

1990 BILL 239

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 239

ENVIRONMENTAL IMPACT ASSESSMENT ACT

MR. McINNIS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 239
Mr. McInnis

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1990

ENVIRONMENTAL IMPACT ASSESSMENT ACT

(Assented to _____, 1990)

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

Definitions

1 In this Act,

(a) "assessment" means an environmental impact assessment
required under section 8;

(b) "contaminant" means any substance, whether gaseous,
liquid or solid, that

(i) is foreign to or significantly in excess of the natural
constituents of the environment; or

(ii) affects the natural, physical in excess of the natural
constituents of the environment; or

and that is or may be injurious to the health or safety of
persons or injurious or damaging to property or to plant or
animal life;

(c) "council" means the Environment Council of Alberta;

(d) "development" means any project, operation or activity or
any alteration or expansion of any project, operation or activity
including government programs and policies which is likely to

(i) have an effect on any unique, rare or endangered
species or feature of the environment;

(ii) significantly reduce the quality of the air or water;

(iii) significantly affect the aesthetic value of the landscape;

(iv) involve the movement, temporarily or permanently of large numbers of people to wilderness areas;

(v) require a significant use of energy to construct or operate;

(vi) substantially utilize any natural resource and in so doing pre-empt the use, or potential use, of a significant part of that resource for any other purpose by another person;

(vii) either in the construction of or subsequent operation of the proposed development the emission of any pollutants or creates by-products, residual or waste products which require handling and disposal in a manner that is not regulated by any other Act or regulation;

(viii) raise public interest and concern that it may cause widespread environmental changes;

(ix) involve new technology concerned with resource utilization, that may cause significant environmental change; or

(x) have a significant impact on the environment or necessitate or be dependant on a further development which is likely to have a significant impact on the environment;

(e) "environment" means

(i) all layers of the ecosphere, specifically the air, land and water, including surface and groundwater;

(ii) plant and animal life, including man; and

(iii) the social economic and cultural conditions including archaeological and historic sites that influence the life of man or a community in so far as they are related to the matters described in subclauses (i) and (ii);

(f) "environment officer" means a person appointed pursuant to section 7(g) of the *Department of the Environment Act* and specifically charged with such duties relating to the enforcement of this Act;

- (g) "Minister" means the Minister of the Environment;
- (h) "ministerial approval" means the written approval of the Minister given pursuant to section 15(1) or section 16(2);
- (i) "municipality" means a municipality as defined in the *Municipal Government Act*;
- (j) "person" includes a body corporate or other legal entity, an incorporated association, partnership, or other organization, a municipality, the Crown, a Crown corporation or an agency of the Crown;
- (k) "pollutant" means a substance, including a contaminant, which result, or is likely to result, in pollution;
- (l) "pollution" means alteration of physical, chemical, biological or aesthetic properties of the environment, including the addition of any contaminant, that
 - (i) will render the environment harmful to public health;
 - (ii) is unsafe or harmful to domestic, municipal, industrial, agricultural, recreational or other lawful uses of the environment; or
 - (iii) is harmful to plant or animal life;
- (m) "proponent" means a person who proposes or desires to undertake a development;
- (n) "statement" means an environmental impact statement required under section 8.

Application of Act 2 This Act binds the Crown.

Purpose 3 The purposes of this Act are

(1) (a) to ensure that development projects, programs and policies are properly assessed so as to identify and analyze potential environmental impacts and the significance of such impacts of a development, analyze the acceptability of developments with regard to the goal of conservation of the environment; and

(b) to ensure that the views of those members of the public likely to be affected by a development are properly considered.

(2) Without limiting the generality of subsection (1) each environmental impact assessment shall

(a) describe fully all potential environmental impacts of a development;

(b) analyze the significance of each potential environmental impact of a development;

(c) review all alternative proposals to negotiate environmental impacts and identify which environmental impacts cannot be negotiated;

(d) consider alternatives to the development and the impact of these alternatives;

(e) review plans to monitor environmental impacts of a development with the future and review contingency plans to respond to unpredicted or emergency environmental impacts;

(f) establish an audit process of the environmental impact assessment monitor its ability to predict and respond to environmental impacts.

Powers of Minister

4(1) The Minister may investigate any project, operation or activity or any alteration or expansion of it and if he has grounds to believe that it is assessable within the meaning of this Act, he shall order that it is a development and shall advise the proponent of the grounds.

(2) For the purpose of administering and enforcing this Act and the regulations, the Minister may

(a) conduct research with respect to the environment, assessments or statements;

(b) conduct studies of the quality of the environment, or with respect to environmental planning, assessments or statements;

(c) gather, publish and disseminate information with respect to the environment, assessments or statements;

(d) appoint committees to perform any advisory functions that he considers necessary;

(e) make any examinations, tests or other arrangements that he considers necessary for the operation of this Act;

(f) with the approval of the Lieutenant Governor in Council,

enter into agreements with any government or person with respect to the environment, assessments or statements.

Grants for research

5(1) Subject to subsection (2), the Minister shall establish a revolving fund into which shall be paid any money appropriated to the purpose by the Legislature, and out of which the Minister may make grants to a person who meets at least one of the criteria set out in subsection (3) for research and for the preparation and presentation of briefs related to assessments or statements.

(2) The proponent of the development program policy under review shall reimburse the revolving fund for any grants paid out under this section.

(3) A person is eligible for compensation who

(a) has a clearly ascertainable interest in the environmental impact of a development; or

(b) has an established record of concern for the interest it seeks to represent; or

(c) has an interest that is not otherwise repressed;

(d) has an interest or representation which is necessary to the process for a fair assessment.

6 All of the information related to a development, policy or program under this Act is presumed to be public unless it can be shown to be both proprietary and without environmental impact.

Ministerial approval required

7(1) Notwithstanding the requirements of an Act, regulation or by-law relating to any licence, permit, approval, permission or consent, a proponent shall require approval under this Act to proceed with a development, and no person shall proceed with a development until he has received the approval of the Minister.

(2) Notwithstanding subsection (1), a proponent may, subject to the regulations, conduct a feasibility study, including research and exploration, and may take any other necessary action to comply with this Act before obtaining the approval of the Minister to proceed with the development.

Assessment and review procedure

8(1) The proponent of a development shall, in accordance with the regulations, cause to be prepared and submitted to the Minister an environmental impact statement of the development, which assessment shall include

(a) a description of the purpose of the development;

- (b) a description of and statement of:
 - (i) the need and rationale for development; and
 - (ii) alternatives to the development;
 - (iii) the consequences of not proceeding with the development.
- (c) a description of
 - (i) the environment that will be affected by the development or that might reasonably be expected to be affected, directly or indirectly; and
 - (ii) the effects that will be caused or might reasonably be expected to be caused to the environment;
- (d) a description of the steps which will be taken to
 - (i) ensure conservation and proper management of natural resources;
 - (ii) prevent, change, mitigate or remedy harmful noise levels resulting from the construction and operation of the development;
 - (iii) preserve the natural environment for its aesthetic or wilderness value; and
- (e) an assessment of any alternate means by which the proposed development could be carried out so as to minimize its impact on the environment;
- (f) a description of any impacts that cannot be fully mitigated and an analysis of the significance of those impacts;

(2) The proponent shall ensure that the person preparing the assessment under subsection (1) is at arm's length from and has no interest in the proposed development other than in the preparation of the assessment.

Notice of assessments

9 Where the Minister becomes aware that an assessment is about to be conducted, he shall immediately give notice of the assessment in any manner that may be prescribed in the regulations.

Review of

10(1) The Minister shall cause a review to be prepared of each

statements

statement he receives.

(2) When the review mentioned in subsection (1) is completed, the Minister shall

(a) make the statement and review available for public inspection; and

(b) give notice, in the manner prescribed in the regulation, of the locations at which the statement and the review may be inspected, and may prescribe any conditions relating to the inspection that he considers appropriate.

Public access to
statements

11 Any person may

(a) inspect a statement and review that is available for public inspection pursuant to section 10(2);

(b) make a written submission to the Minister within 60 days from the date when the Minister first gives notice pursuant to section 10(2) or, make a written or verbal submission to a public hearing held pursuant to section 12.

12(1) At any time prior to making his decision whether to approve a development, the Minister shall

(a) cause a public hearing to be conducted relating to the development, not less than 30 days and not more than 90 days after the Minister makes the statement public;

(b) provide notice of the hearing in the prescribed manner in the regulations; and

(c) direct the proponent to provide further availability of expert witnesses.

(2) A public hearing required under this section shall be conducted by the Environment Council of Alberta pursuant to section 7(1)(d) of the *Environment Council Act*.

(3) Within 60 days after the completion of the hearing, the Council shall submit a report of its findings to the Minister, including any measures it considers necessary or advisable to protect the environment or the public good.

Petition for
meeting

13(1) The Minister shall upon receiving a proposal for a development classify the proposal into one of the following categories

(a) excluded developments in which an environmental impact assessment of the development will not be carried out there being no obvious environmental impact; or

(b) included developments in which an environmental impact assessment will be carried out as there appears to exist potential environmental impact of significant public concern or because of the universal nature of the project.

(2) Should the Minister be unable to classify a proposed development he shall notify the public to canvass commentary from the public and upon completion of said canvass the Minister may postpone classification for a period of time.

(3) The Minister shall make the classification of each project known to the public.

(4) The classification of a development is subject to review and the Minister may change the classification of a development.

Powers of council

14 For the purpose of any hearing pursuant to this Act, the council or any member thereof, or any other person authorized by the council to conduct a hearing, has all the powers of a commissioner appointed under the *Public Inquiries Act*.

Decision of Minister

15(1) Where the ECA has recommended in favour of the development and the Minister is satisfied that a proponent has met all the requirements of this Act and after considering the maintenance of essential ecosystem and life support process and the pressure of biological diversity and the sustainable use of species and ecosystems, he shall, within a reasonable time after making his decision

(a) give the proponent written approval to proceed with the development, subject to any terms and conditions that he considers necessary or advisable; or

(b) advise the proponent that he refuses to approve the development, and give his reasons in writing.

(2) The Minister shall also give notice of his decision, together with written reasons for the decision, to

(a) any person who has made a written submission to the Minister or the hearing pursuant to sections 11 and 12; and

(b) any other person that the Minister considers should receive notice.

Changes after
decision

16(1) Where a proponent

- (a) has received the approval of the Minister to proceed; and
- (b) intends to make a change in the development that does not conform to the terms or conditions contained in the approval;

he shall inform the Minister of the proposed change before proceeding with it.

(2) Where the Minister has received notice of a proposed change, he shall either

- (a) give the proponent written approval of the proposed change subject to any terms and conditions that he considers advisable;
- (b) advise the proponent in writing that he refuses to approve the change in the development; or
- (c) if he considers the change to have a major environmental impact, direct the proponent to seek approval for the proposed change in the manner prescribed in sections 7 to 13 as if it were a new or separate development.

(3) The Minister shall give notice of his decision, together with written reasons for the decision, to

- (a) any person who made a written submission to the Minister or the hearing concerning the original development pursuant to section 11; and
- (b) any other person that the Minister considers should receive notice.

(4) No person shall proceed with a change in a development until he has been given ministerial approval of it.

Compliance with
conditions

17 No person shall proceed with a development for which he has received approval from the Minister, except in accordance with the terms and conditions of the approval.

Court appeal and
order

18(1) Any decision or order of the Minister may be appealed on a question of law or jurisdiction by the proponent to the Court of Queen's Bench, within 90 days of notice of it to the proponent and the Court may affirm, vary or quash the decision or order.

(2) The Minister may apply to the Court of Queen's Bench for an

order enjoining any person from proceeding with a development contrary to this Act or to the terms and conditions of any ministerial approval, and the Court may make an order on any terms and conditions that it considers appropriate.

Investigation

19 Where, in the opinion of the Minister, the terms and conditions of a ministerial approval are not being complied with, the Minister may cause any investigation, inspection or inquiry to be conducted and require any information or document to be submitted to him that he considers necessary to determine whether the ministerial approval is being complied with.

Order to search and seize

20(1) Where a judge of the Provincial Court is satisfied by information on oath that there are reasonable grounds for the issuance of an order to enable an environment officer to carry out the duties assigned to him, the judge may issue an order on any terms and conditions he considers appropriate, authorizing an environment officer to

(a) enter and search any land, building or chattel; and

(b) seize any chattels, documents or samples

described in the order.

(2) Every environment officer, while exercising his authority pursuant to an order issued under this section, shall produce a copy of the order upon the request of any person who has the custody, possession or control of any land, building, chattel or document described in the order.

(3) No person shall obstruct or impede an environment officer acting pursuant to an order issued under this section.

Confidentiality

21(1) Every environment officer shall preserve the confidentiality of any matter that comes to his knowledge in the course of any investigation, inspection, test or inquiry under this act and no environment officer shall communicate any such matter to any person except

(a) as may be required in connection with the administration of, or in any proceeding under this Act and the regulations;

(b) to his counsel; or

(c) with the consent of the person to whom the information refers.

(2) Except in a proceeding under this Act or the regulations, no

environment officer is a compellable or competent witness to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of any investigation, inspection, test or inquiry under this Act or the regulations.

Offences

22 No person shall knowingly give false information to

- (a) the Minister;
- (b) any environment officer;
- (c) a public hearing under section 12; or
- (d) any appointee of, or person employed by or acting on behalf of, the Minister or a public hearing

in respect of any matter to which this Act or the regulations relate.

Penalties

23 Any person who contravenes sections 7(1), 16(4), 17, 20(3) or 22 is guilty of an offence and liable on summary conviction to a fine of not more than \$50 000 and, in the case of a continuing offence, to a further fine of not more than \$50 000 for each day or part of a day during which the offence continues.

Limitations

24 No prosecution for an offence under this Act shall be commenced after 5 years from the day of the commission of the alleged offence.

Liability

25(1) Where any person proceeds with a development for which approval is required without being given such approval he is liable to any other person who suffers loss, damage or injury as a result of the development, and that other person is not required to prove negligence or intention to inflict loss, damage or injury.

(2) When a person who claims under subsection (1) has shown that he has suffered loss, damage or injury and he shows reasonable grounds to believe that it was caused at least to a significant part by the development, the burden of proving that any loss, damage or injury was not caused by a development is on the person carrying out the development.

(3) Nothing in this section shall be construed as replacing or limiting any other remedy available at law.

Notices

26(1) Any notice required to be given by this Act or the regulations is, unless otherwise provided for, to be served personally or mailed by registered mail to the last known address of the person being served.

(2) A notice served by registered mail is deemed to have been received on the 7th day following the date of its mailing, unless the person to whom it was mailed establishes that, through no fault of his own, he did not receive the notice or that he received it at a later date.

Regulations

27 The Lieutenant Governor in Council may make regulations

(a) respecting any requirement relating to an assessment or a statement;

(b) respecting any guideline applicable to the approval of any development;

(c) subject to section 26, respecting the manner and form of giving notice under this Act;

(d) prohibiting or regulating, in all or any part of the Province, any feasibility study or any other action permitted under section 7(3);

(e) specifying the grounds on which the Minister may withhold or limit disclosure of any information, matter or document relating to a development;

(f) respecting the awarding of costs of intervenors at public hearings held under this Act.

Consequential
c.L-3,R.S.A. 1980

28(1) The *Land Surface Conservation and Reclamation Act* is amended by this section.

(2) Section 8 is repealed.

Consequential
c.E-13,R.S.A. 1980

29(1) The *Environmental Council Act* is amended by this section.

(2) Section 7(1) is amended in clause (d) by adding "when required to do so by sections 12 and 13 of the *Environmental Impact Assessment Act*, or" after "shall".

Coming into force

30 This Act comes into force on Proclamation which shall not be earlier than the date upon which money is appropriated to the purposes of this Act by the Legislature.