

1990 BILL 52

Second Session, 22nd Legislature, 39 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 52

NATURAL RESOURCES CONSERVATION BOARD ACT

THE MINISTER OF ENERGY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 52

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1990

NATURAL RESOURCES CONSERVATION BOARD ACT

(Assented to _____, 1990)

Table of Contents

Definitions	1
Purpose of Act	2
Crown is bound	3
Reviewable projects	4
Application for review	5
Hearings, inquiries and other proceedings	6
Power of Board on inquiry	7
Hearings	8
Approval	9
Funding for interveners	10
Establishment of Board	11
Membership of Board	12
Chairman and Vice-chairman	13
Remuneration and expenses	14
Acting Board members	15
Prohibitions as to interests of Board members	16
Divisions of the Board	17
Absent Board members	18
Protection from action	19
Co-operative reviews	20
Powers of the Board	21
Services of technical specialists	22
Restraining order	23
Rehearing	24
Delegation of powers	25
Personnel	26
Meetings	27
Rules of practice	28
Coming into force of order	29
Appeal	30
Exclusion of prerogative writs	31
Signing of Board documents	32
Proof of Board orders	33
Records as evidence	34
Protection re evidence	35

Witnesses at hearing	36
Notices	37
Costs of advertising notice	38
Services of Government departments	39
Fiscal year	40
Board funds and expenditures	41
Disposition of money collected	42
Regulations	43
Coming into force	44

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 Natural Resources Conservation Board established under section 11;
- (b) “Chairman” means the Chairman of the Board;
- (c) “environmental impact assessment” means a report containing an assessment of the environmental impact ordered under section 8(1) of the *Land Surface Conservation and Reclamation Act*;
- (d) “forest industry project” means a project
 - (i) to construct a facility to be used to manufacture pulp, paper, newsprint or recycled fibre;
 - (ii) to construct a facility to be used to produce lumber, veneer, panelboard or treated wood for which an environmental impact assessment has been ordered;
- (e) “metallic or quarriable mineral project” means a project to construct a mine or quarry or to work and recover any metallic mineral or quarriable mineral as defined in the *Mines and Minerals Act* and the regulations under that Act for which an environmental impact assessment has been ordered;
- (f) “natural resource” means the subsurface, land surface, water, fauna and flora resources of Alberta that normally occur in a natural state, but does not include an energy resource as defined in the *Energy Resources Conservation Act*;
- (g) “recreational or tourism project” means a project to construct one or more facilities for recreational or tourism purposes for which an environmental impact assessment has been ordered;

(h) “reviewable project” means a project referred to in section 4;

(i) “water management project” means

(i) a project to construct a barrier that is of a height exceeding the height prescribed in the regulations to store water or water containing any other substance or to control the level of a body of water or water containing any other substance;

(ii) a project to construct a new canal capable of conducting an amount exceeding the amount prescribed in the regulations of water or water containing any other substance;

(iii) a project capable of diverting an amount exceeding the amount prescribed in the regulations of water or water containing any other substance.

Purpose of Act **2** The purpose of this Act is

(a) to provide an impartial process for the review of projects that will or may affect the natural resources of Alberta, and

(b) to provide for those reviews to be conducted having regard to the social, economic and environmental effects of the projects.

Crown is bound **3** The Crown is bound by this Act.

Reviewable projects **4** The following are subject to a review in accordance with this Act and the regulations:

(a) forest industry projects;

(b) recreational or tourism projects;

(c) metallic or quarriable mineral projects;

(d) water management projects;

(e) any other type of project prescribed in the regulations;

(f) specific projects prescribed by the Lieutenant Governor in Council.

Application for review **5(1)** Notwithstanding any licence, permit, approval or other authorization granted or issued under an Act, regulation or by-law or otherwise under any other law, no person may commence a

reviewable project unless the Board, on application, has granted an approval under this Act in respect of the project.

(2) The Board may, before or after an application is made, order that no licence, permit, approval or other authorization may be issued or granted

- (a) under any other enactment,
- (b) by a Government department,
- (c) by a municipality, or
- (d) by any agency of the Government or a municipality

to any person with respect to a reviewable project until such time as an approval in respect of the project has been granted under this Act.

Hearings,
inquiries and
other
proceedings

6 In conducting a review under this Act, the Board may

- (a) make inquiries and investigations and prepare studies and reports,
- (b) hold hearings or other proceedings, and
- (c) do anything that it considers necessary to carry out the purpose of this Act.

Power of Board
on inquiry

7 For the purpose of any hearing, investigation, inquiry or other proceeding under this Act, the Board and any member of it and any other person authorized by the Board to conduct a hearing, inquiry, investigation or other proceeding has all the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*.

Hearings

8(1) The Board shall give persons who may be directly affected, and may give any other persons it considers necessary,

- (a) a reasonable opportunity of learning the facts bearing on an application that are presented to the Board by the applicant and other parties to the application,
- (b) a reasonable opportunity to furnish evidence relevant to an application or in contradiction or explanation of the facts or information in the application,
- (c) if the person will not have a fair opportunity to contradict or explain the facts or allegations in an application without

cross-examination of the person presenting the application, an opportunity of cross-examination in the presence of the Board, and

(d) an adequate opportunity of making representations by way of argument to the Board.

(2) When a person is entitled to make representations to the Board under subsection (1), the Board, unless a hearing is to be held, is not required to afford an opportunity to the person

(a) to make oral representations, or

(b) to be represented by counsel,

if the Board affords the person an adequate opportunity to make representations in writing.

Approval

9(1) The Board after conducting a review of a reviewable project under this Act may, having regard to the purpose of this Act,

(a) with the prior authorization of the Lieutenant Governor in Council, grant an approval on any terms and conditions that the Board considers appropriate,

(b) refuse to grant an approval,

(c) defer consideration of the application on any terms and conditions that the Board may prescribe, or

(d) make any other disposition of the application that the Board considers to be appropriate.

(2) An authorization of the Lieutenant Governor in Council is subject to any terms and conditions prescribed by the Lieutenant Governor in Council.

(3) An approval granted under this Act does not dispense with the requirement to obtain any other licence, permit, approval or other authorization in respect of the reviewable project.

Funding for
interveners

10(1) Individuals or groups of individuals who, in the opinion of the Board, are or may be directly affected by a reviewable project are eligible to apply for funding under this section.

(2) On the claim of a person eligible under subsection (1) or on the Board's own motion, the Board may, subject to terms and conditions it considers appropriate, make an award of costs to the person to assist in the preparation and presentation of an intervention at a hearing of the Board.

(3) Where the Board makes an award of costs under subsection (2), it may determine

- (a) the amount of costs that shall be paid, and
- (b) the persons liable to pay the award of costs.

(4) A person to whom an award is made or a person who is determined by the Board to be liable to pay the costs awarded may request that the Board conduct a review of the award of costs.

(5) Where the Board conducts a review of the award of costs, the Board may

- (a) vary the award of costs,
- (b) refuse to vary the award of costs, or
- (c) deny the award of costs.

(6) If in the Board's opinion it is reasonable to do so, the Board may make an advance of costs to a person applying under this section, and it may direct any terms and conditions for the payment or repayment of the advance by any party to the hearing that the Board considers appropriate.

(7) The Board may make regulations respecting

- (a) the awarding of costs,
- (b) the making of advances of costs,
- (c) the liability of persons to pay costs, and
- (d) the review of costs awarded.

(8) A certified copy of an award of costs made under this section may be filed in the office of the clerk of the Court of Queen's Bench and, on filing and on payment of any fees prescribed by law, the order 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.

**Establishment
of Board**

11 The Natural Resources Conservation Board is established as a corporation consisting of its members.

**Membership of
Board**

12(1) The Board shall consist of at least 3 members but not more than 5 members appointed by the Lieutenant Governor in Council, one of whom shall be designated by the Lieutenant Governor in Council as Chairman and another as Vice-chairman.

(2) Each member of the Board holds office during good behaviour for a term of 5 years from the date of his appointment and thereafter during the pleasure of the Lieutenant Governor in Council.

(3) Any member of the Board may be removed from office by the Lieutenant Governor in Council at any time during the 5-year term referred to in subsection (2) on the address of the Legislative Assembly.

Chairman and
Vice-chairman

13(1) The Chairman may act for, and in the name of, the Board in the execution, performance and carrying out of any act, matter or thing that is within the power of the Board, subject only to any express directions or decisions given or made by a resolution of the Board.

(2) At any time during which the office of Chairman is vacant or the Chairman is absent or is for any reason incapable of exercising his powers or performing his duties as Chairman, or on the direction of the Chairman, a Vice-chairman has and may exercise and perform the powers and duties conferred or imposed on the Chairman by this Act and the regulations.

(3) At any time during which the office of Vice-chairman is vacant or the Vice-chairman is absent or is for any reason incapable of exercising his powers or performing his duties as Vice-chairman, the Chairman may appoint a Board member as acting Vice-chairman.

(4) The acting Vice-chairman has and may exercise and perform the powers and duties conferred or imposed on the Vice-chairman by this Act and the regulations.

Remuneration
and expenses

14 The members of the Board shall receive

(a) remuneration, and

(b) travelling and other expenses while absent from their place of residence in the course of exercising their powers or performing their duties as members of the Board,

in accordance with an order of the Lieutenant Governor in Council.

Acting Board
members

15(1) The Lieutenant Governor in Council may from time to time nominate one or more persons from among whom acting members of the Board may be selected.

(2) When in the opinion of the Chairman 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 (1) as an acting member for a period of time, during any circumstance or for the purpose of any matter before the Board.

(3) An acting member, during the period, under the circumstances or for the purpose for which he is named an acting member, has and may exercise and perform the powers and duties of a member of the Board.

(4) Section 12(1) does not prevent the enlargement of the Board to more than the maximum permitted by the naming of one or more acting members in accordance with this section.

Prohibitions as to interests of Board members

16(1) Where a member has a direct or indirect monetary interest of any description in any reviewable project that is the subject of an application under this Act, the member may not participate in any hearing, inquiry, investigation or other proceeding relating to the project.

(2) No employee of or person engaged by the Board shall have a direct or indirect monetary interest of a kind described in subsection (1) other than

(a) shares of a corporation that are regularly quoted and dealt in on a recognized stock exchange, and

(b) any shares, bonds, debentures, debenture stock or other securities of a corporation that are exempted from the operation of this subsection by order of the Lieutenant Governor in Council.

Divisions of the Board

17(1) The Chairman may designate any 3 or more members of the Board to sit as a division of the Board and may direct that division to conduct any hearing, inquiry, investigation or other proceeding that the Board could conduct under this Act.

(2) A majority of the members constitutes a quorum at any hearing, inquiry, investigation or other proceeding held by a division of the Board.

(3) Any decision or other action made or taken at a hearing, inquiry, investigation or other proceeding held by a division of the Board is the decision or action of the Board.

(4) A division of the Board has and may exercise and perform the powers and duties of the Board under this Act and the regulations with respect to the hearing, inquiry, investigation or other proceeding it is directed to conduct, and for that purpose any reference in this Act and the regulations to the Board is deemed to be also a reference to a division of the Board.

(5) The Chairman may designate a member of a division of the Board to preside at any sitting of the division at which the Chairman is not present.

(6) Two or more divisions of the Board may sit at the same time.

Absent Board members

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

Protection from action

19 No action or proceeding may be brought against the Board or a member of the Board or an officer or employee of the Board in respect of any act or thing done purportedly under this Act, the regulations or an order or direction of the Board.

Co-operative reviews

20(1) Where the Board is of the opinion that it would be expedient or in the public interest to do so, the Board may conduct a review under this Act or participate in other proceedings in respect of matters relating to the purpose of this Act jointly or in conjunction with another board, commission or other body constituted in Alberta.

(2) Subject to the approval of the Lieutenant Governor in Council, the Board may enter into any agreements it considers desirable with the Government of Canada or an agency of it relating to the reviewable project or with any government of a jurisdiction outside Alberta or an agency of that government, in respect of the effects of the reviewable project in that jurisdiction.

(3) Pursuant to an agreement under subsection (2), the Board may hold proceedings jointly or in conjunction with a government or agency referred to in that subsection.

(4) A proceeding referred to in subsection (3) may be held outside Alberta.

Powers of the Board

21 The Board

(a) may, with the approval of the Lieutenant Governor in Council, take any action and make any orders and directions that the Board considers necessary to effect the purpose of this Act that are not otherwise specifically authorized by this Act, and

(b) may do all things that are necessary for or incidental to the exercise or performance of any power or duty conferred or imposed on it by this Act or the regulations.

Services of technical specialists

22 Subject to the approval of the Lieutenant Governor in Council, the Board may from time to time appoint one or more persons having special, technical or other knowledge

(a) to sit with the Board to hear and consider any matter before it, or

(b) to inquire into and report to the Board in respect of any matter before it.

Restraining order

23 If this Act or the regulations authorize the Board to make or issue an order or direction and a person commences, undertakes or continues an activity

(a) for which that order or direction is required but has not been obtained, or

(b) that exceeds or does not comply with an order or direction made or issued by the Board,

the Board, in addition to any other action or proceeding it may be authorized to take, may apply to the Court of Queen's Bench for an order restraining that person and his employees or agents from continuing the activity until that person has obtained the required order or direction.

Rehearing

24 The Board may review, rescind, change, alter or vary an order or direction made by it, or may rehear an application for review before deciding it.

Delegation of powers

25 The Board may delegate any of the powers and duties conferred or imposed on it by this Act or the regulations to designated officials or employees of the Board unless the regulations prohibit the delegation.

Personnel

26 The Board may

(a) engage any employees it considers necessary for the proper and convenient transaction of its business, and

(b) prescribe the duties, conditions of employment and remuneration of persons employed by it.

Meetings

27(1) Meetings of the Board shall be held at the call of the Chairman at the place or places and on the notice that the Chairman considers appropriate.

(2) The Chairman shall call a meeting of the Board immediately on being requested in writing to do so by 2 members of the Board.

(3) A majority of the members of the Board constitutes a quorum at a hearing, inquiry, investigation or other proceeding held by the Board.

Rules of practice

28(1) The Board may make rules of practice governing its procedure and hearings.

(2) The Board in the conduct of its hearings is not bound by the rules of law concerning evidence applicable to judicial proceedings.

Coming into force of order

29(1) The Board may provide in an order or direction that the order or direction or a portion or provision of it is to come into force

(a) at a future fixed time,

(b) on the happening of a contingency, event or condition specified in the order or direction, or

(c) on the performance to the satisfaction of the Board or of a person named by it of any terms that the Board imposes on any interested party.

(2) The Board may direct that the whole or a portion of the order or direction is to have force for a limited time or until the happening of a specified event.

(3) When any work, act, matter or thing is by an order or direction of the Board required to be done, performed or completed within a specified time, the Board, if it thinks it proper to do so, may extend the time specified.

Appeal

30(1) Subject to subsection (2), an appeal lies from the Board to the Court of Appeal on a question of jurisdiction or on a question of law.

(2) Leave to appeal shall be obtained from a judge of the Court of Appeal on application made within one month after the making of the order, decision or direction sought to be appealed from, or within a further time that the judge under special circumstances allows.

(3) Notice of the appeal shall be given to the parties affected by the appeal and to the Board.

(4) An order or direction of the Board takes effect at the time prescribed by the order or direction, and its operation is not suspended by any appeal to the Court of Appeal, or by any further appeal, but the Board may if it thinks fit suspend the operation of its order, when appealed from, until the decision of the Court of Appeal is rendered or the time for appeal to the Supreme Court of Canada has expired or any appeal is abandoned.

(5) Within 30 days after leave to appeal has been obtained, the Board shall forward to the Registrar of the Court the transcript and record of the hearing, its findings and reasons for the order or direction.

(6) On receipt of the transcript, record, findings and reasons from the Board, the Registrar shall set the appeal down for hearing at the next sittings that will commence at least 2 weeks after the appeal is so set down, and after the appeal has been set down, the party appealing shall give to the parties affected by the appeal or the solicitors by whom those persons were represented before the Board, and to the Board, notice in writing that the appeal has been so set down for hearing, and the appeal shall be heard by the Court of Appeal as speedily as practicable.

(7) On the hearing of the appeal, no evidence other than the evidence that was submitted to the Board on the making of the order or direction appealed from shall be admitted, and the Court of Appeal shall proceed either to confirm, vary or vacate the order or direction appealed from, and in the last event shall refer the matter back to the Board for further consideration and redetermination.

(8) On the hearing of the appeal, the Court may draw all inferences that are not inconsistent with the facts expressly found by the Board and that are necessary for determining the question of jurisdiction or of law, as the case may be, and shall certify its opinion to the Board.

(9) The Board is entitled to be heard by counsel or otherwise on the argument of an appeal.

(10) Neither the Board nor any member of the Board is in any case liable to costs by reason or in respect of an appeal or application.

(11) If the order or direction is set aside or a variation is directed, the matter shall be reconsidered and redetermined by the Board, and the Board shall vary or rescind its order in accordance with the judgment of the Court of Appeal or the Supreme Court of Canada.

Exclusion of prerogative writs	31 Subject to section 30, every action, order, ruling or decision of the Board or the person exercising the powers or performing the duties of the Board is final and shall not be questioned, reviewed or restrained by any proceeding in the nature of an application for judicial review or otherwise in any court.
Signing of Board documents	32 Subject to section 25, the Chairman, the Vice-chairman or a Board member shall sign all notices, orders, directions or other documents issued by the Board.
Proof of Board orders	<p>33(1) A notice, order, direction or other document purporting to be issued by authority of the Board, when signed by the Chairman, the Vice-chairman or Board member, shall be admitted in evidence to prove the contents of it without any proof of the signature or of the authority of the Chairman, Vice-chairman or Board member, as the case may be, to sign the document or of his appointment.</p> <p>(2) A copy of a notice, order, direction or other document purporting to be issued by authority of the Board, when certified as a true copy by the Board's solicitor, shall be admitted in evidence to prove the order, direction or other document and its contents without any proof of the authority of the member by whom the notice, order, direction or document purports to be signed and without any proof of the signature or of the authority of the solicitor or of his appointment.</p> <p>(3) An order of the Board need not show on its face that any proceeding was held or notice was given, or that any circumstances necessary to give it jurisdiction to make the order existed.</p>
Records as evidence	<p>34(1) The minutes, accounts and records of the Board are admissible in evidence by the production of them by a member of the Board or by any employee of the Board who is authorized by the Board to produce them.</p> <p>(2) A copy of any record, document, plan, book, paper, minute or account belonging to or deposited with the Board and attested under the signature of a member of the Board or an employee authorized for the purpose by the Board is admissible in evidence in all proceedings in which the original record, document, plan, book, paper, minute or account would be evidence.</p>
Protection re evidence	35(1) No person shall be excused from testifying or from producing, when ordered to do so by the Board, any book, document or paper in a hearing, investigation, inquiry or other proceeding by the Board on the ground that the testimony, book, document or paper might tend to incriminate him or subject him to penalty or forfeiture.

(2) A witness who testifies or produces documents at a hearing, investigation, inquiry or other proceeding under subsection (1) has the right not to have any incriminating evidence so given used to incriminate that witness in any other proceedings, except in a prosecution for or proceedings in respect of perjury or the giving of contradictory evidence.

Witnesses at hearing

36(1) In the case of the failure or refusal by a person to comply with a notice to attend issued by the Board, or to produce a book, document or paper when ordered to do so by the Board, the Court of Queen's Bench, on the application of the Board, may issue a bench warrant requiring the attendance of the witness before the Board, or the production by him of the book, document or paper.

(2) In the case of the refusal by a witness to give evidence or to answer as to any matter regarding which he is questioned before the Board, or to produce a book, document or paper when ordered to do so by the Board, the Court of Queen's Bench, on the application of the Board, may commit the witness for contempt.

Notices

37(1) Any notice with regard to matters before or to come before the Board that is required or authorized to be given in writing

(a) by the Board, may be signed by any member of the Board or the solicitor of the Board,

(b) by a person appointed by the Board, may be signed by that person, or

(c) by any other person, may be signed by that person or his authorized agent or solicitor.

(2) The Board shall give not less than 30 days' notice of a hearing, inquiry, investigation or other proceeding by the Board that the Board considers necessary.

(3) Any notice under this Act may be given by mail, newspaper publication or any other means the Board considers proper.

Costs of advertising notice

38 When the Board publishes a notice in connection with an application, hearing, inquiry, investigation or other proceeding by the Board, it may order that the cost of advertising be paid in whole or in part by any party to the hearing, inquiry, investigation or proceeding.

Services of Government departments

39(1) For the purposes of exercising the powers and performing the duties imposed or conferred on it by or under this Act and the regulations, the Board may avail itself of the services of any officer or other employee of any board, commission or department of the Government.

(2) Each officer or employee of any board, commission or department of the Government shall give to the Board the service, assistance and information that he is able to give and the Board requires, subject to the approval of the board or commission or the Minister in charge of the administration of the department in which the officer or employee is employed.

Fiscal year **40** The fiscal year of the Board is the period commencing on April 1 in one year and ending on March 31 in the following year.

Board funds and expenditures **41(1)** All salaries, expenses and expenditures incurred by the Board in the performance of its powers and duties shall be charged against money provided in accordance with this section.

(2) In each fiscal year, funds equivalent to the estimated net expenditures to be incurred in the year by the Board shall be provided from money voted by the Legislature for that purpose, and if the vote is insufficient, from the General Revenue Fund.

(3) The Provincial Treasurer shall advance to the Board the funds provided by vote and referred to in subsection (2) in instalments as soon after the first days of April and July as it is convenient to do so, and each instalment shall be in an amount that the Provincial Treasurer in consultation with the Board decides.

(4) In preparing its estimate of net expenditures to be incurred, the Board shall have regard to its estimate of any deficit or surplus existing at the end of each fiscal year from funds for such expenditures received from the Government in previous years.

Disposition of money collected **42(1)** Any money collected by the Board is the property of the Board.

(2) The Board may recover any money payable to it by an action in debt.

Regulations **43** The Lieutenant Governor in Council may make regulations

(a) prescribing types of projects that are reviewable projects;

(b) prescribing the height of a barrier for the purpose of section 1(i)(i);

(c) prescribing the amount of water or water containing any other substance capable of being conducted for the purpose of section 1(i)(ii);

(d) prescribing the amount of water or water containing any other substance capable of being diverted for the purpose of section 1(i)(iii);

(e) respecting the information to be included in or to accompany any application to the Board and by whom the information is to be given in respect of a reviewable project;

(f) respecting the making of an application for a review under this Act;

(g) prohibiting the delegation of any powers and duties of the Board under section 25;

(h) prescribing fees payable in respect of reviewable projects required to be reviewed under this Act.

Coming into
force

44 *This Act comes into force on Proclamation.*