

2013 Bill 34

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First Session, 28th Legislature, 62 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 34**

## **BUILDING NEW PETROLEUM MARKETS ACT**

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THE MINISTER OF ENERGY

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 34

2013

### BUILDING NEW PETROLEUM MARKETS ACT

(Assented to \_\_\_\_\_, 2013)

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

#### Amends RSA 2000 cP-10

**1 The *Petroleum Marketing Act* is amended by this Act.**

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

(a.01) “board” means the board of directors established under  
section 2(1.2);

**3 Section 2 is amended**

**(a) in subsection (1) by striking out** “that shall consist of not  
more than 3 members appointed by the Minister”;

**(b) by adding the following after subsection (1):**

**(1.1)** The Commission has the capacity and, subject to this  
Act, the rights, powers and privileges of a natural person.

**(1.2)** There shall be a board of directors of the Commission  
consisting of not more than 7 directors appointed by the  
Minister.

**(c) by repealing subsection (2) and substituting the  
following:**

## Explanatory Notes

**1** Amends chapter P-10 of the Revised Statutes of Alberta 2000.

**2** Adds definition.

**3** Section 2 presently reads:

*2(1) There is hereby created a corporation with the name “Alberta Petroleum Marketing Commission” that shall consist of not more than 3 members appointed by the Minister.*

*(2) The Minister*

*(a) shall designate one of the members of the Commission as chair and another as vice-chair;*

*(b) may prescribe the term of office of any member or the term of office of the chair or vice-chair;*

*(c) may prescribe the rates of remuneration to be paid by the Commission to the members of the Commission.*

(2) The Minister shall designate one of the directors as chair of the board.

(d) **in subsection (3) by striking out** “members of the Commission” **wherever it occurs and substituting** “directors”;

(e) **by repealing subsection (4) and substituting the following:**

(4) The board shall manage or supervise the management of the business and affairs of the Commission.

(5) Subject to the regulations, the board may delegate, on terms and conditions the board considers advisable, to any director or committee of the board any of the board’s powers, duties and functions, including a power to subdelegate, except

(a) the power to make bylaws under section 5, and

(b) any other power, duty or function prescribed in the regulations.

**4 Section 3 is repealed and the following is substituted:**

**Commission meetings**

**3** At its meetings, the Commission may exercise any of its powers by resolution unless some other mode of exercising the power is prescribed in or under this or any other Act.

*(3) The members of the Commission may be paid by the Commission their reasonable travelling and living expenses while absent from their ordinary place of residence and in the course of their duties as members of the Commission, in accordance with a resolution of the Commission.*

*(4) The vice-chair of the Commission shall exercise and perform the powers and duties of the chair in the event of the absence or inability to act of the chair or a vacancy in the office of chair.*

**4** Section 3 presently reads:

*3(1) Subject to subsection (2),*

*(a) if there are 3 members of the Commission in office, 2 members constitutes a quorum at a meeting of the Commission, and*

*(b) if there are one or 2 members of the Commission in office, one member constitutes a quorum at a meeting of the Commission.*

*(2) If one or 2 vacancies occur in the membership of the Commission the remaining members or member, as the case may be, may exercise all the powers of the Commission.*

*(3) At its meetings, the Commission may exercise any of its powers by resolution except when some other mode of exercising the power is prescribed in this or any other Act.*

**5 Section 5(1) is amended**

- (a) **by striking out** “Commission may” **and substituting** “board may”;
- (b) **by striking out** “members” **and substituting** “directors”.

**6 Section 6 is amended by adding the following after subsection (2):**

- (3) If the Commission appoints a chief executive officer, that individual shall not be a director.

**7 The following is added after section 6:**

**Responsibility of directors and officers**

**6.1** Every director and officer, in exercising powers and discharging duties,

- (a) shall act honestly and in good faith and with a view to the best interests of the Commission, and
- (b) shall exercise the care, diligence and skill that a reasonable and prudent person would exercise in comparable circumstances.

**Disclosure by directors and officers**

**6.2** Section 120 of the *Business Corporations Act* applies to the directors and officers of the Commission, and a reference in that section to a contract or transaction with a corporation includes both a contract or transaction with the Commission and a contract or transaction with the Crown.

**Indemnification**

**6.3(1)** Subject to the regulations, the Commission may in writing indemnify

- (a) a present or former director or officer of the Commission,

**5** Section 5(1) presently reads:

*5(1) The Commission may make bylaws respecting the calling of meetings of the Commission and the conduct of business at them, the duties and conduct of members and generally as to the conduct of the business and affairs of the Commission.*

**6** Section 6 presently reads:

*6(1) The Commission may appoint any officers and employees it considers necessary and prescribe their duties and their salaries or remuneration.*

*(2) The Commission may engage the assistance of any persons it considers necessary for the purpose of conducting its business and affairs.*

**7** Responsibility of directors and officers; disclosure by directors and officers; indemnification.

- (b) an individual who acts or acted at the Commission's request as a director or officer, or an individual acting in a similar capacity, of another entity, whether incorporated or unincorporated, of which the Commission or the Crown is or was a direct or indirect security holder or creditor,
- (c) an employee or former employee of the Commission, and
- (d) the heirs and legal representatives of a person referred to in clause (a), (b) or (c),

against costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of holding such a position, if that person acted honestly, in good faith and with a view to the best interests of the Commission or of the other entity, as the case may be, and in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, if that person had reasonable grounds for believing that the conduct was lawful.

(2) Subject to the regulations, the Commission may provide an indemnity in writing that is ancillary and incidental to the business purpose of an agreement involving the Commission if that agreement is of a kind where no liability under the indemnity is likely, based on the historical experience of giving similar indemnities, to arise in the normal course of the performance of the agreement if the agreement is properly performed.

(3) The Commission may, with the approval of the Lieutenant Governor in Council, provide indemnities in addition to those authorized by subsections (1) and (2).

**8 Section 7 is amended by striking out “The Commission” and substituting “Subject to the regulations, the Commission”.**



**8** Section 7 presently reads:

*7 The Commission may in writing delegate any power, duty or function conferred or imposed on it by this Act or any other Act or any regulation or rules to any person.*

**9 The following is added after section 9:**

**Records and accounts**

**9.1** The Commission shall prepare and retain records and accounts in accordance with the regulations as required by the Minister.

**Information to the Commission**

**9.2(1)** The Lieutenant Governor in Council may make regulations respecting the keeping of and the furnishing to the Commission of information that relates to hydrocarbon substances and that is required for the purposes of

- (a) evaluating, formulating or administering any policy or program of
  - (i) the Crown, or
  - (ii) the Commission,
- or
- (b) administering any enactment for which the Minister is responsible.

**(2)** Regulations under this section may provide for any matter respecting

- (a) the keeping of records for the purposes of this Act and the persons required to keep them,
- (b) information to be furnished to the Commission, the persons required to furnish that information, the form in which that information must be furnished and the time within which the information must be furnished,
- (c) the confidentiality of records and other information obtained by the Commission under this Act and the communication and disclosure of and access to those records and that information, and
- (d) the imposition of pecuniary penalties for failure to comply with subsection (3)(b).

**9** Records and accounts; information to the Commission.

**(3)** A person required to do so by the regulations under this section shall

- (a) keep records for the purposes of this Act in accordance with the regulations, and
- (b) furnish to the Commission information required by the regulations within the time prescribed by the regulations.

**(4)** With respect to any record or other information obtained by the Commission under this Act that is used for

- (a) determining or verifying royalty liability or collecting or forecasting royalty, or
- (b) determining, prescribing or verifying an amount, factor or other component that is used to calculate royalty,

the regulations made under this section prevail despite the *Freedom of Information and Protection of Privacy Act* for a period of 5 years following the end of the year to which the record or other information relates.

**10 Sections 10 and 11 are repealed.**

**11 Section 12 is amended**

**(a) in subsection (3)**

- (i) by striking out “Minister” wherever it occurs and substituting “Lieutenant Governor in Council”;**
- (ii) in clause (a) by striking out “for the purpose of meeting its obligations as they become due”;**

**10** Sections 10 and 11 presently read:

*10 The Auditor General is the auditor of the Commission.*

*11(1) The Commission shall annually, after the end of its fiscal year, prepare a general report summarizing its transactions and affairs during its last fiscal year and showing the revenues and expenditures during that period, an audited balance sheet and any other information required by the regulations.*

**11** Section 12 presently reads in part:

*(3) The Commission, with the approval of the Minister and to the extent permitted by the Minister,*

*(a) may from time to time borrow money from any person or enter into overdraft arrangements with a bank or treasury branch, for the purpose of meeting its obligations as they become due, and*

*(b) may give security for the repayment of that money.*

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

**(4)** The Lieutenant Governor in Council may authorize the President of Treasury Board and Minister of Finance to guarantee on behalf of the Crown in right of Alberta any obligation of the Commission.

**(c) by adding the following after subsection (4):**

**(4.1)** The Commission, with the approval of the Lieutenant Governor in Council and to the extent permitted by the Lieutenant Governor in Council, may guarantee the obligation of any person.

## **12 The following is added after section 12:**

### **Investment**

**12.1(1)** The Commission may be a participant under section 40 of the *Financial Administration Act*.

**(2)** In subsection (3), “shares” has the same meaning as in section 42(1)(a) of the *Financial Administration Act*.

**(3)** The Commission may, with the approval of the Lieutenant Governor in Council,

- (a) directly or indirectly purchase shares,
- (b) make a loan of money or acquire an existing loan of money, or
- (c) in a transaction involving the payment of any money, enter into a joint venture or partnership

for the purposes of fulfilling its responsibilities under section 15.

### **Directives**

**12.2(1)** The Minister may issue directives that the Commission, the board, or both, must follow in carrying out their powers and duties under this Act and the regulations.

**(2)** In subsection (3), “directive” means

*(4) The Lieutenant Governor in Council may authorize the President of Treasury Board and Minister of Finance to guarantee on behalf of the Crown in right of Alberta the repayment of any money borrowed by the Commission pursuant to subsection (3) and interest on that money.*

**12** Investment; directives.

- (a) a directive issued under subsection (1),
- (b) a directive issued by the Treasury Board pursuant to section 7 of the *Financial Administration Act*, and
- (c) any other directive or direction issued under another enactment.

(3) The board shall ensure that any directive issued to the board, and the Commission shall ensure that any directive issued to the Commission, is implemented in a prompt and efficient manner and in accordance with section 6.1, and compliance by the board or the Commission, as the case may be, with any directive is deemed to be in compliance with sections 6.1 and 15.

(4) This section does not apply to any powers, duties or functions of the Commission under Part 1, 2 or 5 of the *Natural Gas Marketing Act*.

**13 Section 13(1) is repealed.**

**14 Section 15 is amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following after clause (b):**

- (c) engage in other hydrocarbon-related activities in a manner that is, in the Commission’s opinion, in the public interest of Alberta.



**13** Section 13(1) has been added to section 2 as section 2(1.1).  
Section 13(1) presently reads:

*13(1) The Commission has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.*

**14** Section 15 presently reads:

*15 Subject to the regulations, the Commission shall*

- (a) accept delivery of the Crown's royalty share of a hydrocarbon substance required to be delivered to the Commission pursuant to an agreement, a contract under section 9(a) of the Mines and Minerals Act or an enactment, and*
- (b) deal with the Crown's royalty share of the hydrocarbon substance in a manner that is, in the Commission's opinion, in the public interest of Alberta.*

**15 Section 19(1) is amended**

**(a) by adding the following after clause (a):**

- (a.1) respecting delegation by the board under section 2;
- (a.2) prescribing powers, duties and functions that may not be delegated under section 2;
- (a.3) respecting the providing of indemnities by the Commission under section 6.3(1) and (2);
- (a.4) respecting delegations by the Commission under section 7;

**(b) by repealing clause (b) and substituting the following:**

- (b) respecting the preparation and retention of records and accounts under section 9.1;
- (b.1) respecting directives issued by the Minister under section 12.2(1);

**Amends RSA 2000 cN-1**

**16(1) The *Natural Gas Marketing Act* is amended by this section.**

**(2) Section 19(3) is amended**

- (a) by striking out “members” and substituting “directors”;**
- (b) by striking out “member” and substituting “director”.**

**(3) Section 24(b) is amended by striking out “member” and substituting “director”.**

**(4) Section 25 is amended**

**15** Section 19(1) presently reads:

*19(1) The Lieutenant Governor in Council may make regulations*

- (a) specifying substances or classes of substances as hydrocarbon substances for the purposes of this Act;*
- (b) respecting other information that must be shown in a general report referred to in section 11;*
- (c) respecting information to be furnished to the Commission, the persons required to furnish that information, the form in which that information must be furnished and the time within which the information must be furnished;*
- (d) respecting the imposition of pecuniary penalties payable to the Commission, the circumstances in which the penalties may be imposed, the persons liable to pay the penalties and the time by which the penalties must be paid;*
- (e) respecting the respective rights, powers, liabilities and obligations of the Commission, lessees and others in the event that the quantity of a hydrocarbon substance delivered to the Commission in a month is less than or greater than the Crown's royalty share of the hydrocarbon substance actually payable in respect of that month;*
- (f) providing for any matter in connection with or incidental to the administration of sections 15 to 18.*

**16** Amends chapter N-1 of the Revised Statutes of Alberta 2000. Sections 19(3), 24(b) and 25 presently read:

*19(3) The Commission may authorize any one of its members to report to the Commission on any question or matter arising in connection with the business of, or any application or proceeding before, the Commission under this Act or the regulations, and the member has all the powers of the Commission for the purpose of taking evidence or acquiring the necessary information for the purpose of the report, and when the report is made, it may be adopted as the decision of the Commission or otherwise dealt with as the Commission considers advisable.*

*24 No action or proceeding may be brought against*

- (a) in subsection (1)**
  - (i) by striking out** “chair, vice-chair or a member” **and substituting** “chair or a director”;
  - (ii) by striking out** “chair, vice-chair or member,” **and substituting** “chair or director,”;
  - (iii) by striking out** “as a member of the Commission” **and substituting** “as a director”;
  - (iv) by striking out** “or vice-chair”;
- (b) in subsection (2) by striking out** “member of the Commission” **and substituting** “director”.

**17 This Act comes into force on Proclamation.**

*(b) a member or employee of the Commission, or*

*in respect of anything done purportedly pursuant to this Act or the regulations or pursuant to any decision of the Commission under this Act or the regulations.*

*25(1) A decision or finding or other document purporting to be issued by authority of the Commission, when signed by the chair, vice-chair or a member of the Commission, shall be admitted in evidence as proof, in the absence of evidence to the contrary, of its contents without any proof of the signature of or of the authority of the chair, vice-chair or member, as the case may be, to sign the document or of that person's appointment as a member of the Commission or of that person's designation as chair or vice-chair, as the case may be.*

*(2) A copy of a decision, finding or other document purporting to be issued by authority of the Commission, when certified as a true copy by the Commission's secretary, shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the document and its contents without any proof of the authority of the member of the Commission by whom the document purports to be signed and without proof of the signature, authority or appointment of the Commission's secretary.*

**17** Coming into force.





