

1990 BILL 32

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 32

IRRIGATION AMENDMENT ACT, 1990

MR. MUSGROVE

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 32
Mr. Musgrove

BILL 32

1990

IRRIGATION AMENDMENT ACT, 1990

(Assented to _____, 1990)

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

1 The Irrigation Act is amended by this Act.

*2 Section 1 is amended by repealing clause (a) and substituting the
following:*

(a) "Appeal Tribunal" means the Irrigation Appeal Tribunal
appointed under section 181.1;

(a.1) "assessment roll" means the assessment roll of a district;

3 The following is added after section 44:

44.1(1) If the board wishes to

(a) use a body of water or a water course or ditch that is
owned or under the administration of the board, or

(b) use any land that is owned or under the administration of
the board,

for an activity, development or business not referred to in section
44, it may apply to the Minister for approval to do so.

(2) On receipt by the Minister of an application under subsection
(1), the Lieutenant Governor in Council may grant an approval
subject to any terms or conditions that the Lieutenant Governor
in Council considers appropriate in the circumstances.

Explanatory Notes

1 This Bill will amend chapter I-11 of the Revised Statutes of Alberta 1980.

2 Section 1(a) presently reads:

1 In this Act,

(a) "assessment roll" means the assessment roll of a district;

3 Other activities.

(3) The activity, development or business for which an approval is granted shall only be carried out by

(a) a company incorporated or registered under the *Companies Act*, the *Business Corporations Act* or the *Canada Business Corporations Act* (Canada), or

(b) an association incorporated under the *Co-operative Associations Act*.

(4) When a board is granted an approval under subsection (2), the board may do one or more of the following:

(a) incorporate a company or an association referred to in subsection (3);

(b) hold shares in or be a member of a company or an association referred to in subsection (3);

(c) hold all or any portion of the debt of a company or an association referred to in subsection (3);

(d) manage or operate, in whole or part, a company or an association referred to in subsection (3);

(e) enter into agreements or arrangements with a company or an association referred to in subsection (3).

(5) Where a company or an association referred to in subsection (3) is eligible to be exempted from

(a) assessment and taxation pursuant to the *Municipal Taxation Act*, or

(b) liability to pay a fee imposed under a law of Alberta,

that exemption shall not apply to that company or association if the only reason for that exemption to apply to the company or association is based on the fact that the board of an irrigation district, directly or indirectly,

(c) owns shares in or is a member of that company or association,

(d) holds a debt of that company or association,

(e) operates or manages, in whole or in part, that company or association, or

(f) owns or has possession or control over the property on which or by which the company or association carries on its activity, development or business.

(6) The Minister may make regulations

(a) respecting the making and processing of applications under this section;

(b) governing the information that must be provided in respect of or in support of an application;

(c) prescribing conditions that must be met with respect to making an application;

(d) governing the requirements that must be met by an applicant with respect to making an application or carrying out the activity, development or business that is the subject of the application.

4 *Section 53 is amended by adding the following after subsection (5):*

(5.1) A by-law made under subsection (5) does not come into effect until it has been approved by the Council.

5 *Section 78 is amended*

(a) *in subsection (1) by striking out “subsection (2)” and substituting “subsections (2), (2.1), (2.2) and (3)”;*

(b) *by adding the following after subsection (2):*

(2.1) Notwithstanding that there is more than one water user for a parcel of land, only one vote may be cast at an election in respect of that parcel of land.

(2.2) Notwithstanding that a water user may be a water user for 2 or more parcels of land, that water user may cast no more than one vote at an election.

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

(3) Notwithstanding that an individual is entitled to cast a vote at an election as a water user, that person, if he is appointed as an agent of a corporation in accordance with subsection (1)(b), may also cast votes on behalf of the corporation.

6 *The following is added after Part 6:*

4 Section 53(5) presently reads:

(5) The board may make by-laws establishing a tariff of charges to be imposed annually in respect of benefited parcels.

5 Section 78 presently reads:

78(1) Subject to subsection (2), the only persons entitled to vote at an election of directors are

(a) an individual who is a water user of the district, and

(b) an individual, whether a water user or not, appointed as an agent for a corporation that is a water user under a written authorization from the corporation to vote on its behalf.

(2) For the purposes of an election of directors, the only water users entitled to vote are those of record in the assessment roll of the district at the time when the time for filing nominations expired.

(3) A water user is not entitled to vote more than once at an election unless he is also authorized to vote as the agent of a corporation that is a water user.

6 Reviews and appeals.

PART 6.1

REVIEWS AND APPEALS

181.1(1) The Minister shall appoint an appeal tribunal to be known as the "Irrigation Appeal Tribunal" consisting of

(a) a chairman, and

(b) not more than 4 other persons, 2 of whom must be members of the Council.

(2) The Appeal Tribunal shall hear appeals brought before it under this Part.

(3) The appointment to the Appeal Tribunal

(a) of the chairman shall be for a period of time not exceeding 5 years, and

(b) of the members other than the chairman may be

(i) for the hearing and determination of one or more specific appeals, or

(ii) for a period of time not exceeding 3 years.

(4) Where the term of office of a member of the Appeal Tribunal terminates and that person is at the time of the termination in the process of hearing or determining an appeal, that person is, for the purpose of determining that appeal, empowered to continue to perform the duties and functions of a member of the Appeal Tribunal until the appeal is concluded.

(5) A quorum of the Appeal Tribunal is 3 members of the Appeal Tribunal, one of whom must be a member of the Council.

(6) If an appeal is being held and the chairman of the Appeal Tribunal is not hearing the appeal, the chairman shall designate a member of the Appeal Tribunal who is hearing the appeal to act as the chairman for the purposes of that appeal.

(7) The Minister may prescribe the remuneration and expenses payable to the chairman and other members of the Appeal Tribunal.

181.2(1) Where a water user is affected by a by-law, resolution, direction or decision of a board, that water user may within 60 days

- (a) from the day that the by-law or resolution was passed, or
- (b) from the day that the water user is notified of the direction or decision,

request the board to review its by-law, resolution, direction or decision by serving on the board a written application for a review.

(2) On being served with an application for a review under subsection (1), the board shall in writing, within 30 days from the day on which it was served with the application, advise the person applying for the review

- (a) that the board will conduct a review, or
- (b) that the board has declined to conduct a review.

(3) If a board fails

- (a) to commence its review within 40 days from the day that it is served with the application for a review,
- (b) to complete its review and advise the person who applied for the review within 60 days from the day that the board is served with an application for a review, or such longer period of time as agreed to by the person who applied for the review, of the board's decision, or
- (c) to advise the person who applied for the review of its decision under subsection (2) within the 30-day period,

the board shall be deemed to have advised the person who applied for the review that the board has declined to conduct a review.

181.3(1) Where

- (a) a review was conducted by a board, the water user who applied for the review may appeal the decision arising out of the review to the Appeal Tribunal, or
- (b) a board declines to conduct a review, the water user who applied for the review may apply to have the Appeal Tribunal hear the matter as if a review had been conducted and no relief had been granted.

(2) An appeal must be commenced within 60 days from the day that the water user

- (a) was notified of the board's decision arising out of the

review, or

(b) was notified or deemed to have been notified that the board declined to conduct a review.

(3) An appeal shall be commenced by serving a notice of appeal on the secretary of the Council.

(4) On being served with a notice of appeal the secretary of the Council shall forthwith give

(a) the notice of appeal to the chairman of the Appeal Tribunal, and

(b) a copy of the notice of appeal to the board that made the by-law, resolution, direction or decision that is the subject of the appeal.

181.4 For the purposes of an appeal before the Appeal Tribunal the following applies:

(a) a notice of appeal shall set forth

(i) the particulars of the matter being appealed,

(ii) the name and address of the party applying to have the appeal, and

(iii) the name of the board that made the by-law, resolution, direction or decision that is the subject of the appeal;

(b) written notice of the time and place of the appeal shall be sent by or on behalf of the Appeal Tribunal

(i) to the appellant, and

(ii) to the board;

(c) an appeal shall be heard and a decision made within 60 days from the day that the Appeal Tribunal received the notice of appeal;

(d) the granting and duration of an adjournment is in the sole discretion of the Appeal Tribunal;

(e) the time limit prescribed in clause (c) does not run during a period of adjournment;

(f) a period of adjournment shall not exceed 45 days;

- (g) the chairman of the Appeal Tribunal has the same power as is vested in the Court of Queen's Bench for the trial of civil actions
- (i) to summon and enforce the attendance of witnesses,
 - (ii) to compel witnesses to give evidence on oath or otherwise, and
 - (iii) to compel witnesses to produce any record, object or thing that relates to the matter being heard;
- (h) the parties to an appeal have a right to attend all hearings held in respect of the appeal;
- (i) the Appeal Tribunal shall receive the evidence that it considers relevant to the matter being heard;
- (j) a person appearing before the Appeal Tribunal may be represented by legal counsel;
- (k) the parties appearing before the Appeal Tribunal shall be given adequate opportunity to make representations, present evidence and cross-examine witnesses, if any;
- (l) the Appeal Tribunal may take evidence under oath;
- (m) any member of the Appeal Tribunal may administer oaths for the purpose of taking evidence;
- (n) the rules of evidence applicable to judicial proceedings do not apply;
- (o) all oral evidence received shall be taken down in writing or recorded by electronic means;
- (p) all the evidence taken down in writing or recorded by electronic means and all documentary evidence and things received in evidence at a hearing form the record of the proceeding;
- (q) if a party to an appeal fails to appear for the hearing within one hour from the time set forth in the notice given under clause (b), the appeal may be dismissed or the hearing conducted and determined in that person's absence as the Appeal Tribunal considers proper in the circumstances;
- (r) at any time after a person applies to have an appeal, the Appeal Tribunal may make any interim order that it considers advisable in the circumstances pending the determination of the appeal;

(s) in determining an appeal, the Appeal Tribunal may by order,

(i) in the case of an appeal arising out of a decision given pursuant to a review,

(A) confirm, vary or rescind the decision of the board, or

(B) refer the matter back to the board to reconsider its decision subject to any recommendations that the Appeal Tribunal considers appropriate,

or

(ii) in the case where a board declined to conduct a review, make any decision that the board could have made in determining a review;

(t) notice of the decision made pursuant to an appeal and any written reasons respecting the decision shall be sent promptly to

(i) the parties to the appeal, and

(ii) the board;

(u) a decision of the majority of the members of the Appeal Tribunal is the decision of the Appeal Tribunal and if there is not a majority, the decision of the chairman is the decision of the Appeal Tribunal;

(v) any member of the Appeal Tribunal who does not concur with the decision of the Appeal Tribunal, or the reasons for the decision, may render a minority report;

(w) the Appeal Tribunal may publish its decision in any manner that it considers appropriate;

(x) notwithstanding clauses (b), (i) and (l), with the consent of the parties to an appeal the consideration of the appeal may be conducted without a hearing being held;

(y) where an appeal is conducted under clause (x),

(i) all matters concerning the appeal may be submitted in writing, or as otherwise directed by the Appeal Tribunal, to the Appeal Tribunal, and

(ii) the process under which the appeal is considered and determined by the Appeal Tribunal shall be deemed to be a hearing;

(z) notwithstanding clause (c), if a matter is conducted under clause (x), the decision of the Appeal Tribunal shall be made within 30 days from the day that the parties to the appeal consented to the matter being conducted under clause (x);

(aa) the provisions of the Alberta Rules of Court relating to the payment of conduct money or witness fees apply to matters heard under this Act.

7 *Section 183 is amended by striking out “\$200” and substituting “\$2000”.*

8 *Section 184 is amended*

(a) by striking out “\$200” and substituting “\$2000”;

(b) by striking out “one year” and substituting “60 days”.

9 *Section 185(1) is amended by striking out “\$100” and substituting “\$2000”.*

7 Section 183 presently reads:

183 A person who interferes with, molests or hinders in his work a person lawfully engaged in carrying out any of the provisions of this Act is guilty of an offence and liable to a fine not exceeding \$200 or to imprisonment for a term not exceeding 60 days or to both fine and imprisonment.

8 Section 184 presently reads:

184 A person who carelessly or wilfully or without authority

(a) tampers with any irrigation works of a board,

(b) takes or diverts water from any of the irrigation works of a board, or

(c) does anything that interferes or may interfere in any way with the flow of water in, into, through or from the irrigation works of a board,

is guilty of an offence and liable to a fine not exceeding \$200 or to imprisonment for a term not exceeding one year or to both fine and imprisonment.

9 Section 185(1) presently reads:

185(1) A person who carelessly or wilfully

(a) obstructs or deposits any material in an irrigation work, or

(b) breaks, cuts or otherwise injures any irrigation work,

is guilty of an offence and liable to a fine not exceeding \$100 and in default of payment to imprisonment for a term not exceeding 60 days.

10 Section 186 is repealed and the following is substituted:

186 A person who

(a) deposits or causes or allows to be deposited along the bank of any irrigation work of a board,

(b) throws into any irrigation work of a board, or

(c) allows to be washed or flushed into an irrigation work of a board,

any contaminated matter, filth or impure or deleterious matter or substance of any kind is guilty of an offence and liable to a fine not exceeding \$2000 or to imprisonment for a term not exceeding 60 days or to both fine and imprisonment.

11 Section 187 is amended by striking out “\$100” and substituting “\$2000”.

12 Section 188(2) is amended by striking out “\$200” and substituting “\$2000”.

10 Section 186 presently reads:

186 A person who

(a) deposits or causes or allows to be deposited along the bank of any irrigation work of a board, or

(b) throws into any irrigation work of a board,

any filthy, impure or deleterious matter or substance of any kind is guilty of an offence and liable to a fine not exceeding \$200 or to imprisonment for a term not exceeding 60 days or to both fine and imprisonment.

11 Section 187 presently reads:

187 A person who

(a) makes a fraudulent assessment under Part 4,

(b) wilfully or fraudulently inserts in the assessment roll, a collector's roll or an enforcement return the name of a person which should not be entered in it,

(c) wilfully or fraudulently omits the name of a person in the assessment roll, a collector's roll or an enforcement return which should be inserted in it, or

(d) wilfully neglects any duty required of him by this Act,

is guilty of an offence and liable to a fine of not more than \$100.

12 Section 188 presently reads:

188(1) A person in actual occupation of land to which water is delivered or made available by a board is under a duty to use the water with reasonable care and to prevent the water from causing injury or damage to any person or property.

(2) A person who, being under a duty by virtue of subsection (1), fails without lawful excuse to perform that duty is guilty of an offence and liable to a fine not exceeding \$200 or to imprisonment for a term not exceeding 60 days or to both fine and imprisonment.

(3) This section does not affect any civil right or remedy that any person has in respect of the failure of any person to perform a duty imposed on him by subsection (1).

13 The following is added after section 192:

193 Except as provided for in this Act, any by-law, regulation, tariff of charges, domestic water charge, irrigation rate, special rate or other rate, fee or charge that is made, imposed, set, approved or otherwise established under this Act does not need to be approved pursuant to the *Water Resources Act* or filed under the *Water Resources Act* before it comes into force.

14(1) Any by-law, regulation, tariff of charges, domestic water charge, irrigation rate, special rate or other rate, fee or charge that was made, imposed, set, approved or otherwise established under the Irrigation Act prior to the coming into force of section 13 of this Act is deemed to have been approved for the purposes of the Water Resources Act and filed under the Water Resources Act at the time that it was made, imposed, set, approved or established under the Irrigation Act.

(2) Subsection (1) does not apply to the parties in the Court of Queen's Bench action having the style of cause The Directors of the Western Irrigation District vs Karl H. H. Trobst et al with respect to the tariff of charges established by the board of the Western Irrigation District for the year 1988 and that was intended to apply to the land that was the subject of that action.

13 Exclusion from Water Resources Act.

14 Transitional.