

2009 Bill 12

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Second Session, 27th Legislature, 58 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 12**

**SURFACE RIGHTS AMENDMENT ACT, 2009**

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MR. BERGER

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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*Bill 12*  
*Mr. Berger*

## **BILL 12**

2009

### **SURFACE RIGHTS AMENDMENT ACT, 2009**

*(Assented to , 2009)*

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

#### **Amends RSA 2000 cS-24**

**1 The *Surface Rights Act* is amended by this Act.**

**2 Section 3(3) to (7) are repealed and the following is substituted:**

(3) The Lieutenant Governor in Council shall designate one member as chair and may designate one or more of the other members as vice-chair.

(4) The Lieutenant Governor in Council may fix the remuneration that is payable to the chair and the Board members.

(5) The chair may

- (a) select a member or convene a panel of members to deal with a particular matter or class or group of matters, and
- (b) designate a member to chair a panel convened under clause (a).

(6) The member selected or panel convened pursuant to subsection (5) may perform the functions of the Board in respect of the particular matter or class or group of matters for

## Explanatory Notes

**1** Amends chapter S-24 of the Revised Statutes of Alberta 2000.

**2** Section 3(3) to (7) presently read:

*(3) The Lieutenant Governor in Council may from time to time nominate one or more persons from among whom acting members of the Board may be selected.*

*(4) When in the opinion of the chair of the Board it is necessary or desirable for the proper and expeditious performance of the Board's duties, the chair may name a person nominated under subsection (3) as an acting member for a period of time, during any circumstance or for the purpose of any matter before the Board.*

*(5) An acting member has, during the period, under the circumstances or for the purpose for which the acting member is named an acting member, all the powers of and may perform all duties of a member of the Board.*

*(6) The Lieutenant Governor in Council shall designate one member of the Board as chair and not more than 2 members of the Board as vice-chairs of the Board to act in the absence or inability to act of the chair.*

which the member was selected or the panel was convened and when performing any of those functions has all the powers and jurisdiction of the Board.

**3 Sections 4 and 5 are repealed.**

**4 Section 7 is repealed.**

*(7) The chair and each member of the Board shall receive the remuneration that is fixed by the Lieutenant Governor in Council.*

**3** Sections 4 and 5 presently read:

*4 In accordance with the Public Service Act, there may be appointed a secretary, an assistant secretary, inspectors, land examiners and any other employees required to carry on the business of the Board.*

*5(1) The secretary of the Board shall*

- (a) keep properly authenticated copies of every order made by the Board;*
- (b) have the custody and care of all records and documents belonging to or pertaining to the Board and filed with the Board;*
- (c) ensure that every order made by the Board is drawn pursuant to the direction of the Board and properly authenticated;*
- (d) deliver to any person on request and on payment of the prescribed fee a certified copy of any order made by the Board;*
- (e) perform any other duties that may from time to time be assigned or allocated to the secretary by the Board;*
- (f) obey all rules and directions given by the Board relating to the duties of the secretary.*

*(2) The assistant secretary of the Board may, subject to the direction of the Board, exercise and perform any of the powers and duties of the secretary.*

**4** Section 7 presently reads:

*7 The Board may make rules respecting the calling and holding of its business meetings.*

**5 Section 8(1), (2) and (3) are repealed and the following is substituted:**

**Powers and duties of Board**

**8(1)** The Board shall keep records of its proceedings.

**(2)** The Board may make rules

- (a) governing its business meetings,
- (b) governing the procedure and practice for its proceedings,
- (c) respecting the selection of a member and the convening of a panel for the purposes of section 3(5),
- (d) respecting the service of applications, notices, orders or other documents,
- (e) providing for the resolution of matters before the Board through settlement meetings, mediation or other alternative dispute resolution processes, including rules governing the practice and procedure for those processes,
- (f) respecting the examination of real or personal property under section 24, and
- (g) respecting any other matter that the Board considers advisable.

**(3)** In conducting proceedings, the Board

- (a) is not bound by the rules of law concerning evidence;
- (b) may enter on and inspect, or authorize any person to enter on and inspect, any land, building, works or other property;
- (c) has the rights, powers and immunities conferred on a commissioner under the *Public Inquiries Act*.

**(3.1)** In conducting proceedings, the Board is not bound to hold oral hearings but may instead, subject to the principles of natural justice, make decisions on the basis of written submissions.

**5** Section 8 presently reads in part:

*8(1) The Board may hold its sittings at any place or places in Alberta that it from time to time considers expedient.*

*(2) The Board shall*

- (a) make rules of procedure and practice governing hearings, inquiries and proceedings conducted by it and regulating the places and times of its sittings, and*
- (b) keep records of its hearings, inquiries and proceedings.*

*(3) In conducting a hearing or inquiry, the Board*

- (a) shall proceed in accordance with its rules of procedure and practice;*
- (b) is not bound by the rules of law concerning evidence;*
- (c) may enter on and inspect, or authorize any person to enter on and inspect, any land, building, works or other property;*
- (d) may adjourn the hearing or inquiry from time to time for any length of time the Board considers advisable;*
- (e) has the rights, powers and immunities conferred on a commissioner under the Public Inquiries Act.*

**(3.2)** The Board may adopt as its decision in proceedings a settlement reached by the parties to the proceedings through an alternative dispute resolution process provided for in rules made under subsection (2)(e).

**6 Section 9 is repealed.**

**7 Section 10 is repealed and the following is substituted:**

**Member absent**

**10** Where proceedings are conducted by the Board or a panel of the Board and a member or members of the Board or panel do not attend for any reason on any day or part of a day, the other members of the Board or panel may, if they constitute a quorum, continue the proceedings as fully and effectively as though the member or members were present.

**6** Section 9 presently reads:

*9(1) Any 3 members may perform any function of the Board and when performing that function have all the powers, duties, immunities and jurisdiction of the Board.*

*(2) Notwithstanding anything in this Act, one member may perform any function of the Board*

- (a) when the other member or members of the Board cannot act by reason of disability or of being absent on vacation or on leave of absence,*
- (b) in dealing with an application under and making a right of entry order pursuant to section 15(4)(a),*
- (c) in making an order terminating a right of entry order pursuant to section 28(5),*
- (d) in any proceedings pertaining to the determination of compensation in cases involving vacant Crown land, or*
- (e) with the consent of the operator and the respondent, in any proceedings where the matter in issue is the amount of compensation payable by an operator or the person to whom the compensation is payable,*

*and when performing that function that member has all the powers, duties, immunities and jurisdiction of the Board.*

**7** Section 10 presently reads:

*10 Where a hearing or inquiry is conducted by the Board and a member or members of the Board do not for any reason attend on any day or part of a day, the other member or members who are sitting on the hearing or inquiry may, if they constitute a quorum, continue the hearing or inquiry as fully and effectively as though the member or members were present.*

**8 Section 23 is repealed and the following is substituted:**

**Compensation**

**23** On making a right of entry order, the Board shall, in accordance with its rules, hold proceedings to determine the amount of compensation payable and the persons to whom it is payable.

**9 Section 24 is repealed and the following is substituted:**

**Inspection**

**24** The Board may, in connection with proceedings to determine the amount of compensation, of its own volition or on the written request of any of the parties to the proceedings, conduct an examination of any real or personal property in respect of which a compensation order may be made in order to determine the amount of compensation payable.

**10 Section 26(10) is amended by striking out “hearing” and substituting “proceedings”.**

**11 Section 27 is amended**

- (a) in subsection (8) by striking out “for a hearing” and substituting “for proceedings to be held”;**
- (b) by adding the following after subsection (9):**

**8** Section 23 presently reads:

*23(1) Forthwith on making a right of entry order, the Board shall give notice to the operator and each respondent of the date on which it will hold a hearing to determine the amount of compensation payable and the persons to whom it is payable.*

*(2) The compensation hearing shall be scheduled for a date that is not more than 90 days after the date the right of entry order was made.*

*(3) The Board shall make a compensation order not more than 60 days after the date on which the compensation hearing concluded.*

*(4) On notice to the parties, the Board may, if it considers it necessary to do so, extend the time limits referred to in subsections (2) and (3).*

**9** Section 24 presently reads:

*24(1) The Board may, in connection with a compensation hearing, and of its own volition or on the written request of any of the parties to the hearing, conduct an examination of any real or personal property in respect of which a compensation order may be made in order to determine the amount of compensation payable.*

*(2) Subject to section 9(2)(e), at least 2 members of the Board convened to hold the compensation hearing shall conduct the examination under subsection (1).*

**10** Section 26(10) presently reads:

*(10) A judgment of the Court of Queen's Bench or the Court of Appeal shall be served on the Board, and the Board without any further hearing shall vary its order in accordance with the judgment.*

**11** Section 27 presently reads in part:

*(8) If, by the end of the compensation year in which the notice is given, the parties cannot agree on a rate of compensation, the party desiring to have the rate of compensation reviewed or fixed may make an application to the Board for a hearing to determine the rate of compensation.*

**(9.1)** The Board may by notice in writing require an applicant to provide any additional information that the Board considers necessary for its proceedings by the time specified in the notice.

**(c) by repealing subsection (10);**

**(d) in subsection (11) by striking out “hear the application” and substituting “hold proceedings to determine the rate of compensation”.**

**12 Section 28 is amended**

**(a) by repealing subsection (2);**

**(b) in subsection (3) by striking out “shall hold the inquiry and”;**

**(c) by repealing subsection (6)(a).**

*(9) An application pursuant to subsection (8) shall set out*

- (a) the name and address of the operator,*
- (b) the name and address of the lessor or respondent, as the case may be,*
- (c) the rate of compensation under the surface lease or compensation order, and*
- (d) the amount the applicant believes to be a reasonable and fair rate of compensation,*

*and the application shall be accompanied with a copy of the surface lease, if applicable, and any other documents or material the applicant considers to be relevant to the application.*

*(10) On receipt of an application pursuant to subsection (9), the Board shall fix a date for the hearing of the application and notify the parties of the date so fixed.*

*(11) The Board shall hear the application and, as soon as it is convenient afterwards, shall make an order fixing, confirming or varying the rate of compensation payable commencing on the anniversary date of the surface lease or compensation order, as the case may be, next following the date notice was given under subsection (4)*

**12** Section 28 presently reads:

*28(1) If, at any time after the expiration of 2 months from the date of a right of entry order, the operator has not commenced to use or has ceased to use the surface of the land or any part of it, the operator, the owner or the occupant may request the Board for an order terminating the right of entry order as to that land or part of it.*

*(2) On receipt of a request referred to in subsection (1), the Board*

- (a) shall appoint a date for an inquiry into all matters pertaining to the request, and*
- (b) may require notice of the inquiry to be given in a manner the Board directs.*

**13 Section 29(c) is repealed.**

*(3) The Board shall hold the inquiry and may make an order terminating the right of entry order as to the land or any part of it.*

*(4) The Board shall not terminate the right of entry order as to the land or any part of it until a reclamation certificate has been issued for that land in any case to which Part 6 of the Environmental Protection and Enhancement Act applies.*

*(5) When a reclamation certificate has been issued under Part 6 of the Environmental Protection and Enhancement Act as to the land or any part of it held under the right of entry order, the Board may, without any inquiry, make an order terminating the right of entry order entirely or as to the part of the land to which the reclamation certificate relates, as the case may be.*

*(6) Notwithstanding anything in subsection (1), (2) or (3), if it is indicated to the Board that the termination of a right of entry should be considered, the Board*

*(a) may inquire into the matter, and*

*(b) may, if the circumstances in the opinion of the Board so warrant, make an order terminating the right of entry order as to the land or any part of it.*

**13** Section 29 presently reads:

*29 The Board may*

*(a) rehear an application before deciding it;*

*(b) review, rescind, amend or replace a decision or order made by it;*

*(c) without a hearing, amend an order of the Board with respect to an operator or respondent named in it,*

*(i) when there is a change of operator, on receipt of evidence satisfactory to the Board of the change, or*

*(ii) when there is a change as to the owner or occupant of the land, on receipt of proof of the change or on receipt of proof of the change and a proper assignment of compensation from the owner or occupant to the new owner or occupant;*

**14 Section 30 is amended**

- (a) in subsection (1) by striking out “a hearing” and substituting “proceedings”;**
- (b) in subsection (2) by striking out “hear and”.**

- (d) *notwithstanding anything in this Act, and with or without a hearing, amend a compensation order to show as a respondent a person who is neither an owner or occupant of the land concerned, and to make compensation payable to that person, when the Board is satisfied that that person is legally entitled to receive the compensation that would otherwise be payable to an owner or occupant.*

**14** Section 30 presently reads:

*30(1) Subject to subsections (2) to (4), the Board may hold a hearing and make an order with respect to a dispute between the operator and an owner or occupant who are parties to a surface lease or the operator and an owner or occupant under a right of entry order as to the amount of compensation payable by the operator*

- (a) *for damage caused by or arising out of the operations of the operator to any land of the owner or occupant other than the area granted to the operator,*
- (b) *for any loss or damage to livestock or other personal property of the owner or occupant arising out of the operations of the operator whether or not the land on which the loss or damage occurred is subject to the surface lease or right of entry order, or*
- (c) *for time spent or expense incurred by an owner or occupant in recovering any of the owner's or occupant's livestock that have strayed due to an act or omission of the operator whether or not the act or omission occurred on the land that is subject to the surface lease or right of entry order.*

*(2) The Board has jurisdiction to hear and determine a dispute under this section only if*

- (a) *the application is made in writing to the Board by a party to the dispute within 2 years from the last date on which damage is alleged to have occurred,*
- (b) *in the case of an application made before July 1, 2001, the amount of compensation claimed by the owner or occupant does not exceed \$5000, and*

**15 Section 32 is repealed and the following is substituted:**

**Certified copy as evidence**

**32** A copy of an order of the Board, certified as a true copy by a member of the Board, an employee of the Board authorized to perform that function or the Board's solicitor, shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the order by the Board, without any proof of the appointment or authority of the person so certifying or the authenticity of that person's signature or any other proof.

**16 Section 39(1) to (3) are repealed and the following is substituted:**

**Costs**

**39(1)** The costs of and incidental to proceedings under this Act are in the discretion of the Board.

(c) *in the case of an application made on or after July 1, 2001, notwithstanding that the damage in respect of which the application is made may have arisen before, on or after July 1, 2001, the amount claimed by the owner or occupant does not exceed \$25 000.*

(3) *This section does not apply to a claim for compensation the amount of which may be determined by the Board under section 25.*

(4) *An order under this section may be appealed by the operator or the owner or occupant as though the order were a compensation order under section 23.*

**15** Section 32 presently reads:

*32 A copy of an order of the Board, certified as a true copy by the chair or a member of the Board or the secretary, shall be admitted in evidence as proof, in the absence of evidence to the contrary, of the order by the Board, without any proof of the appointment of the person so certifying or the authenticity of that person's signature or any other proof.*

**16** Section 39(1) to (3) presently read:

*39(1) The costs of and incidental to the proceedings under this Act are in the discretion of the Board and may be fixed in any case at a sum certain or may be taxed.*

*(2) Without restricting the generality of subsection (1), the Board may make regulations*

*(a) establishing a schedule of fees and other expenses incurred by a party in connection with proceedings before the Board that may be allowed as part of that party's costs under this section, and*

*(b) respecting the circumstances under which the Board may allow costs with respect to matters dealt with in the schedule on a basis other than that prescribed in the schedule.*

*(3) The Board may order by whom the costs are to be taxed and allowed.*

**17 Section 40(1) and (2) are repealed.**

**18 Section 41(e) is repealed.**

**17** Section 40 presently reads in part:

*40(1) Where this Act or the regulations provide for the giving or serving of an application, notice, order or any other document by any person other than the Board, the application, notice, order or other document is sufficiently given or served on the person to whom it is directed if it is*

- (a) personally served on that person, or*
- (b) sent by registered mail addressed to that person at the person's last known address.*

*(2) Where this Act or the regulations provide for the giving or serving of a notice, order or other document by the Board, the notice, order or other document is sufficiently given or served on the person to whom it is directed if it is*

- (a) personally served on that person, or*
- (b) sent by ordinary, certified or registered mail addressed to that person at the person's last known address.*

**18** Section 41 presently reads:

*41 The Minister may make regulations*

- (a) defining or designating major power transmission line structures for the purposes of section 27;*
- (b) regarding matters with respect to which a surface lease must make provision, and regulating the content of those provisions;*
- (c) prescribing forms for the purposes of this Act;*
- (d) for the purposes of section 15(2)(b) respecting information that must accompany an application for a right of entry order;*
- (e) prescribing fees for the purposes of section 5(1)(d);*
- (f) exempting operators for the purposes of section 21(c) and defining local distribution system for the purposes of the exemption;*

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

*(g) establishing any procedural provisions for the purposes of section 36.*

**19** Coming into force.

