT ACT, 1980

MR. HYLAND

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 34
Mr. Hyland

BILL 34

1980

THE SURFACE RIGHTS AMENDMENT ACT, 1980

(Assented to , 1980)

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

- 1 The Surface Rights Act is amended by this Act.*
- 2 Section 1(g)(i) is repealed and the following is substituted:*
 - (i) the person or unincorporated group of persons, or agent of that person or group, who
 - (A) has the right to a mineral or the rights to work it, and
 - (B) is the holder of a valid well licence or battery site licence issued under *The Energy Resources Conservation Act*,or
- 3 Section 2(2) is amended by striking out “mining or drilling operations” and substituting “operations concerning mining, drilling, pipelines, power transmission lines or telephone lines”.*
- 4 Section 3 is amended*
 - (a) by repealing subsection (3) and substituting the following:*
 - (3) The Lieutenant Governor in Council shall designate one member of the Board as chairman and not more than 2 members of the Board as vice-chairmen of the Board.
 - (b) in subsection (4) by adding “, each vice-chairman” after “chairman”.*

Explanatory Notes

1 This Bill will amend chapter 91 of the Statutes of Alberta, 1972.

2 Section 1 presently reads in part:

(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;

3 Section 2 presently reads:

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.

4 Section 3(3) and (4) presently read:

(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.

5 *The following is added after section 5(2):*

(3) The chairman may from time to time appoint a member of the Board to carry out the functions and duties of a mediation officer pursuant to section 30.1.

6 *The following is added after section 9:*

9.1 The Board may make regulations prescribing forms for the purposes of this Act.

7 *Section 12 is amended*

(a) *by repealing subsection (1) and substituting the following:*

12(1) No operator has a right of entry in respect of the surface of land for any of the purposes mentioned in this Act unless

(a) he has obtained the consent of the owner of the surface of the land and of the occupant of it, or

(b) he has become entitled to right of entry by reason of an order of the Board pursuant to this Act.

(b) *in subsection (2) by striking out “subsection (1)” and substituting “subsection (3)”, and*

(c) *by repealing subsection (3) and substituting the following:*

5 Section 5 presently reads:

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

(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 an 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 Regulation power to make forms.

7 Section 12 presently reads in part:

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 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

(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,

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

(a) for the removal of minerals contained in or underlying the surface of land or for or incidental to any mining or drilling operations, if the operator or his principal has the right to a mineral or the right to work a mineral in that land and any other land that in the opinion of the Board is necessary

(i) for 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,

(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 and mining operations,

(A) for a road to give the operator additional access to the operations and additional egress from the operations,

(B) for the disposal of overburden incidental to the operations, or

(C) for the disposal of tailings and other materials resulting from the operations,

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 it,

(b) for 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 the tanks, stations and structures,

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

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

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 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.

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

8 *Section 13(2), (3) and (4) is amended by striking out “section 12, subsection (1)” and substituting “section 12(3)”.*

9 *Section 15(2) is repealed and the following is substituted:*

(2) An application to the Board for a right of entry order shall be in the form prescribed by regulation.

10 *Section 17 is repealed.*

8 Section 13(2), (3) and (4) presently read:

(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 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.

9 Section 15(2) presently reads:

(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.

10 Section 17 presently reads:

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.

11 Section 18 is repealed and the following is substituted:

18(1) After the receipt 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 the form prescribed by regulation signed by the respondent, or

(b) if no objection by the respondent is received by the Board,

(i) after 7 clear days after the date of the personal service on the respondent of a copy of the application for right of entry and of a notice in the form prescribed by regulation, or

(ii) after 14 clear days after the date of substituted service on the respondent of a copy of the application for right of entry and of a notice in the form prescribed by regulation.

(2) If the Board receives an objection by a respondent, the Board may, after giving at least 7 days notice to the operator and respondent, or such lesser notice if both parties agree, hold a hearing with respect to the application and objection, at the time and place the Board considers advisable.

(3) If the Board issues a right of entry order pursuant to this section, the Board shall hold a hearing, after giving notice to the operator and respondent, to determine the compensation payable by the operator, at the time and place the Board considers advisable.

(4) The Board may, in respect of any right of entry order issued under this section, direct that the operator pay to a respondent a specific amount of money as an advance on the compensation that the Board may subsequently determine is payable, and the operator shall provide the Board with satisfactory evidence that the payment has been made or tendered before the operator is entitled to exercise the right of entry granted by the right of entry order.

(5) In subsection (1), “substituted service” means any form of service directed by the Board in writing, other than personal service.

12 Section 21(2) is amended by striking out “sections 17 and” and substituting “section”.

11 Section 18 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) except in the case of a pipeline, power transmission line or telephone line, 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,

(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

(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 may 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.

(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.

12 Section 21(2) presently reads in part:

(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,

13 *The following is added after section 22:*

22.1 (1) If the Board has received an application for right of entry order and the application is withdrawn or refused, the Board may, on application by the respondent, hold a hearing and make an order to determine the amount of costs or damages, or both, arising from or incidental to the application for right of entry order.

(2) The Board has jurisdiction to hear and determine any dispute under this section only if the application is made in writing to the Board by a party to the dispute within 6 months after the date on which the application was withdrawn or refused.

(3) An order under this section may be appealed by the operator or the owner or occupant to the Court of Queen's Bench under section 24 as though the order were a compensation order under section 23.

14 *The following is added after section 29(2):*

(3) A right of entry order issued by the Board to an operator is deemed to be an instrument to which section 71 of *The Land Titles Act* applies.

15 *The following is added after section 30:*

Mediation

30.1 (1) An operator and an owner or occupant who have commenced negotiations for a surface lease may request in writing to the Board that a matter in dispute between them be referred to a mediation officer.

(2) An operator and a respondent or lessor, as the case may be, who have commenced negotiations pursuant to section 36(7) or 37(5) may request in writing to the Board that the matter in dispute that is the subject of the negotiations be referred to a mediation officer.

(3) An operator and a respondent or lessor, as the case may be, who are in dispute on a matter to be determined by the Board pursuant to an application under section 22.1,

13 New section to provide for compensation in the case where an application for right of entry order is withdrawn or refused.

14 Section 29 presently reads:

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.

15 New provisions to provide for mediation.

36(9), 37(7) or 38 may request in writing to the Board that the matter be referred to a mediation officer.

(4) If a right of entry order has been granted, the operator and respondent may request in writing to the Board that the amount of compensation payable be determined, notwithstanding section 23(1), by a mediation officer.

30.2(1) On receipt of a request under section 30.1, the Board may refer the request to a mediation officer and, if it so refers the request, it shall notify the parties to the dispute of the referral.

(2) If a referral is made pursuant to section 30.1(3), further proceedings pending before the Board with respect to the matter in dispute shall be stayed until the mediation officer makes his report to the Board pursuant to section 30.4 or 30.5.

(3) The Board shall not refer to a mediation officer a request in respect of an application under section 15 if an objection to the application has been made.

30.3 The mediation officer shall, on receipt of the referral, investigate the matter in dispute and shall, if possible, arrange for a meeting of the parties concerned or their agents for the purpose of arriving at a settlement between the parties.

30.4(1) If the mediation officer does effect a settlement between the parties, he shall forward a report to the Board and to the parties setting out the details of the settlement.

(2) In respect of a settlement made pursuant to a referral under section 30.1(1), the parties may enter into a surface lease for the use of the land required by the operator in accordance with the settlement.

(3) In respect of a settlement made pursuant to a referral under section 30.1(2),

(a) in the case of negotiations under section 36(7), the Board shall vary the compensation order in accordance with the settlement, and

(b) in the case of negotiations under section 37(5), the parties shall amend the lease or enter into a new lease in accordance with the settlement.

(4) In respect of a settlement made pursuant to a referral under section 30.1(3),

(a) in the case of an application under section 36(9), the Board shall vary or confirm the compensation order,

(b) in the case of an application under section 37(7), the parties shall amend the lease or enter into a new lease in accordance with the settlement, and

(c) in the case of an application under section 22.1 and 38(1), the mediation officer shall cause an agreement, in writing, to be entered into between the parties in accordance with the settlement.

(5) In respect of a settlement made pursuant to a referral under section 30.1(4), the operator and respondent

(a) may enter into an agreement determining the amount of compensation payable, or

(b) may enter into a surface lease agreement that includes the amount of compensation payable.

(6) If the operator and respondent enter into a lease agreement under subsection (5)(b), the Board shall terminate the right of entry order.

(7) If, in respect of a referral under section 30.1(3), a settlement has been entered into and the appropriate action has been taken pursuant to subsection (4), proceedings pending between the parties in respect of the referral shall be terminated.

30.5(1) If the mediation officer determines during his investigation that the dispute is not of a nature that can be resolved by mediation or the mediation officer is not able, within a reasonable time, to effect a settlement between the parties of the matters in dispute, he may refuse to continue to act, and in that case, he shall advise the parties concerned that he has been unsuccessful and shall forward a report to the Board setting out the details of his refusal to continue to act.

(2) If a request has been made pursuant to section 30.1(3) or (4) and the mediation officer reports that he has been unsuccessful and that no agreement was reached between the parties, the Board shall continue its proceedings under the Act in the same manner and to the same effect as if the matter had not been referred to a mediation officer.

30.6 In a proceeding before the Board, no statement or admission made by or on behalf of any party to the proceedings before the mediation officer shall be placed on record with the Board or considered by the Board as evidence in the proceedings before it, and the mediation officer shall not take a part in the proceedings as a member, witness or otherwise.

16 Section 33(2) is repealed and the following is substituted:

(2) The Board may order that costs shall be taxed and allowed by a taxing officer or by the clerk of the Court of Queen's Bench for the judicial district in which the lands, in respect of which proceedings were held, are situated.

17 Section 38(2)(b) is amended by striking out "\$2,000" and substituting "\$5000".

18 The forms in the Schedule are repealed.

19 This Act comes into force on July 1, 1980.

16 Section 33(2) presently reads:

(2) The Board may order by whom the costs are to be taxed and allowed.

17 Section 38(2)(b) presently reads:

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

(b) the amount of compensation claimed by the owner or occupant does not exceed the sum of \$2,000.

18 The forms are being repealed in the Act and the power to make forms will be vested in the Board.