

2013 Bill 22

First Session, 28th Legislature, 62 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 22

ABORIGINAL CONSULTATION LEVY ACT

THE MINISTER OF ABORIGINAL RELATIONS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 22

2013

ABORIGINAL CONSULTATION LEVY ACT

(Assented to , 2013)

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Preamble

WHEREAS the Crown is committed to consulting with First Nations and other identified aboriginal groups in respect of provincial regulated activities that might adversely impact their exercise of treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*;

WHEREAS the Crown is committed to consulting with First Nations and other identified aboriginal groups in respect of provincial regulated activities that might adversely impact certain traditional uses of land that are not existing treaty rights recognized and affirmed under section 35 of the *Constitution Act, 1982*;

WHEREAS proponents of provincial regulated activities must, at the direction of the Crown, carry out any required Crown

consultation with First Nations and other identified aboriginal groups in respect of those provincial regulated activities; and

WHEREAS it is desirable to assist First Nations and other identified aboriginal groups in participating in the consultation by providing grants to the First Nations and other identified aboriginal groups based in part on a consultation levy to be paid by proponents of provincial regulated activities;

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

Interpretation

1(1) In this Act,

- (a) “approval” means a permit, licence, registration, authorization, disposition, certificate, allocation or other instrument or form of approval or consent issued or authorized by a specified enactment;
- (b) “consultation levy” means the consultation levy described in section 3;
- (c) “Crown” means the Crown in right of Alberta;
- (d) “First Nation” means a band, as defined in the *Indian Act* (Canada), with reserve land in Alberta;
- (e) “Fund” means the Consultation Levy Fund established under section 4;
- (f) “identified aboriginal group” means an aboriginal group identified by the Minister under section 2;
- (g) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (h) “proponent” means a person who undertakes a provincial regulated activity, but does not include
 - (i) the Crown in right of Alberta,
 - (ii) the Crown in right of Canada,

- (iii) a municipality as defined in the *Municipal Government Act*, or
- (iv) any person or class of persons prescribed by the regulations for the purposes of this clause;
- (i) “provincial regulated activity” means
 - (i) an activity on Crown land for which an approval is required, or
 - (ii) an activity prescribed or described by the regulations as a provincial regulated activity;
- (j) “specified enactment” means
 - (i) the *Environmental Protection and Enhancement Act*,
 - (ii) the *Forests Act*,
 - (iii) the *Historical Resources Act*,
 - (iv) Part 8 of the *Mines and Minerals Act*,
 - (v) the *Public Lands Act*,
 - (vi) the *Water Act*,
 - (vii) a regulation under an enactment referred to in subclauses (i) to (vi), or
 - (viii) any enactment prescribed by the regulations for the purposes of this clause.

(2) Nothing in this Act is to be construed as creating a trust in favour of a First Nation or other identified aboriginal group.

Identifying aboriginal groups

2 The Minister may by order identify aboriginal groups for the purposes of this Act.

Payment of consultation levy

3(1) A proponent shall pay to the Minister, at the time or times and in the manner specified in the regulations, a consultation levy in respect of a provincial regulated activity.

(2) The amount of a consultation levy to be paid by a proponent is the amount determined in accordance with the regulations.

Establishment of Consultation Levy Fund

4(1) The Consultation Levy Fund is established.

(2) The following must be deposited into the Fund:

- (a) consultation levies paid by proponents;
- (b) money from a supply vote appropriated for the purposes of the Fund.

(3) The Minister may only use the Fund for the following purposes:

- (a) to make grants in accordance with the regulations to First Nations and other identified aboriginal groups to assist them in developing capacity to participate in, and in meeting the costs of, any required Crown consultation in respect of provincial regulated activities;
- (b) to pay the costs of administering this Act.

Management and pooled investment of funds

5(1) The Minister may participate under section 40 of the *Financial Administration Act* on behalf of the Fund.

(2) The income of the Fund accrues to and forms part of the Fund.

Payments from Fund

6 The Minister may make payments from the Fund for the purposes described in section 4(3).

Annual report

7(1) The Minister shall, as soon as possible after the end of each fiscal year, prepare a report that summarizes the operation of the Fund during the preceding fiscal year and includes the audited financial statements of the Fund.

(2) The Minister shall lay a copy of the report prepared under subsection (1) before the Legislative Assembly if it is sitting and, if

it is not sitting, within 15 days after the commencement of the next sitting.

Collection of information, records, etc.

8(1) The Minister may, in accordance with the regulations, require a proponent to provide the Minister with information, including third party personal information, records and other documents, including copies of agreements relating to consultation capacity and other benefits pertaining to provincial regulated activities, for one or both of the following purposes:

- (a) to assist in determining the amount of grants to be provided to First Nations and other identified aboriginal groups;
- (b) to plan and facilitate any required Crown consultation in respect of regulated provincial activities.

(2) Where any information, record or document provided by a proponent to the Minister under subsection (1) is subject to any kind of confidence or is supplied, explicitly or implicitly, in confidence, the providing of that information, record or document does not waive or negate any confidence attached to the information, record or document, and the confidence continues for all purposes.

(3) Notwithstanding subsection (2), the Minister may publish in aggregate form any information collected under this Act.

Minister's decision is binding

9 A decision of the Minister under this Act is final and binding and not subject to review.

Regulations

10 The Lieutenant Governor in Council may make regulations

- (a) prescribing or describing an activity as a provincial regulated activity;
- (b) prescribing a person or class of persons for the purposes of section 1(1)(h);
- (c) prescribing enactments for the purposes of section 1(1)(j);

- (d) respecting the amount or the method of determining the amount of a consultation levy, including, without limitation, regulations
 - (i) prescribing factors on the basis of which a consultation levy is determined,
 - (ii) respecting any formula, ratio or percentage to be used to calculate a consultation levy, and
 - (iii) establishing different consultation levies for different types of provincial regulated activities;
- (e) specifying the time or times at which and the manner in which a consultation levy is to be paid;
- (f) respecting the making of grants by the Minister to First Nations and other identified aboriginal groups from the Fund, including, without limitation, regulations
 - (i) respecting applications for grants,
 - (ii) respecting the conditions required to be met by an applicant for a grant,
 - (iii) prescribing the conditions on which a grant is made,
 - (iv) providing for the payment of a grant in a lump sum or by instalments, and
 - (v) prescribing the time or times at which the lump sum or the instalments may be paid;
- (g) respecting the information, records and documents to be provided by a proponent to the Minister under section 8, including, without limitation, regulations respecting the time, form and manner of providing the information, records and documents;
- (h) providing for the imposition of administrative penalties to enforce payment of a consultation levy and for failure to comply with a request for information, records or documents under section 8, including regulations
 - (i) respecting notices of administrative penalties, their form and contents and the manner in which they are required to be given,

- (ii) respecting the amounts of the administrative penalties that may be imposed,
- (iii) respecting appeals from the imposition or the amount of administrative penalties, including regulations authorizing the charging of fees in respect of appeals, and
- (iv) respecting the fees referred to in subclause (iii), the amounts of the fees and their disposition;
- (i) respecting the imposition of interest on an amount owing in respect of a consultation levy;
- (j) respecting the recovery of an amount owing in respect of a consultation levy, an administrative penalty or interest;
- (k) exempting a proponent or class of proponents from the requirements of all or part of this Act and the regulations;
- (l) subject to the regulations made under clause (g), respecting the collection, use and disclosure of information for the purposes of administering this Act;
- (m) respecting the giving of any notice under this Act;
- (n) defining any term or expression that is used but not defined in this Act;
- (o) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

Coming into force

11 This Act comes into force on Proclamation.

