

1986 BILL 42

First Session, 21st Legislature, 35 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 42

ALBERTA ENERGY COMPANY AMENDMENT ACT, 1986

THE MINISTER OF ENERGY

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 42

1986

ALBERTA ENERGY COMPANY AMENDMENT ACT, 1986

(Assented to _____, 1986)

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

1 *The Alberta Energy Company Act is amended by this Act.*

2 *Section 1(1) is amended*

(a) *in clause (a) by striking out “of association of the Company” and substituting “, as defined in the Business Corporations Act, of the Company”;*

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

(b.1) “by-laws” means the by-laws of the Company;

(c) *in clause (c) by striking out “memorandum and articles of association of the company” and substituting “articles and by-laws of the Company”;*

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

(d) “Company” means Alberta Energy Company Ltd.;

(e) *by repealing clause (e);*

(f) *in clause (l) by striking out “the register of members” and substituting “a securities register”.*

3 *Section 2 is repealed and the following is substituted:*

2 Alberta Energy Company Ltd. may use the name “Alberta Energy Company” notwithstanding anything in the *Business Corporations Act* to the contrary.

4 *Section 3 is amended*

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

3(1) Subject to the *Business Corporations Act*, any Canadian citizen is qualified to be a director of the Company if he otherwise qualifies under the charter in that regard.

(b) *by repealing subsection (5).*

Explanatory Notes

1 This Bill will amend chapter A-19 of the Revised Statutes of Alberta 1980.

2 Section 1(1) presently reads in part:

1(1) In this Act,

(a) "articles" means the articles of association of the Company;

(c) "charter", in relation to the Company, means this Act and the memorandum and articles of association of the company;

(d) "Company" means the Alberta Energy Company incorporated under the Companies Act as the Alberta Energy Company Ltd.;

(e) "member" means a shareholder;

(l) "shareholder" means a person who, according to the register of members of the Company, is the holder of a share of the Company and a reference in this Act to the holding of a share by or in the name of a person or any description of person is a reference to his being a shareholder according to any such register;

3 Section 2 presently reads:

2 The Alberta Energy Company Ltd. incorporated under the Companies Act may use the name "Alberta Energy Company" notwithstanding anything in the Companies Act to the contrary.

4 Section 3 presently reads in part:

3(1) Subject to the Companies Act, any Canadian citizen is qualified to be a director of the Company if he otherwise qualifies under the articles in that regard.

(5) The Company may purchase and maintain insurance for the benefit of a director of the Company from and against any liability, cost, charge, loss or expense for which the Company is liable to indemnify the director under the articles.

5 *Section 5 is amended*

- (a) by repealing subsections (1) to (4);*
- (b) in subsection (5) by striking out “articles” and substituting “charter”;*
- (c) in subsection (6) by adding “voting” before “shares”;*
- (d) in subsection (7) by striking out “the register of members” and substituting “a securities register”;*
- (e) in subsection (8)*
 - (i) by striking out “subsection (10)” and substituting “subsection (9)”;*
 - (ii) by striking out “register of members” wherever it occurs and substituting “securities register”;*
 - (iii) by adding “voting” before “share” and “shares” wherever they occur;*
- (f) in subsection (9)*
 - (i) by adding “voting” before “shares” wherever it occurs;*
 - (ii) by striking out “by the register of members” and substituting “by the securities registers”;*
 - (iii) in clause (b) by striking out “the register of members” and substituting “a securities register”;*
- (g) by repealing subsection (10) and substituting the following:*

(10) In the case of the subscription for voting shares of the Company pursuant to an offer of voting shares by way of rights granted by the Company to holders of its shares to purchase additional shares, the Company may count as voting shares issued and outstanding all the voting shares included in the offer.

5 Section 5 presently reads:

5(1) Subject to the charter, the shares of the Company are transferable in accordance with the Companies Act.

(2) No share certificate shall be issued for a fraction of a share of the Company but the Company may issue in lieu of a share certificate for a fractional share, scrip certificates in bearer form that entitle the holder to receive a share certificate for a full share by exchanging scrip certificates aggregating a full share.

(3) The Board may attach conditions to any scrip certificates issued by the Company.

(4) A holder of a scrip certificate is not entitled to exercise voting rights or to receive dividends in respect of the scrip certificate.

(5) A shareholder of the Company shall, on the request of the Board made in accordance with the articles, submit a declaration to the Company with respect to

(a) his direct or indirect ownership of any shares of the Company;

(b) whether he and any person in whose right or for whose use or benefit the share is held are residents of Canada or individuals who are Canadian citizens;

(c) whether he is associated with any other shareholder;

(d) whether he is a Canadian citizen;

(e) if the shareholder is a corporation or trust, information establishing that the shareholder is a resident of Canada;

(f) any other matters the Board considers relevant for the purposes of determining whether the shareholder complies with the statutory conditions.

(6) When a declaration has been requested by the Board from a shareholder under this section and the shareholder fails or neglects to submit to the Board a declaration satisfactory to the Board within 30 days of the day that the request was sent to the shareholder by the Board, the shares of the Company held by that shareholder shall be deemed to be held in contravention of the charter of the Company until a declaration satisfactory to the Board has been submitted to it.

(7) It is a condition of every transfer of a share to be made or recorded in the register of members of the Company and of any subscription for a share of the Company that the transferee or subscriber shall, at the request of the Board, submit to the Board a declaration to the like effect as the declaration that may be requested by the Board under subsection (5).

(8) Subject to subsection (10), when the Board has requested a declaration pursuant to subsection (7), the Board shall not accept any subscription for a share of the Company or allow any transfer to be made or recorded in a register of members of the Company unless the declaration has been submitted to the Board and it appears from the declaration that the subscriber or transferee would not, by the acceptance of the subscription for the shares being subscribed for or the entry in a register of members of the shares being transferred, hold those shares in contravention of the charter of the Company.

(9) When, in the case of a subscription for or transfer of any shares of the Company, it appears that the number of shares that would be held by the subscriber or the transferee, as shown by the register of members of the

6 *Section 6(3) is amended by striking out “register of members” and substituting “securities register”.*

7 *Section 8 is amended*

(a) in subsection (1) by striking out “hold voting shares” and substituting “hold those voting shares”;

(b) in subsection (2)

(i) by striking out “redeem” and substituting “purchase”, by striking out “redeemed” and substituting “purchased” and by striking out “redemption” wherever it occurs and substituting “purchase”;

(ii) in clause (b) by striking out “articles” and substituting “charter”;

(c) in subsection (4)

(i) by striking out “redeemed” wherever it occurs and substituting “purchased”;

(ii) by striking out “Companies Act” and substituting “Business Corporations Act”;

(d) by repealing subsection (5) and substituting the following:

(5) When the contravention of the charter of the Company in respect of which voting shares are required to be disposed of pursuant to subsection (1) concerns the holding by a shareholder and any associates of the shareholder of a total number of voting shares of a class in excess of the percentage limit specified in Part 3 of the issued and outstanding voting shares of that class, the voting shares of that class held by the shareholder and the associates for the least length of time shall, to the extent of that excess, be required to be disposed of first pursuant to this section unless the shareholder and the associates, by agreement notified in writing to the Company, agree to dispose of the number of voting shares of that class sufficient to remove the contravention, in which case the voting shares of that class shall be disposed of by the shareholder and associates as agreed.

Company, would not be more than 6000 shares if the subscription were accepted or the transfer allowed, the Board is entitled to assume

(a) that the subscriber or the transferee is not and will not be associated with any other holder of shares of the Company, and

(b) unless the address to be recorded in the register of members of the Company for the subscriber or transferee is a place outside Canada, that the shares will not be held in contravention of the charter of the Company.

(10) In the case of the subscription for shares of the Company pursuant to an offer of shares by way of rights granted by the Company to holders of its shares to purchase additional shares, the Company may count as shares issued and outstanding all the shares included in the offer.

6 Section 6(3) presently reads:

(3) The validity of a transfer of shares of the Company that has been made or recorded in a register of members of the Company or the validity of the acceptance of a subscription for shares of the Company is not affected by the holding of the shares in contravention of the charter of the Company.

7 Section 8 presently reads:

8(1) When any voting shares of the Company are held in contravention of the charter of the Company, the Company may, on notice to the persons in the manner that may be prescribed by the Board, require the voting shares to be disposed of to a person who may hold voting shares of the Company, within a period, being not less than 60 days, set out in the notice.

(2) If the voting shares referred to in subsection (1) have not been disposed of within the time set out under that subsection, the Company at its sole option may, at any time while those shares continue to be held in contravention of the charter of the Company, redeem them for cancellation on

(a) the deposit by the Company of the amount of the redemption price of the shares in a special account with a bank or treasury branch, and

(b) the giving of notice of redemption to the persons and in the manner prescribed by the articles, including notice of the deposit referred to in clause (a),

and thereupon the shares shall be deemed to be redeemed for cancellation and the rights of the holder and any beneficial owners of them cease except the right of a beneficial owner to receive out of the amount so deposited, without interest, the redemption price payable with respect to the shares on presentation and surrender of the certificates representing the shares.

(3) Any interest payable by the bank or treasury branch on the deposit made pursuant to subsection (2)(a) shall be paid to the Company.

(4) The Company is not bound to see to the application of the amount deposited or to the execution of any trust, whether express, implied or constructive, in respect of any voting shares redeemed for cancellation under this section, nor is the Company estopped by any certificates outstanding in respect of any voting shares redeemed for cancellation, notwithstanding anything in the Companies Act.

(5) When the contravention of the charter of the Company in respect of which voting shares are required to be disposed of pursuant to subsection (1) concerns the holding by a shareholder and any associates of the shareholder of a total number of voting shares in excess of the percentage limit specified in Part 3 of the issued and outstanding voting shares of the Company, the voting shares of the Company held by the shareholder and the

(e) in subsection (6),

(i) by striking out “articles” and substituting “charter”;

(ii) by striking out “redeem” and substituting “purchase”;

(f) by repealing subsection (7) and substituting the following:

(7) For the purposes of this section, the purchase price of any class of voting shares or, in the case of a class of voting shares that has been issued in series, the purchase price of voting shares of that series, is the lesser of

(a) the average issue price per share of all the issued shares of that class or series, and

(b) the closing price per share of the shares of that class or series on the principal stock exchange on the business day immediately preceding the date of the giving of notice of purchase or, if there is no sale of the shares on that exchange on that business day, the average of the closing asked price and the closing bid price for them on that exchange on that business day or, if no bid price and asked price for them on that exchange are quoted for that business day, the last closing sale price for them on that exchange recorded before that business day.

(g) by repealing subsection (9) and substituting the following:

(9) Each share certificate issued by the Company and representing a voting share shall contain in legible form

(a) the provisions of this section, or

(b) a statement that the share that the certificate represents is subject to the restrictions and conditions set out in this section and that the Company will furnish to the shareholder, on demand and without charge, a copy of the full text of this section.

8 *Sections 9 to 13 are repealed.*

associates for the least length of time shall, to the extent of that excess, be required to be disposed of first pursuant to this section unless the shareholder and the associates by agreement notified in writing to the Company agree to dispose themselves of the number of voting shares of the Company sufficient to remove the contravention, in which case the voting shares as agreed on shall be disposed of by the shareholder and associates.

(6) The powers of the Company under this section may be exercised at the option of the Company except that if any voting shares of the Company have, to the knowledge of the Company, been held in contravention of the charter of the Company for 10 years or any lesser period fixed by the articles, the Company shall, in the manner provided by this section, redeem those voting shares for cancellation.

(7) The redemption price of voting shares of the Company for the purposes of this section is

(a) in the case of a preferred share having a par value, the par value of it, and

(b) in the case of a share of any other class, the lesser of

(i) the average issue price per share of all the issued shares of that class, and

(ii) the closing price per share of the shares of that class on the principal stock exchange on the business day immediately preceding the date of the giving of notice of redemption or, if there is no sale of the shares on that exchange on that business day, the average of the closing asked price and the closing bid price for them on that exchange on that business day or, if no bid price and asked price for them on that exchange are quoted for that business day, the last closing sale price for them on that exchange recorded before that business day.

(7.1) In this section,

(a) “business day” means, in respect of any investments of the Company listed or dealt in on a stock exchange, a day on which the principal stock exchange is open for trading in stocks and securities;

(b) “principal stock exchange” means the stock exchange in Canada designated by the Board of Directors as the principal stock exchange for the Company.

(8) Repealed 1981 c2 s5.

(9) The provisions of this section and section 9 shall be set out in each share certificate issued by the Company and representing a voting share or by a writing attached to the certificate.

8 Sections 9 to 13 presently read:

9(1) Subject to the articles and any regulations made in that behalf by the Lieutenant Governor in Council, the Company may purchase for cancellation out of surplus any of its common shares or any fraction of its common shares.

(2) No purchase of common shares shall be made under this section by the Company unless the purchase is authorized by a specific resolution of the Board acting in good faith and in the best interests of the Company.

10(1) Preferred shares of the Company may be issued subject to redemption or purchase for cancellation out of capital or surplus.

(2) Section 83 of the Companies Act does not apply to the redemption or the purchase for cancellation of preferred shares of the Company issued under this section.

9 *Section 14 is repealed and the following is substituted:*

14(1) Section 39 of the *Business Corporations Act* does not apply in respect of subscriptions for shares of the Company by Her Majesty the Queen in right of Alberta.

(2) The Company may not be dissolved or liquidated and dissolved under Part 17 of the *Business Corporations Act* without the prior consent of the Lieutenant Governor in Council.

11 Notwithstanding sections 8, 9 and 10, the Company shall not redeem or purchase for cancellation any of its shares if there are reasonable grounds for believing that

(a) the Company is or would after the payment be unable to pay its liabilities as they become due, or

(b) the realizable value of the Company's assets would after the payment be less than the aggregate of its liabilities and paid-up capital of all classes.

12(1) Shares of the Company of any class redeemed or purchased for cancellation or surrendered on being converted into or exchanged for other shares of the Company, cease to be issued and outstanding and the number of issued and outstanding shares of that class and the paid-up capital shall be reduced accordingly, and the shares so redeemed or purchased for cancellation or surrendered

(a) remain part of the authorized shares of the Company,

(b) are restored to the status of unissued shares of the same class, and

(c) may be reissued by the Company.

(2) Common shares reissued in accordance with subsection (1) rank pari passu in all respects with like shares then issued and outstanding and the number of issued and outstanding common shares and the paid-up capital of the Company are thereby increased accordingly.

(3) Preferred shares reissued in accordance with subsection (1) rank pari passu in all respects with preferred shares then issued and outstanding subject to the reissuance of the shares being in one or more series and with such designation, par value, preferred, deferred or other special rights, restrictions, conditions or limitations attached thereto and the number of issued and outstanding preferred shares and the amount of paid-up capital of the Company are thereby increased accordingly.

(4) A reduction or increase of the number of issued and outstanding shares and paid-up capital of the Company under this section does not affect the number of authorized shares of the Company but notice of the redemption or purchase for cancellation shall, within 30 days thereof, be filed with the Registrar of Companies together with particulars of the current number of issued and outstanding shares and the paid-up capital of the Company.

(5) If the number of authorized shares of the Company is reduced pursuant to the Companies Act, no share may be issued under this section in any amount or number or in respect of any class of shares that would have the effect of increasing or altering the number of authorized shares at the time of the issue.

13 If the Company redeems or purchases for cancellation any shares of the Company under section 8, 9 or 10, the Companies Act as it relates to insider trading by an insider of a company, applies in respect of the redemption or purchase for cancellation of those shares as though the Company was an insider within the meaning of that Act with respect to those shares.

9 Section 14 presently reads:

14(1) Section 129(1) of the Companies Act does not apply in respect of subscriptions for shares of the Company by Her Majesty the Queen in right of Alberta.

(2) No person may commence proceedings under Part 10 of the Companies Act to wind up the Company without the prior consent of the Lieutenant Governor in Council.

10 *Section 17 is repealed and the following is substituted:*

17 If there is any conflict between this Act and

(a) the *Business Corporations Act* as it applies to the Company, or

(b) the articles or by-laws,

this Act prevails.

11 *Section 22(2) is amended by striking out “Companies Act” and substituting “Securities Act”.*

12 *Section 24 is amended*

(a) in subsection (1) by striking out “the Companies Act, the memorandum of association or the articles” and substituting “the *Business Corporations Act*, the articles or the by-laws”;

(b) in subsection (2) by striking out “30” and substituting “45” and by striking out “45 days in advance” and substituting “60 days in advance”.

13 *Section 27(1)(b)(ii) is amended by striking out “he and other persons” and substituting “he and those other persons”.*

14 *Section 30(c) is amended by striking out “register of members” and substituting “securities registers”.*

15 *Section 37 is repealed and the following is substituted:*

37 Notwithstanding the *Business Corporations Act*, the Lieutenant Governor in Council may make regulations

(a) respecting the purchase for cancellation by the Company out of surplus of any of its common shares or any fraction of its common shares;

10 Section 17 presently reads:

17 If there is any conflict between this Act and

(a) the Companies Act as it applies to the Company,

(b) the articles, or

(c) the memorandum of association of the Company,

the provisions of this Act prevail.

11 Section 22(2) presently reads:

(2) The Companies Act as it relates to insider trading by an insider of a company is applicable with respect to any sale or purchase of shares of the Company by or on behalf of the Government of Alberta.

12 Section 24 presently reads in part:

24(1) Notwithstanding Part 1 or the Companies Act, the memorandum of association or the articles, the Minister may, with the approval of the Lieutenant Governor in Council, annually appoint not more than 4 of the members of the Board in lieu of voting the shares held by the Government of Alberta on any resolution electing members of the Board.

(2) An appointment under subsection (1) shall be made by notice in writing to the Company at least 30 days before the date of the annual general meeting and the Minister shall be notified of the date at least 45 days in advance of the meeting.

13 Section 27(1) presently reads:

27(1) The total number of voting shares of any class that may be held

(a) in the name or right of or for the use or benefit of a person, and

(b) in the name or right of or for the use or benefit of

(i) any shareholders associated with the person mentioned in clause (a), or

(ii) any other persons who would be deemed under these statutory conditions to be associated with the person mentioned in clause (a), if both he and other persons were shareholders,

shall not exceed 1% of the total number of the issued and outstanding voting shares of that class or any other percentage or percentages that may be fixed by the Lieutenant Governor in Council by regulation.

14 Section 30(c) presently reads:

30 Notwithstanding section 29(2),

(c) if it appears from the register of members of the Company that not more than 6000 of the voting shares of the Company are held by a shareholder, he shall not be deemed to be associated with any other shareholder and no other shareholder shall be deemed to be associated with him.

15 Section 37 presently reads:

37 The Lieutenant Governor in Council may make regulations

(a) governing the purchase for cancellation by the Company out of surplus of any of its common shares or any fraction of its common shares;

(b) governing the voting of shares held on behalf of the Government of Alberta;

- (b) respecting the voting of shares held on behalf of the Government of Alberta;
- (c) fixing the percentage or percentages of the issued and outstanding voting shares of the Company which may be held by shareholders for the purpose of Part 3;
- (d) respecting any matter or thing necessary or advisable for carrying out the intent and purposes of this Act.

16 Section 37.1 is amended

(a) in subsection (1) by striking out “register of members” and substituting “securities registers of the Company”;

(b) in subsection (2)

(i) by striking out “the register” and substituting “a securities register of the Company”;

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

*(b) he pays the fee chargeable under, and otherwise complies with, the *Business Corporations Act* in that regard.*

*17 This Act comes into force on the date on which a certificate of continuance is issued in respect of the Company under the *Business Corporations Act*.*

(c) fixing the percentage or percentages of the issued and outstanding shares of the Company which may be held by shareholders for the purpose of Part 3;

(d) respecting any matter or thing necessary or advisable for carrying out the intent and purposes of this Act.

16 Section 37.1 presently reads:

37.1(1) The register of members shall, during normal business hours, be open to the inspection of any person.

(2) No person is entitled to a copy of the register or any part of it unless

(a) the Board of Directors has consented to provide the copy, and

(b) he pays the fee chargeable under the Companies Act for the copy.

(3) The Board may give its consent under subsection (2) on an individual basis or under general guidelines it establishes for that purpose.

17 Coming into force.