

1983 BILL 60

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 60

SURFACE RIGHTS ACT

THE MINISTER OF AGRICULTURE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 60

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1983

SURFACE RIGHTS ACT

(Assented to , 1983)

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

Definitions

1 In this Act,

- (a) “Board” means the Surface Rights Board;
- (b) “compensation order” means an order providing for the payment of compensation and made
 - (i) under this Act or a former Act, or
 - (ii) by the Board of Public Utility Commissioners or a district court judge under regulations established pursuant to *The Provincial Lands Act* prescribing the conditions under which right of entry may be obtained on land;
- (c) “Crown” means the Crown in right of Alberta;
- (d) “former Act” means *The Right of Entry Arbitration Act*, chapter 24 of the Statutes of Alberta, 1947, *The Right of Entry Arbitration Act, 1952*, chapter 79 of the Statutes of Alberta, 1952, *The Right of Entry Arbitration Act*, chapter 290 of the Revised Statutes of Alberta, 1955 and chapter 322 of the Revised Statutes of Alberta 1970 and the *Surface Rights Act*, chapter 91 of the Statutes of Alberta, 1972 and chapter S-27 of the Revised Statutes of Alberta 1980;
- (e) “minerals” means all naturally occurring minerals and, without restricting the generality of the foregoing, includes gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sands, oil sands, natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite, granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl, but does not include
 - (i) sand and gravel or clay and marl that belong to the owner of the surface of land under the *Law of Property Act*, or
 - (ii) peat on the surface of land and peat obtained by stripping off the overburden, excavating from the surface, or otherwise recovered by surface operations;
- (f) “Minister” means the Minister of Agriculture;
- (g) “occupant” means
 - (i) a person, other than the owner, who is in actual possession of land,

- (ii) a person who is shown on a certificate of title under the *Land Titles Act* as having an interest in land,
 - (iii) an operator granted right of entry in respect of land pursuant to a right of entry order, or
 - (iv) in the case of Crown land, a person shown on the records of the department or other body administering the land as having an interest in the land;
- (h) “operator” means
- (i) the person or unincorporated group of persons having the right to a mineral or the right to work it, or the agent of such a person or group of persons, 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*, the *Hydro and Electric Energy Act* or the *Water, Gas, Electric and Telephone Companies Act*, as the case may be;
- (i) “owner” means
- (i) the person in whose name a certificate of title to land is issued under the *Land Titles Act*, or
 - (ii) if no certificate of title to the land is issued, the Crown or other body administering the land;
- (j) “pipeline” means
- (i) a pipeline as defined in the *Pipeline Act* and to which that Act applies, or
 - (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;
- (k) “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;
- (l) “respondent” means an owner or occupant named as a respondent in an application to or in an order of the Board;

(m) "right of entry" means the right of entry, user and taking of the surface of land;

(n) "right of entry order" means an order granting right of entry and made

(i) under this Act or a former Act, or

(ii) by the Board of Public Utility Commissioners or a district court judge under regulations established pursuant to *The Provincial Lands Act* prescribing the conditions under which right of entry may be obtained on land;

(o) "surface lease" means a lease or other instrument under which the surface of land is being held for any purpose for which a right of entry order may be made under this Act and that provides for payment of compensation;

(p) "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 Telephone Companies Act* apply;

(q) "vacant Crown land" means the surface of land owned by the Crown and in which no other person has any interest.

Application
of Act

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

(2) If there is a conflict between 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 operations concerning mining, drilling, pipelines, power transmission lines or telephone lines, this Act prevails.

Surface Rights
Board

3(1) The Surface Rights Board established under the *Surface Rights Act*, chapter S-27 of the Revised Statutes of Alberta 1980, is continued.

(2) The Board shall consist of the members appointed by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may from time to time nominate 1 or more persons from among whom acting members of the Board may be selected.

(4) When in his opinion it is necessary or desirable for the proper and expeditious performance of the Board's duties, the chairman may name a person nominated under subsection (3) as an acting member for a period of time, during any circumstance or for the purpose of any matter before the Board.

(5) An acting member has, during the period, under the circumstances or for the purpose for which he is named an acting member,

	<p>all the powers of and may perform all duties of a member of the Board.</p> <p>(6) The Lieutenant Governor in Council shall designate 1 member of the Board as chairman and not more than 2 members of the Board as vice-chairmen of the Board to act in the absence or inability to act of the chairman.</p> <p>(7) The chairman and each member of the Board shall receive the remuneration that is fixed by the Lieutenant Governor in Council.</p>
Staff	<p>4 In accordance with the <i>Public Service Act</i> there may be appointed a secretary, an assistant secretary, inspectors, land examiners and any other employees required to carry on the business of the Board.</p>
Duties of secretary	<p>5(1) The secretary of the Board shall</p> <ul style="list-style-type: none"> (a) keep properly authenticated copies of every order made by the Board; (b) have the custody and care of all records and documents belonging to or pertaining to the Board and filed with the Board; (c) ensure that every order made by the Board is drawn pursuant to the direction of the Board and properly authenticated; (d) deliver to any person on request and on payment of the prescribed fee a certified copy of any order made by the Board; (e) perform any other duties that may from time to time be assigned or allocated to him by the Board; (f) obey all rules and directions given by the Board relating to the duties of the secretary. <p>(2) The assistant secretary of the Board may, subject to the direction of the Board, exercise and perform any of the powers and duties of the secretary.</p>
Annual report	<p>6 The Board shall submit to the Minister in the month of January in each year a report</p> <ul style="list-style-type: none"> (a) showing briefly all applications dealt with during the previous year and how they were disposed of, and (b) respecting any other matters the Minister requests.
Board meetings	<p>7 The Board may make rules respecting the calling and holding of its business meetings.</p>
Powers and duties of Board	<p>8(1) The Board may hold its sittings at any place or places in Alberta that it from time to time considers expedient.</p> <p>(2) The Board shall</p> <ul style="list-style-type: none"> (a) make rules of procedure and practice governing hearings, inquiries and proceedings conducted by it and regulating the places and times of its sittings, and

(b) keep records of its hearings, inquiries and proceedings.

(3) In conducting a hearing or inquiry, the Board

(a) shall proceed in accordance with its rules of procedure and practice;

(b) is not bound by the rules of law concerning evidence;

(c) may adjourn the hearing or inquiry from time to time for any length of time the Board considers advisable;

(d) has the rights, powers and immunities conferred on a commissioner under the *Public Inquiries Act*.

(4) The Board has any other powers and duties assigned to it by the Lieutenant Governor in Council.

Powers of members

9(1) Any 3 members may perform any function of the Board and when performing that function have all the powers, duties, immunities and jurisdiction of the Board.

(2) Notwithstanding anything in this Act, 1 member may perform any function of the Board

(a) when 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,

(b) in dealing with an application under and making a right of entry order pursuant to section 15(4)(a),

(c) in making an order terminating a right of entry order pursuant to section 31(5),

(d) in any proceedings pertaining to the determination of compensation in cases involving vacant Crown land, or

(e) with the consent of the operator and the respondent, in any proceedings where the matter in issue is the amount of compensation payable by an operator or the person to whom the compensation is payable,

and when performing that function that member has all the powers, duties, immunities and jurisdiction of the Board.

Member absent

10 Where a hearing or inquiry is conducted by the Board and a member or members of the Board do not for any reason attend on any day or part of a day, the other member or members who are sitting on the hearing or inquiry may, if they constitute a quorum, continue the hearing or inquiry as fully and effectively as though the member or members were present.

Signing of orders etc.

11(1) Any order, direction or other document issued or made by the Board may be signed on behalf of the Board by the chairman or any other member of the Board, whether or not the person so signing

participated in any proceedings giving rise to the order, direction or document.

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

(a) that the order, direction or document is the act of the Board, and

(b) that the person signing it was authorized to do so,

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

Right of entry

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

(a) for the removal of minerals contained in or underlying the surface of that land or for or incidental to any mining or drilling operations,

(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 those tanks, stations and structures,

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

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

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

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

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

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

(a) the land in which the operator or his principal has the right to a mineral or the right to work a mineral, and

(b) any other land that is necessary

(i) for a road to connect the operator's mining or drilling operations located on adjacent land 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 operations,

(A) for a road or roads to give the operator additional access to and 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,

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 mineral.

(4) When

(a) a licence has been obtained to drill a well for the removal of a mineral contained in or underlying the surface of a tract of land, and

(b) the orifice of the well will be located outside the tract,

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

Right of entry for
conservation
scheme

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

(a) repressuring, recycling or pressure maintenance in a petroleum or natural gas field, pool or area,

(b) the storage or disposal of

(i) natural gas,

(ii) processed or treated natural gas, or

(iii) products of petroleum or natural gas,

(c) the storage and disposal of water or any other substance produced from or to be injected in an underground formation, or

(d) obtaining water for any operation mentioned in clause (a), (b) or (c).

(2) When 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(1).

(3) When right of entry has been acquired by an operator under a right of entry order for any purpose mentioned in section 12(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(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.

Surveys

14(1) Notwithstanding section 12(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 on 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 those portions of the surface of the land that are incidental to or necessary for the operation.

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

(3) The Court of Queen's Bench may, on application by the operator by way of originating notice, make any order that may be necessary to enable the operator or any person employed or engaged by the operator to exercise his rights under subsection (1).

Application for
right of entry
order

15(1) When the surface of any land required by an operator for any of the purposes mentioned in this Act is owned by the Crown or any other person, and the operator cannot acquire the consent of the owner and the occupant as required by section 12, the operator may apply to the Board for a right of entry order in respect of the surface

of the land that may be necessary for the performance of his operations.

(2) An application for a right of entry order must be in the prescribed form and be accompanied by

(a) a copy of the most recent written offer made by the operator to the respondent and evidence satisfactory to the Board that the offer has been refused, and

(b) any other information required by the regulations.

(3) Where the Board receives an application and the operations in respect of which the application is made require a licence, permit or other approval from the Energy Resources Conservation Board, the Surface Rights Board may request the Energy Resources Conservation Board to provide it with a copy of the licence, permit or other approval together with any other information in the Energy Resources Conservation Board's possession that is relevant to the right of entry, and the Energy Resources Conservation Board shall forthwith comply with the request.

(4) On receipt of an application under subsection (1) the Surface Rights Board may, if it considers it appropriate to do so, make a right of entry order

(a) on the operator filing with the Board a letter of consent in the prescribed form signed by the respondents, or

(b) not less than 14 days after the date of service by the Board on the respondents of

(i) a notice in the prescribed form, and

(ii) a copy of the application.

(5) When the Board receives an objection after the serving of the notice referred to in subsection (4)(b)(i), the Board may hold a hearing with respect to the application and objection at a time and place that the Board considers advisable.

(6) Where the Board makes a right of entry order under this section, it

(a) shall describe the portion of the surface of the land that is necessary for the performance of the operator's operations, and

(b) may make the order subject to any conditions it considers appropriate,

but where the activity the operator proposes to engage in is the subject of a licence, permit or other approval granted by the Energy Resources Conservation Board, and that board has provided the Surface Rights Board with a copy of the licence, permit or other approval pursuant to subsection (3), the Surface Rights Board shall ensure that the right of entry order is not inconsistent with the licence, permit or other approval.

Rights conferred
by order

16(1) A right of entry order vests in the operator,

(a) unless otherwise provided in the order, the exclusive right, title and interest in the surface of the land in respect of which the order is granted, other than

(i) the right to a certificate of title issued pursuant to the *Land Titles Act*, and

(ii) the right to carry away from the land any sand, gravel, clay or marl or any other substance forming part of the surface of the land,

and

(b) to the extent necessary for his operations, the right to excavate or otherwise disturb any minerals within, on or under the land without permission from or compensation to the Crown or any other person with respect to those minerals.

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

Entry on Crown
land before
survey

17(1) When the right of entry required by an operator relates to

(a) vacant Crown land, or

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

the application for a right of entry order may be accompanied by a plan or map satisfactory to the Board showing

(c) the proposed location of the land in which the right of entry is required with its approximate dimensions and coloured or outlined in red, and

(d) the quarter-sections, or what would be the quarter-sections if the land were surveyed under the *Surveys Act*, in which the land is situated.

(2) The Board may make 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 the order may

(a) stipulate that a further plan satisfactory to the Board or a plan of survey of the surface of the land, or any part of it, in which right of entry has been acquired by the operator, be submitted to the Board within a specified time, and

(b) prescribe other terms and conditions.

18(1) Notwithstanding anything in this Act, an operator who has been granted a right of entry order under section 17 may enter into

an agreement with any other person with respect to the use of the surface of the land referred to in the order for so long as the order is in effect.

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

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

(a) the land can be used by the applicant and the operator without undue interference with the operator's operations, and

(b) having regard to all the circumstances, it is fair and proper to grant the application.

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

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

(b) make an order determining the compensation payable by the applicant to the operator for those rights.

(5) When an application is granted under this section, the applicant shall not be made a respondent under the order.

Entry fee

19(1) An operator who proposes to exercise a right of entry on land, other than land owned by the Crown, for any of the purposes mentioned in section 12(1) or 13(1) shall pay

(a) to the lessor of the land, where the right of entry is to be exercised pursuant to a surface lease, or

(b) to the respondent or to the Board under section 22, where the right of entry is to be exercised pursuant to a right of entry order

an entry fee in an amount equal to the lesser of

(c) \$5000, or

(d) \$500 per acre granted to the operator, or a proportionate amount, not to be less than \$250, where the land granted to the operator is less than 1 acre,

calculated in respect of each titled unit of the respondent that contains land that is granted to the operator.

(2) Subject to section 14, the operator shall not exercise his right of entry until the money required by subsection (1) to be paid has been paid.

(3) An entry fee payable pursuant to this section is in addition to any compensation payable in respect of the right of entry.

Prepayment of compensation

20(1) The operator shall pay to the respondent or to the Board under section 22, as part payment of the compensation payable to the respondent, a sum of money equal to 80% of the compensation offered in the written offer filed with the application in respect of the first compensation year of the term of the right of entry order and, subject to section 14, the operator shall not exercise his right of entry until the money has been paid.

(2) A payment made under subsection (1) must be based on the factors set out in section 25(1) to the extent that those factors are within the knowledge of or reasonably available to the operator.

Exemption

21 Sections 19 and 20 do not apply to an operator that is

(a) a distributor as defined in the *Rural Gas Act*, or

(b) an association as defined in the *Rural Electrification Revolving Fund Act* that constructs or operates works as defined in that Act.

Payment to Board

22(1) Where the operator is unable to agree with the respondents

(a) as to which of the respondents is to receive all or part of the entry fee referred to in section 19(1), or the part payment of compensation referred to in section 20(1), or

(b) as to the percentage of the entry fee or part payment that each respondent is to receive,

he shall pay the money to the Board.

(2) Where money is paid to the Board under subsection (1),

(a) the Board shall, in the case of a part payment of compensation, deal with it in accordance with section 25(6), and

(b) in the case of an entry fee, the Board shall, at the time it makes a compensation order, determine entitlement to the entry fee and pay it to the person entitled to it.

(3) A respondent may appeal a determination under subsection (2)(b) as to the amount of the entry fee payable to any of the respondents or the person to whom the entry fee is payable, or both, in the same way as if the determination were a compensation order under section 23.

Compensation hearing

23(1) Forthwith on making a right of entry order the Board shall give notice to the operator and the respondent of the date on which it will hold a hearing to determine the amount of compensation payable and the persons to whom it is payable.

(2) The compensation hearing shall be scheduled for a date that is not more than 30 days after the date the right of entry order was made.

(3) The Board shall make a compensation order not more than 30 days after the date on which the compensation hearing is completed.

(4) On notice to the parties the Board may, if it considers it necessary to do so, extend the time limits referred to in subsections (2) and (3).

Inspection

24(1) The Board may, in connection with a compensation hearing, and of its own volition or on the written request of any of the parties to the hearing, conduct an examination of any real or personal property in respect of which a compensation order may be made in order to determine the amount of compensation payable.

(2) Subject to section 9(2)(e), at least 2 members of the Board convened to hold the compensation hearing shall conduct the examination under subsection (1).

Determining compensation

25(1) The Board, in determining the amount of compensation payable, may consider

(a) the amount the land granted to the operator might be expected to realize if sold in the open market by a willing seller to a willing buyer on the date the right of entry order was made,

(b) the per acre value, on the date the right of entry order was made, of the titled unit in which the land granted to the operator is located, based on the highest approved use of the land,

(c) the loss of use by the owner or occupant of the area granted to the operator,

(d) the adverse effect of the area granted to the operator on the remaining land of the owner or occupant and the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator,

(e) the damage to the land in the area granted to the operator that might be caused by the operations of the operator, and

(f) any other factors that the Board considers proper under the circumstances.

(2) The Board, in determining the amount of compensation payable, may ignore the residual and reversionary value to the owner or occupant of the land granted to the operator.

(3) Where an owner or purchaser of land is required to relocate his residence as a result of the making of a right of entry order, the Board shall, on application and after determining the amount of compensation payable, determine the additional amount that, 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 in respect of which the right of entry order is made.

(4) In fixing the additional amount of compensation under subsection (3), 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 can reasonably be obtained.

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

(a) for damage caused by or arising out of the operations of the operator to any land of the owner or occupant other than the area granted to the operator, if those operations were incidental to the operations of that operator on the area granted to him under the right of entry order;

(b) for the loss of or damage to livestock or other personal property of the owner or occupant caused by or arising out of the operations of the operator;

(c) for time spent or expense incurred by the owner or occupant in recovering any of his livestock that have strayed due to an act or omission of the operator;

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

(6) When the Board makes a compensation order, it shall offset the amount paid as part payment of compensation to the respondent under section 20 or to the Board under section 22 against the total compensation it determines to be payable to the respondent, and

(a) in a case where the money was paid to the respondent under section 20,

(i) if the amount the Board determines to be payable exceeds the amount paid, it shall order the operator to pay the difference to the respondent, and

(ii) if the amount paid exceeds the amount the Board determines to be payable, it shall order the respondent to pay the difference to the operator, and

(b) in a case where the money was paid to the Board under section 22,

(i) if the amount the Board determines to be payable exceeds the amount paid, it shall pay to the respondent the money paid to the Board and order the operator to pay the difference to the respondent, and

(ii) if the amount paid exceeds the amount the Board determines to be payable, it shall pay to the respondent the money he is entitled to and refund the difference to the operator.

(7) In determining the amount of compensation payable, the Board may fix certain amounts payable in the manner and over the periods the Board decides.

(8) Notwithstanding any other Act, if no thoroughfare exists on a road allowance prescribed under the *Surveys Act* and no disposition of the road allowance has been made to any person, an operator has

the right to use the road allowance for the purpose of gaining access to his drilling or mining operation without payment of compensation to the Crown or to the municipal corporation having the direction, control and management of the road allowance.

(9) The Board may order the operator to pay interest on any or all of the compensation payable on and from the date the right of entry order was made, at the Bank of Canada rate on the date the right of entry order was made.

26(1) The operator or any respondent named in a compensation order may appeal a compensation order made under this Act to the Court of Queen's Bench as to the amount of compensation payable or the person to whom the compensation is payable or both.

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

(a) an order of the Board to amend a compensation order in respect of the amount of compensation payable or the person to whom it is payable, and

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

(3) The party appealing shall

(a) within 30 days after the date on which he receives a copy of the compensation order, file a notice of appeal in the office of the clerk of the Court in the judicial district in which the land is situated, and

(b) not later than 10 days after the filing of the notice of appeal, serve the Board and the other parties to the compensation order appealed from or their respective solicitors with a copy of the notice of appeal.

(4) The Board, on being served with a copy of the notice of appeal, shall forthwith transmit to the clerk of the Court a certified copy of

(a) the application for the right of entry order,

(b) the right of entry order,

(c) the compensation order appealed from, and

(d) the reasons given by the Board for its decision in making the compensation order.

(5) The clerk of the Court on receiving the certified copies of the documents referred to in subsection (4) shall

(a) set down the appeal for hearing at the next sittings of the Court, and

(b) within 10 days after the appeal has been set down for hearing, notify the Board and the parties or their respective solicitors of the date of the hearing.

(6) An appeal to the Court shall be in the form of a new hearing.

(7) The Court

(a) has the power and jurisdiction of the Board in determining the amount of compensation payable and the person to whom the compensation is payable,

(b) shall determine the amount of compensation payable and the person to whom the compensation is payable,

(c) shall

(i) confirm the order of the Board, or

(ii) direct that the compensation order be varied in accordance with its judgment,

and

(d) shall make directions as to costs of the appeal in accordance with subsection (9).

(8) By leave of a judge of the Court of Appeal, any party may appeal from the judgment of the Court of Queen's Bench to the Court of Appeal and the rules and practice applicable to appeals to the Court of Appeal apply, except as to costs.

(9) The costs of an appeal under this section,

(a) when the appeal is by the operator, are payable by him on a solicitor and client basis regardless of the result of the appeal, unless the Court finds special circumstances to justify it to award costs on any other basis, or

(b) when the appeal is by the owner or occupant,

(i) if the appeal is successful, are payable by the operator on a solicitor and client basis, and

(ii) if the appeal is unsuccessful, are payable on a party and party basis to the party, if any, that the Court in its discretion may direct.

(10) A judgment of the Court of Queen's Bench or the Court of Appeal shall be served on the Board, and the Board without any further hearing shall vary its order in accordance with the judgment.

Review of
compensation
order

27(1) In this section, "rate of compensation" means the amount of compensation payable on an annual or other periodic basis under a compensation order.

(2) This section applies only to compensation orders made

(a) under this Act, or

(b) after January 1, 1972 under a former Act.

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

(4) This section shall not be construed to limit the powers of the Board under section 32 to review, rescind, amend or replace compensation orders.

(5) When a compensation order provides for the payment of compensation on an annual or other periodic basis, the operator shall give a notice to the respondent

(a) on or within 30 days after the 4th anniversary of the date the right of entry order to which the compensation order relates is made, where the right of entry order

(i) is made after the coming into force of this section, or

(ii) was made under a former Act, and the 4th anniversary of that date occurs after the coming into force of this section, or

(b) on or within 30 days after the coming into force of this section, where the right of entry order to which the compensation order relates was made under a former Act and the 4th anniversary of the date it was made occurred before the coming into force of this section.

(6) A notice under subsection (5) shall state

(a) that the operator wishes to have the rate of compensation under the order reviewed, or

(b) that the respondent has a right to have the rate of compensation under the order reviewed

with respect to the compensation years of the term subsequent to the compensation year in which the notice is given.

(7) If either the operator or the respondent indicates pursuant to a notice under subsection (5) that he wishes to have the rate of compensation reviewed, they shall enter into negotiations in good faith for that purpose.

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

(9) If the operator and the respondent cannot, by the end of the compensation year in which the notice is given, agree on a new rate of compensation, the party desiring a review may make an application to the Board for a review of the rate of compensation.

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

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

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

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

(12) The Board shall hear the application and, on conclusion of the hearing or as soon as is convenient thereafter, shall make an order confirming or varying the rate of compensation payable under the compensation order in respect of the compensation years of the term subsequent to the compensation year in which the notice under subsection (5) was given.

(13) An order under subsection (12) may be appealed as though the order were a compensation order under section 23.

(14) The operator shall give a notice to the respondent that complies with subsection (6) on or within 30 days after every 5th anniversary date after the date the notice under subsection (5) was given for as long as the compensation order is in effect, and subsections (7) to (13) apply to such a notice.

(15) If the operator fails to give a notice required by subsection (5) or (14), the respondent may, within a reasonable time after the failure, give a notice to the operator stating that he wishes to have the rate of compensation under the order reviewed, and in such a case

(a) subsections (7) to (13) apply,

(b) the Board may, notwithstanding subsection (12), make its order regarding compensation effective from the same date it would have been effective if the operator had given the notice as required by subsection (5) or (14), and

(c) the Board may make any order regarding the payment of interest that it considers appropriate.

Review of
pre-1972
compensation
orders

28(1) In this section, "rate of compensation" means the amount of compensation payable on an annual or other periodic basis under a compensation order in respect of the matters referred to in section 25(1)(c) and (d).

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

(3) For the purposes of this section, the term of a compensation order shall be computed from the date an application for review under subsection (4) is received by the Board.

(4) An operator or respondent may make application to the Board for a review of a compensation order regarding the rate of compensation under the order in respect of the years of the term subsequent to the year of the term in which the application is made, whether or not at the time of the application the compensation order contains provision for the payment of annual or other periodic compensation in respect of the matters referred to in section 25(1)(c) and (d).

- (5) The application pursuant to subsection (4) shall
 - (a) state the amount the applicant believes to be a reasonable and fair rate of compensation, and
 - (b) be accompanied by any documents or material the applicant considers to be relevant to the application.
- (6) The applicant shall give notice of the application to the other party.
- (7) On receipt of an application pursuant to subsection (4), the Board shall fix a date for the hearing of the application and notify the operator and the respondent of the date fixed.
- (8) The Board shall hear the application and, on conclusion of the hearing or as soon as is convenient thereafter, shall make an order fixing, confirming or varying the rate of compensation payable under the compensation order in respect of the years of the term subsequent to the year in which the application is made.
- (9) An order under subsection (8) may be appealed as though the order were a compensation order under section 23.
- (10) The operator shall give a notice to the respondent that complies with section 27(6) on or within 30 days after every 5th anniversary date after the date the application under subsection (4) of this section was received by the Board for as long as the compensation order is in effect, and section 27(4), (6) to (13) and (15) apply in such a case.

29(1) In this section,

- (a) “operator” means an operator who is obligated to pay compensation under a surface lease to a lessor;
 - (b) “lessor” means a party to a surface lease who is entitled to receive compensation under that surface lease;
 - (c) “rate of compensation” means the amount of compensation payable on an annual or other periodic basis under a surface lease.
- (2) This section applies only to the following classes of surface leases:
- (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;
 - (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.
- (3) When a surface lease provides for the payment of compensation on an annual or other periodic basis, the operator shall give a notice to the lessor
- (a) on or within 30 days after the 4th anniversary of the date the term of the surface lease commences where the term of the surface lease

- (i) commences after the coming into force of this section, or
- (ii) commenced before the coming into force of this section and the 4th anniversary of the date it commenced occurs after the coming into force of this section, or

(b) on or within 30 days after the coming into force of this section, where the term of the surface lease commenced before the coming into force of this section and the 4th anniversary of the date it commenced occurred before the coming into force of this section.

(4) A notice under subsection (3) shall state

- (a) that the operator wishes to have the rate of compensation under the surface lease reviewed, or
- (b) that the lessor has a right to have the rate of compensation under the surface lease reviewed

with respect to the compensation years of the term subsequent to the compensation year in which the notice is given.

(5) If either the operator or the lessor indicates pursuant to a notice under subsection (3) that he wishes to have the rate of compensation reviewed, they shall enter into negotiations in good faith for that purpose.

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

(7) If the operator and the lessor cannot, by the end of the compensation year in which the notice is given, agree on a new rate of compensation, the party desiring a review may make an application to the Board for a review of the rate of compensation.

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

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

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

(9) On receipt of an application pursuant to subsection (7), the Board shall fix a date for the hearing of the application and notify the operator and the lessor of the date fixed.

(10) The Board shall hear the application and, on conclusion of the hearing or as soon as is convenient thereafter, shall make an order

confirming or varying the rate of compensation payable under the surface lease in respect of the compensation years of the term subsequent to the compensation year in which the notice under subsection (3) was given.

(11) An order under subsection (10) may be appealed as though it were a compensation order under section 23.

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

(13) The operator shall give a notice to the lessor that complies with subsection (4) on or within 30 days after every 5th anniversary date after the date the notice under subsection (3) was given for as long as the surface lease is in effect, and subsections (5) to (12) apply to such a notice.

(14) If the operator fails to give a notice required by subsection (3) or (13), the lessor may, within a reasonable time after the failure, give a notice to the operator stating that he wishes to have the rate of compensation under the surface lease reviewed, and in such a case

(a) subsections (5) to (12) apply,

(b) the Board may, notwithstanding subsection (10), make its order regarding compensation effective from the same date it would have been effective if the operator had given the notice as required by subsection (3) or (13), and

(c) the Board may make any order regarding the payment of interest that it considers appropriate.

Review of
compensation
under older
surface leases

30(1) In this section,

(a) “operator” means an operator who is obligated to pay compensation under a surface lease to a lessor;

(b) “lessor” means a party to a surface lease who is entitled to receive compensation under that surface lease;

(c) “rate of compensation” means the amount of compensation payable on an annual or other periodic basis under a surface lease in respect of the matters referred to in section 25(1)(c) and (d).

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

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

(b) surface leases that relate to major power transmission line structures as defined or designated in the regulations, where the terms of the leases commence before January 1, 1977.

(3) For the purposes of this section, the term of a surface lease shall be computed from the date an application for review under subsection (4) is received by the Board.

(4) An operator or lessor may make application to the Board for a review of a surface lease regarding the rate of compensation under the lease in respect of the years of the term subsequent to the year of the term in which the application is made, whether or not at the time of the application the surface lease contains provision for the payment of annual or other periodic compensation in respect of the matters referred to in section 25(1)(c) and (d).

(5) The application pursuant to subsection (4) shall set forth

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

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

(6) The applicant shall give notice of the application to the other party.

(7) On receipt of an application pursuant to subsection (4), the Board shall fix a date for the hearing of the application and notify the operator and the lessor of the date fixed.

(8) The Board shall hear the application and, on conclusion of the hearing or as soon as is convenient thereafter, shall make an order fixing, confirming or varying the rate of compensation payable under the surface lease in respect of the years of the term subsequent to the year in which the application is made.

(9) An order under subsection (8) may be appealed as though the order were a compensation order under section 23.

(10) The operator shall give a notice to the lessor that complies with section 29(4) on or within 30 days after every 5th anniversary date after the date the application under subsection (4) of this section was received by the Board for as long as the surface lease is in effect, and section 29(4) to (12) and (14) apply in such a case.

Termination of
right of entry
order

31(1) If, at any time after the expiration of 2 months from the date of a right of entry order, the operator has not commenced to use or has ceased to use the surface of the land or any part of it, the operator, the owner or the occupant may request the Board for an order terminating the right of entry order as to that land or part of it.

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

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

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

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

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

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

(a) may inquire into the matter, and

(b) may, if the circumstances in the opinion of the Board so warrant, make an order terminating the right of entry order as to the land or any part of it.

Rehearings

32 The Board may

(a) rehear an application before deciding it;

(b) review, rescind, amend or replace a decision or order made by it;

(c) without a hearing, amend an order of the Board with respect to an operator or respondent named in it,

(i) when there is a change of operator, on receipt of evidence satisfactory to the Board of the change, or

(ii) when there is a change as to the owner or occupant of the land, on receipt of proof of the change or on receipt of proof of the change and a proper assignment of compensation from the owner or occupant to the new owner or occupant;

(d) notwithstanding anything in this Act, and with or without a hearing, amend a compensation order to show as a respondent a person who is neither an owner or occupant of the land concerned, and to make compensation payable to that person, when the Board is satisfied that that person is legally entitled to receive the compensation that would otherwise be payable to an owner or occupant.

Settlement of
disputes

33(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 an owner or occupant 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,
 - (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 an 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 a dispute under this section only if
- (a) the application is made in writing to the Board by a party to the dispute within 2 years 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 \$5000.
- (3) This section does not apply to a claim for compensation the amount of which may be determined by the Board under section 25(4) or to a claim for compensation for damages agreed to be paid by the operator under the terms of a surface lease.
- (4) An order under this section may be appealed by the operator or the owner or occupant as though the order were a compensation order under section 23.

Copies of orders

34 When the Board makes an order under this Act it shall, as soon as is convenient thereafter, give a copy of the order to the parties to the proceeding in which the order was made.

Certified copy as evidence

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

Filing of order in Court

36(1) A certified copy of a right of entry order may be filed in the office of the clerk of the Court of Queen's Bench.

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

- (a) the sheriff or the sheriff's bailiff, or
- (b) any other person under the written direction of the sheriff,

in the same manner as a writ of possession issued on the order of the Court of Queen's Bench.

(3) A certified copy of a compensation order may be filed in the office of the clerk of the Court of Queen's Bench.

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

Registration of
order in land
titles office

37(1) An order of the Board or a certified copy of it may be filed with the Registrar of Land Titles for the appropriate land registration district and, on payment of the proper fee, the Registrar shall register the order and endorse a memorandum of its registration on the certificate of title to the land affected.

(2) When 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 of Land Titles 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 on registration the endorsement of the memorandum on the certificate of title shall be cancelled.

Order need not
show jurisdiction

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

Recovery of
compensation

39(1) When an operator fails to pay, within 30 days following the day on which it was due, any money under a compensation order or surface lease, the person entitled to receive the money may submit to the Board evidence of the failure.

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

(3) If the Provincial Treasurer pays money to a person under subsection (2), the amount paid thereby constitutes a debt owing by the operator to the Crown.

Board exempt
from fees

40(1) Every Registrar of Land Titles and every department of the Government shall furnish without charge to the Board any certificates and certified copies of documents that the Board requests in writing.

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

Unauthorized
land use

41 Notwithstanding the *Petty Trespass Act*, a person who, in the exercise of a right of entry, enters on, uses or takes any of the surface of land in contravention of this Act

(a) shall be deemed to have committed a trespass, and

(b) is liable in damages or otherwise for the trespass to any person who is the owner or the occupant entitled to the possession of the surface of the land.

Costs

42(1) The costs of and incidental to the proceedings under this Act are in the discretion of the Board and may be fixed in any case at a sum certain or may be taxed.

(2) Without restricting the generality of subsection (1), the Board may make regulations

(a) establishing a schedule of fees and other expenses incurred by a party in connection with proceedings before the Board that may be allowed as part of that party's costs under this section, and

(b) respecting the circumstances under which the Board may allow costs with respect to matters dealt with in the schedule on a basis other than that prescribed in the schedule.

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

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

(5) When

(a) the Board makes a right of entry order, and

(b) the owner or occupant refuses to allow the operator to enter on and use the land to which the operator is entitled as described in the order,

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

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

Service of documents

43(1) Where this Act or the regulations provide for the giving or serving of an application, notice, order or any other document, the application, notice, order or other document is sufficiently given to or served on the person to whom it is directed if it is

(a) personally served on him, or

(b) sent by registered mail addressed to him at his last known address.

(2) Where an application, notice, order or any other document is to be given to or served on the Crown, it shall be given to or served on

(a) a Deputy Minister of the department charged with the administration of the land to which the application, notice, order or other document relates, and

(b) a Deputy Minister of another department, where the title to the land to which the application, notice, order or other docu-

ment relates indicates that another department has an interest in the land.

Regulations

44 The Minister may make regulations

(a) defining or designating major power transmission line structures for the purposes of section 30(2)(b);

(b) regarding matters with respect to which a surface lease must make provision, and regulating the content of such provisions;

(c) prescribing forms for the purposes of this Act;

(d) for the purposes of section 15(2)(b) respecting information that must accompany an application for a right of entry order;

(e) prescribing fees for the purposes of section 5(1)(d).

Repeal

45 *The Surface Rights Act, chapter S-27 of the Revised Statutes of Alberta 1980, is repealed.*

Coming into force

46(1) Subject to subsection (2) this Act comes into force on Proclamation.

(2) Sections 28 and 30 come into force on June 1, 1985.