

1991 BILL 21

Third Session, 22nd Legislature, 40 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 21

RURAL UTILITIES AMENDMENT ACT, 1991

MR. THURBER

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 21
Mr. Thurber

BILL 21

1991

RURAL UTILITIES AMENDMENT ACT, 1991

(Assented to , 1991)

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

1 The Rural Utilities Act is amended by this Act.

2 Section 1 is amended by adding the following after clause (e):

(e.1) "power company" means the electrical power company with which an association or a person has an agreement to supply the association or person with electrical power;

3 Section 22 is amended

(a) *in subsection (3) by adding "or an underground power line" after "sewage";*

(b) *in subsection (6) by striking out " , but subsection (2) applies in the event that any payment required by the agreement is not made";*

(c) *by adding the following after subsection (6):*

(6.1) If the owner of the land does not enter into an agreement described in subsection (5) or (6),

(a) the service contract, if any, is terminated,

(b) the owner's membership, if any, in the association is terminated,

(c) the net salvage proceeds, in the case of a rural electrification association, shall be paid to the association and applied towards payment of principal and interest

Explanatory Notes

1 This Bill will amend chapter R-21 of the Revised Statutes of Alberta 1980.

2 Further definition.

3 Section 22 presently reads in part:

(3) A pipeline for natural gas, water or sewage may be left in the land.

(6) Notwithstanding subsection (2), there shall be no removal where the owner of the land enters into an agreement in the prescribed form which provides that the owner will pay

(a) the association's cost of maintaining its works in accordance with the service contract entered into by the member with the association, and

(b) the association's deposit reserve account levy and any other levy approved under section 18,

but subsection (2) applies in the event that any payment required by the agreement is not made.

due under the lien note and, if there is any surplus remaining after payment in full of all money due under the lien note, it shall be paid to the owner,

- (d) in the event that the owner later applies to have the utility service re-established, he shall pay the average installation cost paid by other members of the association or the actual cost of the installation, whichever is the greater, and
- (e) the association may authorize removal of all or any part of the works.

(6.2) If the owner of the land enters into an agreement described in subsection (6) but any payment required by the agreement is not made by the due date, the association, after

- (a) giving notice to the owner of the land, and
- (b) having obtained any necessary approvals from a regulatory agency having jurisdiction,

may authorize an employee or agent of the association to enter on that land at any reasonable time to remove all or any part of the works.

(6.3) A pipeline for natural gas, water or sewage or an underground power line may be left in the land.

(6.4) A notice under subsection (6.2) shall be in the form prescribed by the Director and

- (a) shall be given at least 30 days before the intended removal, and
- (b) shall be served personally or by registered mail on the occupant of the land, if any, and on the owner of the land.

(6.5) Before removal takes place under subsection (6.2), the association shall give the owner of the land an opportunity to pay all the amounts due to date, and, if the owner does not do so,

- (a) the service contract, if any, is terminated,
- (b) the owner's membership, if any, in the association is terminated,
- (c) the net salvage proceeds, in the case of a rural electrification association, shall be paid to the association and applied towards payment of principal and interest due under the lien note and, if there is any surplus remaining after payment in full of all money due under the lien note, it shall be paid to the owner, and
- (d) in the event that the owner later applies to have the utility service re-established, he shall pay the average installation cost paid by other members of the association or the actual cost of the installation, whichever is the greater.

4 Section 35 is amended

(a) by repealing subsection (2) and substituting the following:

(2) When land against which an association has a lien pursuant to this Act is sold,

- (a) the total amount outstanding under the lien note including interest accrued to the date of the sale becomes due and payable at the time of the sale,
- (b) the association shall not supply its utility service to the purchaser of the land until the amount outstanding has been paid, and
- (c) without limiting clause (b), the association may refuse to supply its utility service to that purchaser until the purchaser becomes a member of the association.

(b) by repealing subsection (4) and substituting the following:

(4) When all amounts payable under the lien note have been paid in full, the Director shall cancel the lien note.

4 Section 35 presently reads in part:

(2) When land against which an association has a lien pursuant to this Act is sold, the association may refuse to supply its utility service to the purchaser of the land until the purchaser becomes a member of the association and executes a lien note.

(4) On a lien note being made by the purchaser under subsection (2), the Director may cancel the lien note made by the vendor or by any former owner of the land.

(5) A lien may be postponed at the discretion of the Director in accordance with section 108(3) of the Land Titles Act.

(6) The lien notes shall be delivered to the Director.

(7) On a notice of lien being filed in the land titles office,

(a) the association has a lien on the land described in the notice of lien or on the interest of the maker of the lien note in the land described in the notice of lien for the total indebtedness, including interest, owing in respect of which the notice of lien is registered, and

(b) the lien has the same priority as if it were a mortgage under the Land Titles Act to secure the total amount of the lien note of the member and registered in the land titles office at the time at which the notice of lien was filed in the land titles office.

(c) *by adding the following after subsection (6):*

(6.1) The Director may reject a lien note if he considers that the person liable under the note is unlikely to be able to meet all the payments under it.

5 *Section 36 is amended*

(a) *in subsection (1) by striking out “30” and substituting “60”;*

(b) *in subsection (2) by striking out “30” and substituting “60”;*

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

(2.1) Where, as a result of a change in circumstances, it becomes necessary to have a new notice of lien on other land owned by the borrower or in which the borrower has a registered interest, the Director may file the new notice of lien against that other land in the appropriate land titles office and may give notice in the prescribed form withdrawing the original notice of lien.

(d) *in subsection (3) by adding “referred to in subsection (1), (2) or (2.1)” after “lien”;*

(e) *in subsection (4) by adding “or on receiving the notice referred to in subsection (2.1)” after “discharged”;*

(f) *in subsection (5) by striking out “108(3)” and substituting “108.1(1)”;*

(g) *in subsection (6) by striking out “replaced by a new lien note and”;*

(h) *by adding the following after subsection (6):*

(6.1) Where there is a notice of lien registered in the appropriate land titles office, the Registrar of Land Titles shall maintain the registration of the notice of lien in respect of the land until the notice of lien has been cancelled, notwithstanding

(a) any voluntary or involuntary change in ownership of the land that occurs after the commencement of this subsection,

(b) that the notice of lien may have been

5 Section 36 presently reads in part:

36(1) When a lien note is made pursuant to section 35(1), the Director shall, within 30 days of the execution of the guarantee, file a notice of lien against the land described in the lien note in the land titles office.

(2) When

(a) a guarantee is executed with respect to an instalment of a loan pursuant to section 32(3), and

(b) the instalment is made for the purpose of constructing a part only of the works intended to be constructed with the use of the loan guaranteed under section 32,

subsection (1) does not apply but the Director shall, within 30 days of the execution of the guarantee referred to in clause (a), file notices in the land titles office with respect to the lien notes given by the members of the association for whose benefit the works referred to in clause (b) are to be constructed.

(3) The Registrar of Land Titles shall endorse a memorandum on the certificate of title to the land described in the notice of lien.

(4) On receiving notice from the Director that a lien note in respect of which a memorandum has been endorsed against the certificate of title of any land has been discharged, the Registrar of Land Titles shall cancel the memorandum on the certificate.

(5) A lien may be postponed at the discretion of the Director in accordance with section 108(3) of the Land Titles Act.

(6) Notwithstanding that a lien note has been cancelled and replaced by a new lien note and notwithstanding any other Act, a lien created pursuant to this Act in respect of land or an interest in land continues to be a lien against that land or interest until the total indebtedness, including interest, owing in respect of which the lien was registered has been repaid in full.

(7) On a notice of lien being filed in the land titles office,

(a) the association has a lien on the land described in the notice of lien or on the interest of the maker of the lien note in the land described in the notice of lien for the total

registered after any mortgage or encumbrance giving rise to an involuntary change in ownership,

- (c) that the notice of lien and any such mortgage or encumbrance may have been registered before the commencement of this subsection, and
- (d) section 44 of the *Law of Property Act* and any other law.

(6.2) Subsection (6.1) does not apply to the extent that a lien is postponed under subsection (5) to a mortgage or encumbrance.

(i) *in subsection (7)*

- (i) *in clause (a) by striking out “, and” at the end;*
- (ii) *by repealing clause (b).*

6 *The following is added after section 49:*

49.1(1) In this section,

- (a) “association” means an association other than one to which section 35 of the *Rural Gas Act* applies;
- (b) “easement” means an instrument referred to in section 72 of the *Land Titles Act*.

(2) An easement in favour of an association must be in a form prescribed or approved by the Director.

(3) An association shall ensure

- (a) that it has acquired all necessary easements and expropriation orders for the purposes of undergrounding all or part of its rural distribution system, and
- (b) that all such easements and expropriation orders and all caveats in respect of them are registered under the *Land Titles Act* before construction commences on the land.

(4) Notwithstanding subsection (3), an easement or expropriation order is not required for a street, road or lane.

indebtedness, including interest, owing in respect of which the notice of lien is registered, and

(b) the lien has the same priority as if it were a mortgage under the Land Titles Act to secure the total amount of the lien note of the member and registered in the land titles office at the time at which the notice of lien was filed in the land titles office.

6 Easements in favour of associations.

(5) The *Dower Act* does not apply with respect to the granting of an easement in favour of an association.

(6) Section 36(6.1) applies with respect to a registered easement or expropriation order as if the easement or expropriation order were a registered notice of lien.

7 This Act, except sections 5(h) and 6, comes into force on July 1, 1991.

7 Coming into force.