



STANDING COMMITTEE ON THE ECONOMY

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STANDING COMMITTEE ON THE ECONOMY

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Mr. Ryan Domotor
Cut Knife-Turtleford

Mr. Ken Francis
Kindersley

Mr. Delbert Kirsch
Batoche

Ms. Alana Ross
Prince Albert Northcote

Mr. Doug Steele
Cypress Hills

[The committee met at 15:59.]

The Chair: — All right. Welcome everyone to the Standing Committee on the Economy. I'm Colleen Young and I'll be chairing the meeting this evening. We have joining us here committee members Ryan Domotor, Ken Francis, Delbert Kirsch, Alana Ross, Doug Steele, and Ms. Erika Ritchie.

Bill No. 95 — *The Surface Rights Acquisition and Compensation Amendment Act, 2022*

Clause 1

The Chair: — We will begin with consideration of Bill No. 95, *The Surface Rights Acquisition and Compensation Amendment Act, 2022*, clause 1, short title. Minister Reiter is here with his officials, and I would ask that the officials please state their names before speaking at the mike for the first time. And you don't have to touch the mikes; our Hansard operator will turn it on when you have to speak. So, Minister, please introduce your officials and make your opening remarks.

[16:00]

Hon. Mr. Reiter: — Thanks, Madam Chair. I have with me today the assistant deputy minister of energy regulations, Sharla Hordenchuk; and the director of regulatory affairs, Scott Weaver. And behind me is my chief of staff, Charles Reid.

I'm pleased to speak to Bill 95, *The Surface Rights Acquisition and Compensation Amendment Act, 2022*. The bill is intended to address some issues that continue to be of concern to landowners, to industry itself, and the ministry as a regulator of the oil and gas industry.

Specifically, the bill will amend *The Surface Rights Acquisition and Compensation Act* to allow the Surface Rights Board of Arbitration to hear cases and issue compliance orders to oil and gas companies for payment of delinquent surface rights compensation owed to landowners, add an obligation in *The Oil and Gas Conservation Act* for operators to comply with an order of the board, create a requirement in the Act for the operator to prove compliance with the board's order for payment to the ministry in a manner to be prescribed in regulations, establish power in the Act to prescribe in regulations the maximum allowable compensation that can be awarded by the board for off-lease damages, and introduce various housekeeping amendments to update and modernize the Act.

It's important to remember that if landowners do not own the mineral rights under their property, a landowner cannot prevent access to their land to the holder of those mineral rights. Surface rights compensation is meant to repay landowners for agricultural and other ongoing impacts caused by oil and gas facilities on their properties.

As of now, neither the ministry nor the board can assist landowners in recovering unpaid surface rights compensation. And while the ministry can suspend the company's operations in certain circumstances, it currently has no authority to impose sanctions when a licensee hasn't paid surface lease rentals to landowners. That leaves landowners with one option to recover

unpaid surface lease rentals, and that's going through the courts on their own, assuming a delinquent licensee is still in business. Often that option is not pursued because of the cost of litigation.

During March of '22 to May of '22, the ministry engaged with industry and various stakeholder groups, including the Canadian Association of Petroleum Producers, the explorers and producers association of Canada, the Saskatchewan-headquartered oil producers, the Saskatchewan Cattlemen's Association, the Saskatchewan Stock Growers Association, the Agricultural Producers Association of Saskatchewan, the Saskatchewan Association of Rural Municipalities, the Surface Rights Board of Arbitration, the ministries of Environment and Agriculture, and received feedback from individual landowners.

In general the ministry received positive feedback from respondents on the ability for the board to hear matters of nonpayment and for the board to make orders for payment and for the ministry to act to suspend an operator's licences if they failed to comply with that order. Industry is well aware of the importance of ensuring landowners are paid their financial obligations and the black eye non-payment can give the industry as a whole.

The bill will better align Saskatchewan with the surface rights legislative regimes already established in Alberta and British Columbia. For years these provinces have allowed their respective surface rights boards to hear cases and to issue orders demanding payment of delinquent surface lease rentals.

The bill also gives the ministry the ability to use its regulatory powers to help compel payment from delinquent operators. The bill also proposes to establish power in the Act to prescribe in regulations the maximum allowable compensation that can be awarded by the board for off-lease damages. The Act currently only allows a maximum award for damages of \$1,000. Landowners are requesting that amount be increased to provide adequate compensation in those instances of damage. The maximum damages amount will be set in regulations, which the ministry is currently engaging on.

Finally the bill introduces various housekeeping amendments to update and modernize the Act, including allowing for a notice of service pursuant to the Act to be served electronically, in addition to service in person or by registered or certified mail; removal of redundant and obsolete provisions that have been superseded by other sections of the Act; repealing sections 56 to 59 of part VI of the Act that duplicate the robust, science-based site reclamation process under *The Oil and Gas Conservation Act* governing the restoration of landowners' property impacted by oil and gas activity; and requiring operators to control pests in addition to weeds at well and facility sites.

And with those opening comments, Madam Chair, we'd be happy to take any questions.

The Chair: — Thank you, Minister. I'll open the floor to committee members now, and I'll recognize Ms. Ritchie.

Ms. Ritchie: — Thank you, Madam Chair. In consultation with stakeholders, one of the issues that has come up is limits on surface rights where operations are dormant. And I wondered if

you could explain how that issue has been addressed in terms of cases where operations are no longer active.

Hon. Mr. Reiter: — Can I just clarify your question? When you said “dormant,” were you referring to an orphan well, or were you referring to when the company is no longer in business?

Ms. Ritchie: — You know, I think it applies to all. The way it was sort of explained to me was that sometimes an operation can just, you know, not be orphaned, but you know, for whatever reason operation has been paused perhaps.

Hon. Mr. Reiter: — Okay, I think they would have been referring to an orphan well likely then.

Ms. Ritchie: — Okay.

Hon. Mr. Reiter: — Okay. So the amendments to the Act that you see in front of you today won’t address that, but there are provisions existing in the Act that can address that. And I’m just going to ask Scott to introduce himself and to explain that.

Mr. Weaver — Sure. Scott Weaver. Once the site becomes orphaned, then it falls into the orphan well program. And then the intent of that program is to clean up and remediate that site as soon as possible without that. So the ongoing surface payment kind of ends when it enters the orphan program. The orphan program doesn’t have a mechanism to address outstanding or ongoing surface lease payments, but the aim of the program is to get those sites cleaned up as quick as possible and returned to the landowner in the original states.

Ms. Ritchie: — I believe that the concern had more to do with cases where, you know, production has been paused, and there is some intent maybe down the road . . . They want to keep their options open to then bring it back into production. And the concern is that this is impacting on the compensation that’s received during those times when they’re not in production.

Mr. Weaver — Yeah. In those cases actually when a well becomes inactive, not producing but not abandoned, the surface lease is still owing on that property. So that still is an accumulation of debt that has not been paid, so that amount doesn’t change. That agreement still goes forward until that site is reclaimed.

So what the legislation will do in those cases where companies aren’t paying is allow us as a regulator to suspend those licences and get them off the landscape, or to identify that problem much earlier and deal with the company from a regulatory perspective earlier, in those cases.

Ms. Ritchie: — Okay. Yeah, so it seems like it’s kind of addressing it sort of indirectly in terms of if it’s not producing and they’re not paying, then you have a mechanism for it to be . . .

Mr. Weaver — To identify that through Surface Rights Board.

Ms. Ritchie: — Yeah.

Mr. Weaver — And then the ministry can take actions to suspend that licence.

Ms. Ritchie: — Yeah, okay. Well we might come back to that later when I have some questions in regards to that. I mean, certainly the issue around the degree and level of compensation has been a prime concern. And a number of sort of nuisance and inconvenience factors have been identified, you know, including impacts, negative impacts to agricultural production from decreased grass production from dust, and increased respiratory issues in livestock from dust, decreased grass utilization and grazing distribution as a result of vehicle traffic, potential for injured or euthanized animals from vehicle collisions.

I note that there is amendments in the Act around noxious and invasive weeds. But these other inconvenience factors, as I’ll call them, are also of concern to stakeholders, you know, generally the lost production from inaccessible and idle land as a result of large farm equipment being unable to manoeuvre around tight spots around oil infrastructure, and the list goes on. And so I guess it’s sort of a broader question in terms of you’ve mentioned that, I believe, that the compensation amount will be the subject of regulation. Is that right?

Hon. Mr. Reiter: — Yeah, that’s right.

Ms. Ritchie: — And so I mean it seems to me that it leaves a lot of unanswered questions in terms of the issues brought forward by stakeholders. And I’m wondering if you can address how these factors will be considered.

Hon. Mr. Reiter: — So many of the issues you raised when you were going through things — you said you’d heard from landowners — that had a great deal to do with the decision to do the amendments we’re doing today.

[16:15]

So that thousand-dollar amount that’s currently there, as I mentioned, that’ll be gone. And our ministry officials are doing consultations right now to come forward with a recommendation on what that max amount will be from now on. So that’s the intent, is to handle those sorts of concerns. I can’t tell you a dollar amount today because it’s not decided, but it will go through the process for regulations.

Ms. Ritchie: — And so in the present legislation, there is a maximum amount that’s identified in the legislation at \$1,000. Right?

Hon. Mr. Reiter: — Yes.

Ms. Ritchie: — And so I guess, you know, there would be concerns with having that now be subject to regulation. And I guess I’m trying to understand the justification for moving that into regulation and not having it be in the realm of the Act — which is, you know, a legislation approved by the legislature — and now subject to regulations.

Hon. Mr. Reiter: — I think part of the answer to that would be, you know . . . As you know, to amend legislation certainly takes longer. And that would be part of the reason that, in an instance like this, that dollar amount frankly got outdated. So wherever the new amount’s left with . . . wherever it’s set with regulation, it leaves an option open for some point down the road and possibly for more frequent updates when, you know, depending

on rates of inflation, those sorts of things.

Ms. Ritchie: — I guess the issue it raises though is now it takes it out of the hands of the legislature to make that determination in terms of whether or not there be a cap, how much that cap is. I understand that in other jurisdictions, notably BC [British Columbia], there is no cap stated there. And so looking again for some kind of, you know, assurance or justification for why that approach would be taken.

Hon. Mr. Reiter: — I think in addition to what I said previously, it's not uncommon for those types of things to be in regulation. That's why you have regulations as opposed to everything being in the Act.

Ms. Ritchie: — Okay, thank you very much. I guess it remains to be seen whether, you know, sort of it strikes the right balance. I'll move on with some other questions.

We've also had some feedback regarding the period for cleanup on, I guess, sites that have been taken out of production. Can you please explain how that issue has been addressed in terms of the time frames for cleanup?

Hon. Mr. Reiter: — Just for clarification, that question, are you referring to inactive wells or orphan wells?

Ms. Ritchie: — Inactive.

Hon. Mr. Reiter: — Okay.

Ms. Hordenchuk: — Hi, this is Sharla Hordenchuk. So with regards to the question around the period for cleanup for inactive sites, so outside of the scope of Bill 95 but part of a set of regulations that came into force January 1st of 2023, are *The Financial Security and Site Closure Regulations*, which prescribe through regulation an annual reduction target for a company's inactive liability reduction program.

So there's requirements starting at 5 per cent reduction in 2023 to reduce their inactive inventory. So that's for the purposes of abandonment. And while those sites are still with an owner, with a company, there's, you know, requirements there around site maintenance. So when a site is abandoned, it's not necessarily on a schedule for reclamation.

Ms. Ritchie: — And so during that time that it is inactive then, as you say, the leaseholder is obligated to ensure continued site maintenance and compensation. Is that correct?

Ms. Hordenchuk: — So just in response to that question, I guess the short answer would be, yes, you know, unless there's some other arrangement that the company has made with the landowner. But it would be, you know, subject to the requirements to maintain the site and part of that lease agreement.

Ms. Ritchie: — Okay. And the very issue that's come to my attention is concerns around transparency of lease agreements between surface rights holders and lessors. How is the legislation addressing the issue of transparency? I understand in some other jurisdictions those agreements are public and filed with the surface rights boards. Will that be the case with these amendments?

Hon. Mr. Reiter: — So the current requirement under section 30 says:

Every agreement entered into after the coming into force of this Act between an operator and an owner or between an operator and the occupant, if any, with respect to compensation for any surface right mentioned in section 23 shall be in writing and a copy of the agreement shall be filed by the operator with the board within thirty days after the date of execution thereof.

So the amendments aren't addressing that, so that would still stay in force.

Ms. Ritchie: — So are you saying in that case that at this time any landowner could request copies or view lease agreements for other properties?

Hon. Mr. Reiter: — So the section I read, it'll stay in place. Your question specifically — I'm sorry I misunderstood the first question — that would be under the operations of the board. We're not sure exactly how the board handles public inquiries with that. We can follow up and get back to you though.

Ms. Ritchie: — Just so I understand the response, are you saying that accessibility or access to those agreements that are filed is the purview of the board?

Hon. Mr. Reiter: — Well I don't know whether or not there's some commercial sensitivities in play there. I don't know how the board handles that. So we will check and follow up with you though.

Ms. Ritchie: — Yeah, so I guess from conversations that I've had with surface rights holders, they lament an uneven playing field and lack of, you know, when it comes to sort of entering into a negotiation around compensation, sort of what fair market value is and, you know, how surface rights holders are supported in terms of ensuring a fair bargain I guess at the end of the day in terms of those compensation rates and not necessarily knowing what the neighbour down the road got. Or you know, one neighbour may have drove a hard bargain and managed to get a certain amount. And just a lot of concerns around their ability to negotiate and receive fair compensation.

So I guess my question would be in that case, has that issue been addressed or how has it been addressed with these amendments? I mean how are we ensuring that surface rights holders receive fair compensation and fair market value?

[16:30]

Hon. Mr. Reiter: — So with this, to your question, what we're not trying to do is delve into that space. Government is not determining what fair market value is in this case. There is provision that if there's a disagreement between the two parties though, now they will have the avenue to go to the board. The board can look at it and make an objective ruling in that case. What we're trying to do today is to make sure that the landowner is paid.

Ms. Ritchie: — With regards to that process, another concern I've heard is that oftentimes the timing of hearings, the location

of hearings is difficult for landowners, surface rights holders, particularly when it falls during either, you know, seeding or harvest or calving season. What has been done to ensure that those sorts of considerations and the priorities of surface rights holders are adequately addressed?

Because I don't think it's a small matter, like the concerns that I've heard in terms of having to drive hours to a hearing in Regina, you know, from a farm site. And it's very disruptive to their own agricultural operations to take time out to go and attend to these hearings. And you know, the fact that the hearings aren't being held, say, maybe in an RM [rural municipality] office instead of coming all the way to Regina. And as I say, the time of year and some of those seasonality considerations and how those have been accounted for in the amendments.

Hon. Mr. Reiter: — So a couple points. The board head office isn't in Regina; it's in Kindersley. And the folks are telling me that — I think it's relatively recently, I'm assuming probably during COVID — allowance was made for virtual hearings as well. So I think there's some avenues being taken to kind of address the concerns that you had raised.

Ms. Ritchie: — And some other concerns that I've heard raised relate to the lack of bargaining power, I suppose. When, say a surface operator, if they feel like they're not . . . or not an operator sorry, a leaser, if they're not satisfied with the direction that the negotiations are going, they may just go to the next surface rights holder next door. And because of the ability to do directional drilling nowadays, or you know, access wells, so you know, again the question comes is that surface rights holders don't necessarily feel like they do have a lot of bargaining power when there isn't that full transparency and there's the ability of the producer to then go to other locations. And I'm wondering if there's . . . I think there was some talk, perhaps, about the timing for those negotiations and when they take place, to somewhat address that issue. I'm not sure about that. But I'm just wondering how you consider those types of concerns from stakeholders.

Hon. Mr. Reiter: — I guess the situation here becomes sort of that's the freedom to negotiate, right? If the point of the amendments today are to deal with compensation if you've lost some use of your land or the issues around that, if the company goes to a different landowner, and the first landowner, you know, if they're not on site, then sort of there's no compensation. The amendments here become irrelevant to that person.

Ms. Ritchie: — Now staying on the topic of compensation, I understand that you say that this is something now that's going to be subject to regulations, but this is really my only opportunity to sort of, you know, bring forward these concerns of stakeholders.

So another concern and issue that's been raised is the compensation for pipeline rights-of-way. And it's my understanding currently that that is . . . and other facilities. I'm not clear on sort of what the current framework is right now, but the concern that's come forward is one around the lack of compensation for pipeline rights-of-ways, and can you please tell me how that's currently being addressed and how that might change with the amendments?

Hon. Mr. Reiter: — So the pipelines you're referring to, if it's flowlines or something of that nature, that wouldn't be impacted by this Act. There's already provision in the Act that they can apply to the board and nothing in the amendments is going to change that.

Ms. Ritchie: — And so when you say they can apply to the board, the current framework allows for compensation or is that the decision of the arbitration board?

Hon. Mr. Reiter: — If the framework allows for compensation.

Ms. Ritchie: — Okay, I can take that at face value. I'm just trying to understand why it would have come up repeatedly from stakeholders in terms of the degree of compensation, whether or not they are compensated, the amount, and if there had been feedback to that effect from stakeholders you mentioned that you had consulted with, how that might have been considered in terms of these amendments.

[16:45]

Hon. Mr. Reiter: — I'm going to need some clarification. You're talking about annual compensation then?

Ms. Ritchie: — I'm not sure. Are there different types for rights-of-way?

Hon. Mr. Reiter: — Yeah, I think so. I apologize; I'm not clear. You had several questions kind of all rolled into one there.

Ms. Ritchie: — Yeah, you know, I guess the nub of it is the concern raised by stakeholders regarding compensation for pipeline rights-of-ways. You've already indicated that there's provisions in the current Act to receive that compensation. And my question was around, did this issue, even though it's maybe not addressed in these amendments, did this issue come up in your consultations and how was that resolved?

Hon. Mr. Reiter: — So as I'm sure you know, I wasn't part of those consultations. Ministry officials do that, and they tell me that officials, after that, they rolled up everything they heard and it's on the website now. Whether that one in specific was, I'm not sure, but it's available publicly.

Ms. Ritchie: — Okay. I'd like to get into the section 86 around order for payment. And whereby an operator fails to honour its compensation obligations, an owner may apply to the board for an order requiring the operator to comply with those compensation obligations. And it mentions "in an approved form and manner," and I'm wondering if you could tell me what that might be.

Mr. Weaver: — So I would say the approved form and manner is to be determined still as part of the regulation development that we're doing as well. But basically it's, you know, the board would be looking for some verification that the payment was made. So that could include things like a cancelled cheque or a bank statement or a transfer, or some notice of such just to verify that the payment had been made.

Ms. Ritchie: — Okay. And I see that an applicant pursuant to subsection (1) must be made no earlier than three months after

the date on which payment for compensation was due. How did you arrive at that time frame?

Mr. Weaver: — The three-month's notice was based on feedback received both from landlords and industry, and with the intent to ensure that, you know, these matters get addressed quicker from an industry standpoint. So landowners can come forward, but also to encourage landowners to bring these issues forward as well. So not to let nonpayment drag out for a period of time. So there is within the three-month period, you know, counting the delayed cheque, there's certain reasons why something may not be paid in three months. But you know, generally after three months, that was the impetus to have that move forward quickly.

Ms. Ritchie: — Are there any penalties or fees that are contemplated or included in these amendments in the case where those payments are indeed either late or not forthcoming?

Ms. Hordenchuk: — So in response to the question about penalties or other matters to deal with it, I would say if the payment is not made, then the amendments enable the ministry, as regulator, to suspend a licence if the proof of payment cannot be in fact proved out. And if the payment is not made, then that authority is enabled to suspend a licence.

Ms. Ritchie: — And so there's existing provisions, you're saying, within the legislative framework to take that course of action? I'm just looking for confirmation.

Ms. Hordenchuk: — So the amendments are what would create that provision for the regulator to suspend a licence if proof of payment and payment is not made.

Ms. Ritchie: — Under what section would I find that?

Ms. Hordenchuk: — Thank you for the question. So just in regards to where is that provision, so that is under *The Oil and Gas Conservation Act* associated amendment, which would be new section 9.101 indicating that:

Every licensee shall comply with all orders issued pursuant to *The Surface Rights Acquisition and Compensation Act* and the proof of payment requirement set out in subsection 86.1(8) of that Act.

Ms. Ritchie: — Okay, thank you for that answer. And I guess that would cover off on enforcement of these provisions under section 86. Is that correct?

Ms. Hordenchuk: — That is correct.

Ms. Ritchie: — Okay. Yeah, I remember what I was going to ask. So in terms of the process that's just been described and sort of the rights of the surface rights holder with regards to this, I mean I kind of . . . You indicated in one of my earlier questions that you're not finding in all cases that landowners are coming forward in a timely fashion when these kinds of issues are arising.

And so, maybe it's kind of a twofold question, but what efforts is the ministry undertaking to ensure that the process will be — as amended — will be understood and communicated to those rights holders, and to ensure that they are coming forward in a

timely manner as these issues arise?

Mr. Weaver: — Sure. So I think the mechanism for communicating that will be similar to how we've done the consultation. So involved in the consultation were numerous, kind of, associations, so SARM [Saskatchewan Association of Rural Municipalities], and APAS [Agricultural Producers Association of Saskatchewan], and landowner groups, and stakeholder groups.

So we would provide that information back to those groups to distribute to their membership and the community broader. We also publish, typically with regulatory amendments and such, a bulletin on our site that's, you know, it's public but it's kind of more aimed to the industry to understand the process as well. When we did the consultations on the Act, we did take out ads and we did a social media post as well. So we have mechanisms to kind of broadly disseminate this as far as we can.

Ms. Ritchie: — And I guess going back to an earlier issue that I was asking some questions around in terms of the negotiating position of landowners respective, or you know, compared to the land agents, the producers, is there or has there been any efforts or initiatives undertaken to support landowners to be able to sort of enter into those agreements on a more even footing?

[17:00]

Hon. Mr. Reiter: — So again, in private negotiations like that it is not our intent to interject into those. There are, however though, some landowner associations, those sorts of organizations that often share information. Our intent with the amendments here is to make sure that the landowners get paid.

Ms. Ritchie: — And given the time, just one final, quick question. It's also come to my attention that some of the stakeholders would like all pipelines, flow lines, and power lines to be registered with Sask 1st or a similar line identification system. Is that something that is being endeavoured?

Hon. Mr. Reiter: — That issue is far beyond what we are dealing with in these amendments, but we'll ask ministry officials to take a look. And if there is some information that this has been looked at in the past, we'll share that with you when we get back to you with the other items.

Ms. Ritchie: — Thank you, Minister. No further questions, Madam Chair.

The Chair: — Seeing no further questions from committee members at this point in time, we will move to vote off the bill. Clause 1, short title, is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried.

[Clause 1 agreed to.]

[Clauses 2 to 19 inclusive agreed to.]

The Chair: — His Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

The Surface Rights Acquisition and Compensation Amendment Act, 2022.

I would ask a member to move that we report Bill No. 95, *The Surface Rights Acquisition and Compensation Amendment Act, 2022* without amendment. Mr. Francis so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. Minister, if you have any closing remarks.

Hon. Mr. Reiter: — I do. Thank you, Madam Chair. I'd like to thank you and the committee members for their time today. I'd also like to thank Ms. Ritchie for her respectful questions, the Assembly staff, and also the ministry staff for their time today. Thank you.

The Chair: — Awesome. That concludes our business for today. I would ask a member to move a motion of adjournment. Mr. Domotor so moves. Is that agreed?

Some Hon. Members: — Agreed.

The Chair: — Carried. This committee stands adjourned to the call of the Chair.

[The committee adjourned at 17:06.]