

Bill 18
Ms DeLong

BILL 18

2003

ENERGY STATUTES AMENDMENT ACT, 2003

(Assented to , 2003)

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

Part 1 Freehold Mineral Rights Tax Act

Amends RSA 2000 cF-26

1 The *Freehold Mineral Rights Tax Act* is amended by this
Part.

2 Section 3(3) is repealed and the following is substituted:

- (3) If the Minister determines that
- (a) the amount of tax calculated in respect of a taxable mineral right for a taxation year is incorrect, or
 - (b) the amount of interest and penalties, or either of them, calculated to be owing is incorrect,

the Minister may recalculate the tax, interest and penalties, as the case may be, and send a new tax statement to the owner.

3 The following is added after section 3:

Limitation period

3.1(1) In this section,

- (a) “claim” means claim as defined in section 1(a) of the *Limitations Act*;
- (b) “recalculation period” means, in relation to any tax under this Act in respect of a taxable mineral right, the 4-year period under section 3(5)(b) to recalculate that tax, including any extension of that period permitted by this Act;
- (c) “remedial order” means remedial order as defined in section 1(i) of the *Limitations Act*.

(2) The *Limitations Act* does not apply to a claim in relation to any tax under this Act in respect of a taxable mineral right, in relation to any interest or penalties arising under this Act, or in relation to an overpayment of any of them.

(3) No proceedings may be commenced by the Crown or any other person for a remedial order in relation to a claim for any tax, interest or penalties referred to in subsection (2), or in relation to an overpayment of any of them, more than 3 years after the end of the recalculation period for that tax.

(4) Subsection (3) does not apply in respect of a claim by the Crown for any tax, interest or penalties referred to in subsection (2) where section 3(5)(a) applies.

4 Section 12 is repealed and the following is substituted:

Application of payment

12(1) Where a person owes more than one amount under this Act and payment is made in respect of any of those amounts, the Minister may, subject to the regulations, determine the order in which, and the extent to which, the payment will be applied among those amounts, whether or not the person specifies how the payment is to be applied.

(2) Where any amount is owing by a person, whether under this Act or otherwise, to the Crown in right of Alberta or a Provincial agency as defined in the *Financial Administration Act*, the Minister may recover that amount by way of a set-off against any amount owing to that person by the Crown in right of Alberta pursuant to this Act or any other enactment under the

administration of the Minister or an agreement as defined in the *Mines and Minerals Act*.

5 Section 23(1) is amended by adding the following after clause (e):

- (e.1) respecting the application of payments made in respect of amounts owing under this Act;

**Part 2
Mines and Minerals Act**

Amends RSA 2000 cM-17

6 The *Mines and Minerals Act* is amended by this Part.

7 Section 5(1) is amended

- (a) **in clause (n) by adding** “, in respect of an agreement or otherwise,” **after** “Alberta”;
- (b) **by repealing clause (q) and substituting the following:**
 - (q) respecting the imposition of pecuniary penalties payable to the Crown, the circumstances in which the penalties may be imposed, the person liable to pay the penalties and the time by which the penalties must be paid;

8 Section 20 is amended by adding the following after subsection (2):

- (2.1) Where 2 or more persons are recorded with the Department as lessees of an agreement,
 - (a) those lessees in relation to the Crown are jointly responsible for the obligations and liabilities that arise under that agreement, notwithstanding that the agreement was issued before, on or after the coming into force of this subsection, and
 - (b) a judgment in favour of the Crown against one or more of those lessees or a release by the Crown in favour of one or more of those lessees does not preclude the

Crown from obtaining judgment against the other lessees in the same or a separate proceeding.

9 Section 24 is amended by repealing clause (b) and substituting the following:

- (b) if the lessee does not consent as provided in clause (a),
 - (i) cancel the agreement as to all or part of its location, or
 - (ii) amend the agreement to remove a misdescribed zone from the whole or part of its location,subject to the payment of compensation in accordance with the regulations.

10 Sections 38 and 39 are repealed and the following is substituted:

Calculations and recalculations

38(1) In this section,

- (a) “offset compensation” means amounts that a lessee elects to pay to the Crown in relation to an obligation referred to in section 83(1)(e);
- (b) “royalty proceeds” means amounts owing
 - (i) on account of a money royalty,
 - (ii) in respect of the Crown’s royalty share of a mineral when disposed of by an agent, or
 - (iii) on account of royalty compensation.

(2) Where the Minister considers it appropriate to do so, the Minister may, in accordance with this section, calculate, recalculate or make additional calculations of any of the following:

- (a) the Crown’s royalty share of a mineral;
- (b) any royalty proceeds;

- (c) any credit or other deduction permitted by the regulations from the Crown's royalty share of a mineral or from royalty proceeds;
- (d) any reduction or exemption from payment permitted by the regulations of the Crown's royalty share of a mineral or of royalty proceeds;
- (e) any offset compensation;
- (f) any interest or penalty arising or imposed under the regulations.

(3) A calculation, recalculation or additional calculation of any amount referred to in subsection (2) may be made by the Minister

- (a) on the Minister's own initiative, or
- (b) on receipt of a request in writing that is made by the lessee, the lessee's agent or any other person authorized by the regulations to make the request in accordance with any terms and conditions specified by the Minister.

(4) A calculation, recalculation or additional calculation of any amount referred to in subsection (2) may be made,

- (a) subject to subsection (6), within 4 years after the end of the calendar year in which
 - (i) the mineral that is the subject of the calculation, recalculation or additional calculation was recovered in a case to which subsection (2)(a) applies,
 - (ii) the amount referred to in subsection (2)(b), (e) or (f), as the case may be, became owing, or
 - (iii) the amount of any credit, deduction, reduction or exemption referred to in subsection (2)(c) or (d) was first determined by the Minister,

or

- (b) notwithstanding clause (a), at any time if the calculation, recalculation or additional calculation is made necessary by reason of

- (i) fraud, or
- (ii) misrepresentation attributable to neglect, carelessness or wilful default

in the filing or submission of any report or other information under this Act.

(5) Subject to subsection (6), where the calculation, recalculation or additional calculation of any amount referred to in subsection (2) is made

- (a) pursuant to a written request in accordance with subsection (3)(b), or
- (b) as a result of an audit or examination under section 47(5),

and the written request is received or the audit or examination is commenced in the 4th year as calculated under subsection (4)(a), that 4-year period is extended by one year.

(6) The period for recalculation and auditing of costs, charges and expenses relating to reclamation in respect of a mine or mining operations shall be determined pursuant to the regulations.

Objection to calculation or recalculation of royalty

39(1) A lessee, a lessee's agent and any other person authorized by the regulations to make an objection may, in accordance with the terms and conditions specified by the Minister and in the form and manner and within the time specified by the Minister, object to a calculation, recalculation or additional calculation of any amount referred to in section 38(2) with respect to the lessee.

(2) On receipt of an objection under subsection (1), the Minister may recalculate or make additional calculations of any amount referred to in section 38(2) that the Minister considers appropriate.

Limitation of actions

39.1(1) In this section,

- (a) “calculation period” means, in respect of an amount referred to in section 38(2), the applicable period of time under section 38, including any extensions of that period permitted by this Act, to calculate, recalculate or make additional calculations in respect of that amount;
- (b) “claim” means claim as defined in section 1(a) of the *Limitations Act*;
- (c) “remedial order” means remedial order as defined in section 1(i) of the *Limitations Act*.

(2) The *Limitations Act* does not apply to a claim

- (a) in respect of an amount referred to in section 38(2) or in respect of an overpayment of that amount;
- (b) in respect of an amount payable to the Crown under section 55 or in respect of an overpayment of that amount;
- (c) by the Crown to establish or confirm the Crown’s ownership of any mines or minerals;
- (d) by the Crown for an accounting in relation to any benefit derived by someone other than the Crown from any mines or minerals the Crown’s ownership of which is established or confirmed in relation to a claim under clause (c).

(3) No proceedings may be commenced by the Crown or any other person for a remedial order in respect of a claim for an amount referred to in subsection (2)(a) more than 3 years after the end of the calculation period for that amount.

(4) Subsection (3) does not apply in respect of a claim by the Crown for an amount referred to in subsection (2)(a) where the calculation period for the amount arises under section 38(4)(b).

(5) No proceedings may be commenced by the Crown or any other person for a remedial order in respect of a claim for an amount referred to in subsection (2)(b) more than 2 years after the date on which the direction to pay was issued under section 55 in respect of the amount.

11 Section 41 is repealed and the following is substituted:

Application of payment

41 Where a person owes more than one amount under this Act, in respect of agreements or otherwise, and payment is made in respect of any of those amounts, the Minister may, subject to the regulations, determine the order in which, and the extent to which, the payment will be applied among those amounts, whether or not the person specifies how the payment is to be applied.

12 Section 46(4) is repealed and the following is substituted:

(4) Where any amount is owing by any person to the Crown in right of Alberta or a Provincial agency as defined in the *Financial Administration Act*, whether under this Act or otherwise, the Minister may recover that amount by way of set-off against any amount owing to that person by the Crown in right of Alberta in respect of an agreement or pursuant to this Act or any other enactment under the administration of the Minister.

13 The following is added after section 46:

Deposits

46.1(1) Any money paid by a person to the Crown in right of Alberta under this or any other enactment under the administration of the Minister as a deposit or to increase a deposit

- (a) is to be paid into the General Revenue Fund, and
- (b) is to be refunded to that person when that person is no longer required to maintain the deposit.

(2) Notwithstanding subsection (1)(b), any amount to be refunded to a person under subsection (1) is subject to any rights of the Crown in right of Alberta to set off against the refundable amounts any amount owing by that person to the Crown in right of Alberta.

14 Section 55 is repealed and the following is substituted:

Compensation for unauthorized taking

55(1) Where the Minister has grounds to believe that a person has contravened section 54(1), the Minister may do one or more of the following:

- (a) in writing impose a penalty on that person and direct that person to pay the penalty to the Minister within the time specified in the direction in an amount determined under the regulations;
- (b) in writing require that person to forfeit to the Crown in right of Alberta any information or data obtained as a result of the contravention;
- (c) disqualify that person from bidding on an agreement if the Minister is of the opinion that information or data obtained as a result of the contravention may give that person an advantage over others in bidding for the agreement;
- (d) cancel any agreement to which that person is a party where the Minister is of the opinion that information or data obtained as a result of the contravention may have given that person an advantage over others in acquiring the agreement.

(2) The Minister must refund the money paid to acquire an agreement that is cancelled under subsection (1)(d).

(3) Any penalty imposed pursuant to a direction under subsection (1) is recoverable by the Minister in an action in debt.

(4) Section 43 applies to a penalty owing under this section in the same way as if it were liability in respect of royalty on a mineral.

15 Section 67 is amended

- (a) **in subsection (1) by adding** “but, subject to subsection (2), does not grant any rights to any natural gas, including coalbed methane” **after** “of the lease”;
- (b) **in subsection (2) by adding** “, including coalbed methane,” **after** “natural gas”.

16 Section 69(1) is amended by adding “, unless otherwise directed by the Minister,” **after** “coal mine shall”.

17 Section 77 is amended by striking out “quarriable minerals” **and substituting** “minerals defined under the regulations as metallic and industrial minerals”.

18 Section 83(1)(e) is amended by striking out “laterally”.

19 The following is added after section 87:

Solution gas

87.1(1) In this section, “solution gas” means a gas that is dissolved in crude bitumen under initial reservoir conditions and includes any of that gas that evolves as a result of changes in pressure or temperature, or both, due to human disturbance.

(2) An agreement granting rights in respect of oil sands that is issued on or after January 1, 2001, grants the right to solution gas.

(3) Nothing in this section is to be construed so as to affect in any manner any agreements issued before January 1, 2001 with respect to any rights granted in respect of oil sands.

20 The following is added after section 91:

Obligations to run with agreement, etc.

91.1(1) Where a transfer is registered under section 91 with respect to the whole of an agreement, a specified undivided

interest in an agreement or a part of the location contained in an agreement,

- (a) any obligation or liability arising under the agreement that existed before the transfer was registered continues, on and after the registration of the transfer, to run with the agreement, interest or part of the location transferred, and
- (b) the transferee and the transferor and any other person recorded with the Department as a lessee of the agreement prior to the transfer are jointly responsible for any obligation or liability referred to in clause (a).

(2) With respect to any obligation or liability referred to in subsection (1),

- (a) any judgment in favour of the Crown in respect of that obligation or liability against one or more of the persons referred to in subsection (1)(b), or
- (b) any release by the Crown in respect of that obligation or liability in favour of one or more of the persons referred to in subsection (1)(b)

does not preclude the Crown from obtaining judgment against any of the other persons referred to in subsection (1)(b) in the same or a separate proceeding.

21 Section 102 is amended

- (a) **by repealing subsection (1) and substituting the following:**

Unit agreement

102(1) The Minister may on behalf of the Crown enter into an agreement providing for the combining of interests in a mineral occurring in a subsurface reservoir underlying one or more tracts to facilitate the co-ordinated management of operations for any one or more of the following:

- (a) the recovery of the mineral from the subsurface reservoir;

- (b) the use of the subsurface reservoir for the purposes of storage of fluid mineral substances and the combining of interests in the storage rights in respect of that subsurface reservoir;
 - (c) the recovery of fluid mineral substances injected into or stored in the subsurface reservoir.
- (b) in subsection (3)(g) by striking out “of a mineral” and substituting “or extraction of a mineral or a stored substance”.**

Part 3 Repeals and Coming into Force

22 The *Mines and Minerals Amendment Act, RSA 2000 c19(Supp)*, is repealed.

23 This Act comes into force on Proclamation.

Explanatory Notes

Part 1 Freehold Mineral Rights Tax Act

1 Amends chapter F-26 of the Revised Statutes of Alberta 2000.

2 Section 3(3) presently reads:

(3) If the Minister, as a result of receiving new information or corrected information, determines that the amount of tax calculated in respect of a taxable mineral right for a taxation year was incorrect, the Minister may recalculate the tax in accordance with that information and send a new tax statement to the owner.

3 Limitation period for actions under the Freehold Mineral Rights Tax Act.

4 Section 12 presently reads:

12(1) A payment made on account of tax with respect to a mineral right shall be applied

- (a) first, on the interest and penalties charged, if any,*
- (b) 2nd, on the tax in arrears, if any, and*
- (c) 3rd, on the current tax.*

(2) Subject to subsection (1), if a person pays tax on account of 2 or more taxable mineral rights and does not specify the amount of the payment to be applied to the tax payable in respect of each taxable mineral right, the Minister may apply the payment to reduce the tax payable in respect of any one or more of the taxable mineral rights.

5 Section 23(1)(e) presently reads:

23(1) The Lieutenant Governor in Council may make regulations

- (e) respecting the payment of interest by the Crown on overpayments;*

**Part 2
Mines and Minerals Act**

6 Amends chapter M-17 of the Revised Statutes of Alberta 2000.

7 Section 5(1)(n) and (q) presently read:

5(1) The Lieutenant Governor in Council may make regulations

- (n) respecting the application of money paid to the Crown in right of Alberta under this Act;*

- (q) *respecting the imposition of pecuniary penalties for*
 - (i) *failure to furnish information in accordance with regulations under clause (j),*
 - (ii) *failure to furnish in accordance with another Act under the Minister's administration information that is, by reason of regulations under clause (k), deemed to be required to be furnished pursuant to this Act,*
 - (iii) *failure to deliver the Crown's royalty share of a mineral, or failure to pay a money royalty or money owing in respect of the disposal of the Crown's royalty share of a mineral or failure to pay royalty compensation to the Crown, as and when required under the regulations, and*
 - (iv) *engaging in or attempting to engage in an act, agreement, arrangement, transaction or operation that is of a type specified in the regulations in order to reduce*
 - (A) *the Crown's royalty share in respect of a mineral,*
 - (B) *the amount owing on account of a money royalty,*
 - (C) *the consideration given for the Crown's royalty share when it is disposed of by an agent, or*
 - (D) *the amount owing on account of royalty compensation;*

8 Section 20(2) presently reads:

(2) An agreement issued in accordance with subsection (1) is binding on the Crown in right of Alberta and the lessee.

9 Section 24 presently reads:

24 If, in the opinion of the Minister, an agreement contains a misdescription of a zone, the Minister may

- (a) with the consent of the lessee, amend the agreement to correct the description without the payment of compensation to the lessee, or*
- (b) if the lessee does not consent as provided in clause (a), cancel the agreement subject to the payment of compensation in accordance with the regulations.*

10 Sections 38 and 39 presently read:

38(1) Where the Minister considers it appropriate to do so, the Minister may, in accordance with this section, recalculate or make additional calculations of

- (a) the Crown's royalty share of a mineral, and*
- (b) amounts owing*
 - (i) on account of a money royalty,*
 - (ii) in respect of the Crown's royalty share of a mineral when disposed of by an agent, or*
 - (iii) on account of royalty compensation.*

(2) A recalculation or additional calculation may be made by the Minister

- (a) on the Minister's own initiative, or*
- (b) on receipt of a request in writing that is made by the lessee, the lessee's agent or any other person authorized by the regulations to make*

the request in accordance with any terms and conditions specified by the Minister.

(3) A recalculation or additional calculation may be made

(a) within 4 years after the end of the calendar year in which

(i) the mineral that is the subject of the recalculation or additional calculation was recovered, in a case to which subsection (1)(a) applies, or

(ii) the amount owing in a case to which subsection (1)(b) applies,

or

(b) at any time, if the recalculation or additional calculation is made necessary by reason of

(i) fraud, or

(ii) misrepresentation attributable to neglect, carelessness or wilful default

in the filing or submission of any report or other information under this Act.

(4) Where the recalculation or additional calculation is made

(a) pursuant to a written request in accordance with subsection (2)(b), or

(b) as a result of an audit or examination under section 47(5),

and the written request is received or the audit or examination is commenced in the 4th year as calculated under subsection (3)(a), that 4-year period is extended by one year.

(5) If the Minister makes a recalculation or additional calculation under this section or section

39, the Minister may also make recalculations or additional calculations of interest payable and related penalties.

39(1) A lessee, an agent of a lessee and any other person authorized by the regulations to make an objection may, in accordance with the terms and conditions specified by the Minister and in the form and manner and within the time specified by the Minister, object to

- (a) the Minister's calculation of the Crown's royalty share of a mineral or an amount owing*
 - (i) on account of a money royalty,*
 - (ii) in respect of the Crown's royalty share of a mineral when disposed of by an agent, or*
 - (iii) on account of royalty compensation,*
- and*
- (b) the Minister's recalculation or additional calculation under section 38*

with respect to the lessee.

(2) On receipt of an objection under subsection (1), the Minister may recalculate or make additional calculations of the Crown's royalty share or an amount referred to in clause (a), as the case may be, that the Minister considers appropriate.

11 Section 41 presently reads:

41(1) Unless the Minister directs otherwise, if a person pays money to the Crown in right of Alberta in respect of an agreement, the money shall be applied

- (a) first, on any penalties charged under this Act,*

- (b) *2nd, on any interest charged under this Act,*
- (c) *3rd, on rentals in arrears, and*
- (d) *4th, on money owing on account of a money royalty or in respect of the disposition of the Crown's royalty share of a mineral by an agent.*

(2) If a person pays money on account of 2 or more agreements and does not specify the amount of the payment to be applied to each agreement, the Minister may apply the payment to any one or more of the agreements.

12 Section 46(4) presently reads:

(4) Where any amount is owing by any person to the Crown in right of Alberta under this Act or any other enactment under the administration of the Minister, the Minister may recover that

amount by way of set-off against any amount owing to that person by the Crown in right of Alberta pursuant to this Act or any other enactment under the administration of the Minister.

13 Deposits.

14 Section 55 presently reads:

55(1) Where the Minister has grounds to believe that a person has contravened section 54(1), the Minister may in writing direct that person to pay to the Minister within the time specified in the direction compensation in an amount determined under this section.

(2) Subject to subsection (3), the amount of compensation must be an amount equal to

(a) the value of the mineral, as determined by the Minister, that was won, worked or recovered in contravention of section 54(1),

less

(b) that portion of the incremental costs of drilling and production incurred that the Minister considers is

attributable to the unauthorized winning, working or recovery of the mineral.

(3) No costs may be deducted under subsection (2)(b) in respect of any part of a mineral won, worked or recovered in circumstances where the Minister is of the opinion that the person who won, worked or recovered the mineral knew or ought reasonably to have known that the person was doing so in contravention of section 54(1).

(4) The Minister may require a person who claims a deduction for costs under subsection (2)(b) to provide to the Minister within the time and in the manner specified by the Minister any documentation or other information in support of the claim that the Minister requires.

(5) Compensation referred to in a direction under subsection (1) is recoverable by the Minister in an action in debt.

(6) Section 43 applies to compensation owing under this section in the same way as if it were liability in respect of royalty on a mineral.

15 Section 67 presently reads:

67(1) A coal lease grants the right to the coal that is the property of the Crown in the location in accordance with the terms and conditions of the lease.

(2) The Minister, on the recommendation of the Energy Resources Conservation Board that it is

necessary to do so for safety or conservation reasons, may authorize the lessee of a coal lease to recover natural gas contained in a coal seam in the location of the coal lease.

16 Section 69 presently reads:

69(1) The lessee of a coal lease who operates a coal mine shall make available for sale at the lessee's mine to Alberta residents the coal they require for their own domestic household needs at a price per tonne not exceeding the average price per tonne for the last month during which the lessee sold similar coal otherwise than for domestic household needs.

(2) This section does not apply to a lessee with respect to a mine where all the coal obtained from that mine is sold for domestic household needs only.

17 Section 77 presently reads:

77 No lease may be granted for the right to any mineral in a road allowance, other than coal, petroleum, natural gas, oil sands or any quarriable minerals, unless with the approval of the Lieutenant Governor in Council.

18 Section 83(1)(e) presently reads:

83(1) The Lieutenant Governor in Council may make regulations

(e) respecting the obligations of lessees and the powers of the Minister in cases where petroleum or natural gas is being produced from a freehold well in a spacing unit laterally adjoining a spacing unit containing the location or part of the location of a lease or licence;

19 Solution gas.

20 Obligations, etc. run with the agreement and are assumed by a transferee.

21 Section 102(1) and (3)(g) presently read:

102(1) The Minister may on behalf of the Crown enter into an agreement providing for the combining of interests in a mineral occurring in a subsurface reservoir underlying one or more tracts to facilitate the co-ordinated management of operations for the recovery of the mineral from the subsurface reservoir, with or without also providing for the use of the subsurface reservoir for the purposes of storage of fluid mineral substances and the combining of interests in the storage rights in respect of that subsurface reservoir.

(3) Notwithstanding this Act or an agreement but subject to section 36(6), a unit agreement may provide

(g) that production of a mineral in accordance with the unit agreement will be deemed to be production in commercial quantity from any tract covered by the agreement when that production is necessary to entitle the lessee of an agreement to an extension or renewal of the lessee's agreement, and

Part 3 Repeals and Coming into Force

22 Repeals chapter 19(Supp) of the Revised Statutes of Alberta 2000.

23 Coming into force.