

1989 BILL Pr4

First Session, 22nd Legislature, 38 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr4

EDMONTON COMMUNITY FOUNDATION
AMENDMENT ACT, 1989

MRS. HEWES

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr4
Mrs. Hewes

BILL Pr4

1989

EDMONTON COMMUNITY FOUNDATION AMENDMENT ACT, 1989

(Assented to , 1989)

WHEREAS the Edmonton Community Foundation was incorporated by chapter 117 of the Statutes of Alberta, 1971, which was amended by chapter 82 of the Statutes of Alberta, 1974; and

WHEREAS a petition has been presented praying that the Act be further amended as hereinafter set forth and it is expedient to grant the prayer of the petition;

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

1 The Edmonton Community Foundation Act is amended by this Act.

2 Section 2 is amended

(a) by repealing clause (b) and substituting:

(b) "Edmonton Community" means the City of Edmonton and such other areas in Northern Alberta as the Board may from time to time by resolution include for the purposes of this Act;

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

(d) "Governors" means those persons provided with a power of appointment under section 7(1);

Explanatory Notes

1 This Bill will amend chapter 117 of the Statutes of Alberta, 1971.

2 Adds new definitions. Section 2(b) presently reads:

2 *In this Act,*

(b) *"Edmonton Community" means the City of Edmonton and such part or parts of the surrounding area as, in the opinion and sole discretion of the Board, the Board deems to be included in the said City from time to time for the purposes of this Act;*

(e) "Policy By-law" means a by-law enacted by the Board, under section 11(3) or (4), designated by the Board as such, being deemed by the Board to be of such importance or consequence to the Foundation, donors, or the public, that some written record of its provisions is necessary or advisable;

(f) "Sponsor" means an individual, organization or trust that before September 1, 1990, on terms accepted by the Board, donates or commits to donate within a period of not more than 5 years, a sum not less than \$1 000 000 to the Foundation.

3 Section 3 is amended

(a) *by striking out* "to change, alter and renew the same when and so often as it shall seem proper, for and with the following objects, powers, and purposes namely" *and substituting* "to alter or change the same at pleasure and with the following powers";

(b) *in clause (b) by striking out* "purposes" *and substituting* "objects";

(c) *by repealing clause (e) and substituting:*

(e) to invest any money of or in the possession of the Foundation in such investments as are from time to time authorized by law either for trustees or for Canadian Life Insurance Companies, or as may be directed by the donor;

(d) *by adding at the end of clause (h)* "which, without limiting the foregoing, shall include the power to open and operate current, savings, or trust accounts with a member institution whose deposits are insured by the Canada Deposit Insurance Corporation pursuant to the Canada Deposit Insurance Corporation Act of Canada, or a Treasury Branch of Alberta, and to engage counsellors, consultants and advisors".

4 Section 4 is repealed and the following is substituted:

4 The Foundation is exempted from sections 6, 87, 118 to 121, 162 and 304 of the Companies Act.

3 Section 3(b), (e) and (h) presently read:

3 His Worship Ivor C. Dent, Mayor of the City of Edmonton, the Honourable Ethel Wilson, Cabinet Minister, the Honourable Ernest C. Manning, Executive, Tevie H. Miller, Q.C., Barrister and Solicitor, Joseph H. Forest, Executive, E. Keith Cumming, Executive, Michael H. English, Executive, Ernest A. James, Bank Manager, Anthony C. C. Hedge, Trust Company Manager, Ross Munro, Publisher, all of the City of Edmonton, in the Province of Alberta, or such other persons as may from time to time become members of the Board, are hereby constituted and established a body corporate and politic, under the name of "The Edmonton Community Foundation", and by that name shall have perpetual succession and a common seal with power to change, alter, and renew the same when and so often as it shall be proper, for and with the following objects, powers, purposes, namely:

(b) to acquire by purchase, gifts, transfer or otherwise real or personal property of every nature and wheresoever situate, and have, hold, possess, enjoy, take and receive the same for the general uses and purposes of the Foundation;

(e) to invest all monies of, or in possession of, the Foundation arising from or connected with its objects or operations, or any of them in such securities, real or personal, as by law or statute in force in the Dominion of Canada, trustees may lawfully make such investments;

(h) to have all the other powers and privileges and immunities vested by law in a corporation, necessary or proper for the carrying out of its objects.

4 Section 4 presently reads:

4 The Foundation is exempted from each of sections 6, 73, 74, 79, 118, 146 and 287 of The Companies Act, Revised Statutes of Alberta 1970, and amendments thereto, or substitutions therefor.

5 The following is added after section 4:

4.1(1) The Foundation shall maintain at its registered office records containing

- (a) minutes of every meeting of the Governors,
- (b) minutes of every meeting of the Board,
- (c) a copy of every Policy By-law,
- (d) a copy of every by-law,
- (e) a copy of the annual audited financial statements of the Foundation required under section 21, and
- (f) a copy of every notice required to be filed with the Registrar of Corporations.

(2) During normal business hours,

- (a) the Sponsors, the Governors, the Directors and the auditors of the Foundation may examine the records referred to in subsection (1), and
- (b) any person may examine the records referred to in subsection 1(c), (d), (e) and (f).

6 Section 5 is amended by adding the following after clause (e):

- (f) to encourage and promote the co-ordination and correlation of charitable campaigns and causes within the Edmonton Community;

5 New section allows Foundation to maintain registered office records.

6 Adds new object of the Foundation.

7 Sections 6, 7, 8 and 9 are repealed and the following substituted:

6(1) The property, powers, and management of the Foundation shall be vested in and exercised by a board, which shall be known as the Board of Directors of the Foundation, consisting of 12 members appointed as herein set out from among individuals normally resident in and having evinced an interest in the welfare of the Edmonton Community.

(2) If the Board recommends to the Governors an increase in the number of members of the Board, the Governors shall determine in their sole discretion whether or not to make the increase and if so they shall designate the authority for appointment of the increased number of Directors.

(3) A Committee established by the Board pursuant to section 11(1)(d) shall have at least one Director among its members.

(4) If the Board establishes an Executive Committee, it shall have not less than 6 members all of whom shall be Directors.

(5) To assist the Board in the conduct of the affairs of the Foundation, the Board may establish regional advisory committees whose members need not be members of the Board or normally resident in the Edmonton Community.

(6) A quorum for a meeting of any committee shall be a majority of its members.

7(1) Each of the following shall be Governors of the Foundation, and each may appoint one member to the Board:

(a) the Mayor of the City of Edmonton;

(b) the President of the Edmonton Chamber of Commerce;

(c) the President of the Edmonton and District Labour Council;

(d) the senior Justice resident in Edmonton of the Court of Queen's Bench of Alberta.

7 Sections 6, 7, 8 and 9 presently read:

6.(1) Subject to the provisions of section 7, the members of the Board of the Foundation shall consist of the following persons:

(a) the person, from time to time holding each of the following offices:

(i) the mayor of the City of Edmonton;

(ii) the President of The Edmonton Chamber of Commerce;

(iii) the President of the United Community Fund of Greater Edmonton;

(iv) the President of the Edmonton District Labour Council;

(b) the person nominated by each of the following organizations:

(i) the Edmonton Bar Association;

(ii) the Trust Companies Association of Canada, Alberta Section.

(iii) the Edmonton Clearing House, Canadian Bankers Association.

(c) Three persons elected by those members described in clauses (a) and (b).

(2) In the event that any office holder or member as designated above refuses or is unable to carry out his duties as a member of the Board, or in the event that any such office or organization ceases to exist, or becomes known by another name, or that any such office or organization is reconstituted, or in the event that an organization names in clause (b) of subsection (1) above fails to nominate a person, the Board, by resolution unanimously approved, may temporarily or permanently substitute for the offices or organization named in the preceding subsection such other offices or organizations as may in their belief more nearly meet the original intent of this Act, and shall file a copy of such resolution with the Registrar of Companies.

7.(1) The First Board shall consist of the petitioners named in this Act and shall possess all of the powers given to the Board hereunder and shall be governed by all of the provisions of this Act relating to the Board.

(2) Each member of the First Board shall serve for a term of two

(2) Each of the following organizations shall, by resolution of its governing body, be entitled to appoint one member of the Board:

- (a) The United Way of Edmonton and Area;
- (b) The University of Alberta;
- (c) The Edmonton Bar Association.

(3) Until September 1, 1994 the Sponsors, by majority decision among their number, shall be entitled to appoint 2 members to the Board.

(4) The remaining positions on the Board shall be filled by appointment by the Board, including representatives, if any, pursuant to section 13(1).

(5) If

- (a) any office holder designated in subsection (1) declines or is unable to carry out functions of a Governor, or the designated office or organization ceases to exist, or becomes known by another name, or is reconstituted, or
- (b) an organization named in subsection (2) fails to nominate a person or ceases to exist, or becomes known by another name, or is reconstituted,

the Board, by resolution approved by a majority of the Governors holding office at the time, may temporarily or permanently substitute for the offices or organizations named in the subsections (1) or (2), such other offices or organizations as may in their belief most nearly meet the original intent of this Act.

8(1) The Secretary of the Foundation shall forthwith canvas the Governors, the organizations listed in section 7(2), and the Sponsors, for nominees and so soon as 5 nominees have been appointed the existing members of the Board shall be deemed to have retired and a Board consisting of the nominees shall be deemed constituted and operative.

calendar years and thereafter subsequent Boards shall be constituted as provided in this Act.

8. *The Foundation shall, subject to the provisions of this Act, be managed and administered by the Board.*

9.(1) *Each member of the Board shall serve,*

(a) In the case of those members described in section 6, subsection (1), clause (a), for so long as he continues in office and is willing and able to act;

(b) In the case of those members described in section 6, subsection (1), clause (b) and section 6, subsection (1), clause (c), for a term of two calendar years, except that when a member has been nominated or elected to complete the unexpired portion of a previously serving member's term, he shall serve only for as many years as are required to complete such term and in no event shall he serve for more than three consecutive terms.

(2) *The term of office of any member of the Board shall immediately terminate*

(a) upon his death, resignation, or removal from the Edmonton Community; or

(b) in the event of his absence without excuse acceptable to the Board from three consecutive meetings of the Board; or

(c) by resolution of the Board, when in the opinion of the Board a member is guilty of gross misconduct; or

(d) by resolution of the Board, because of incapacity for any cause which in the opinion of the Board may prevent him from discharging his duty for nine months or more.

(3) *Upon any vacancy occurring in the Board the Chairman of the Board may call a special meeting of the Board to fill such vacancy for the unexpired portion of the term, and shall call a special meeting for such purpose if the numbers of the Board have by such vacancy fallen below five members.*

(2) From October 1, 1989 the Board may appoint further members of the Board pursuant to section 7(4).

9(1) Subject to subsection (2), term of office of a member of the Board shall be 3 years, provided that

(a) when completing the Board pursuant to section 8(2) the Board shall by lot determine the first term of office of each member of the Board, save any appointed by the Sponsors, so that the term of 4 of the members shall be one year, of 2 shall be 2 years, and of the remainder shall be 3 years;

(b) a member appointed by the Sponsors shall serve at their pleasure, but in any event no longer than September 1, 1994;

(c) when a new member has been appointed to complete the unexpired portion of the term of a previously serving member, the new member shall serve only to complete such unexpired term;

(d) the Board may from time to time by by-law prescribe procedures for the orderly appointment and rotation of Directors.

(2) The term of office of a member shall terminate

(a) upon death, resignation, or ceasing to be normally resident in the Edmonton Community;

(b) in the event of absence without excuse acceptable to the Board from 3 consecutive meetings of the Board;

(c) by resolution of the Board, when, in the opinion of the Board, the member has been guilty of gross misconduct;

(d) by resolution of the Board, for any cause which in the opinion of the Board may prevent the member from properly discharging the duties of a Director for 6 months or more;

(e) where the member has been appointed by a Governor or an organization described in section 7(2), if that Governor or that organization revokes the appointment.

(3) Where there is a vacancy on the Board, the remaining Directors may continue to act if a quorum of Directors remains in office, or, if the remaining Directors are not a quorum, for the purposes of filling the vacancy.

(4) Upon a vacancy occurring in the Board the Secretary shall, if the incumbent was appointed under section 7(1), (2) or (3), give notice to the person or organization that appointed the incumbent requesting the appointment of a replacement.

(5) If no appointment is made pursuant to subsection (4) within 30 days of the notice, or if a vacancy occurs in a position that is to be filled pursuant to section 7(4) the Secretary may call a special meeting of the Board to make an appointment to fill the vacancy and shall call a special meeting for that purpose if the numbers of the Board have fallen below 5 members.

(6) A retiring member of the Board shall be eligible for reappointment, provided that no member shall serve more than 2 consecutive terms.

8 *Section 10 is amended*

(a) *in subsection (4)*

(i) *by striking out "all" and substituting "a majority", and*

(ii) *by adding ", and a copy of such resolution shall be promptly mailed to every member of the Board" at the end of it;*

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

(5) A Director may in any manner waive notice of a meeting of the Board, and attendance of a Director at a meeting of the Board is a waiver of notice of the meeting, except when a Director attends a meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not lawfully called.

(6) A Director may participate in a meeting of the Board by means of telephone or other communication facilities that

8 New subsections provide for waiver of notice and telephone attendance at meetings. Section 10(4) presently reads:

(4) A resolution in writing, signed in one instrument or in counterpart by all the members of the Board without their meeting together, shall be as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted, and shall be deemed to relate back to any date therein stated to be the effective date thereof.

permit all persons participating in the meeting to hear each other and a Director participating in a meeting by such means is deemed to be present at that meeting.

(7) The provisions of subsections (4), (5) and (6) shall apply, *mutatis mutandis*, to every meeting of any committee of the Board and to any meeting of the Governors or the Sponsors.

9 *Section 11 is amended*

(a) *by renumbering it as subsection (1);*

(b) *in clause (a)*

(i) *by adding "Chairman," before "President", and*

(ii) *by adding "an Executive Director or Manager," after "appoint";*

(c) *in clause (e) by striking out "by-laws, resolutions,"; and*

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

(2) The Board may, by resolution adopted by not less than 2/3 of its members present at a meeting of which special notice has been given, make by-laws regulating matters assigned by this Act to the Foundation or the Board, or such other matters as it deems advisable for the convenient and efficient carrying-out of the objects of the Foundation and to provide for the management of the property and affairs of the Foundation.

(3) The Board

(a) may pass Policy By-laws to regulate matters of policy and the investment of funds and distribution pursuant to section 12;

(b) shall pass any Policy By-law proposed by a majority of the Sponsors before September 1, 1994 that is not inconsistent with a Policy By-law in force.

(4) Subject to subsection (5), the Board may by Policy

9 Section 11 presently reads:

11 The powers of the Foundation are vested in and shall be exercised by the Board, and without restricting the generality of the foregoing, the Board may:

(a) elect its own President and Vice-President and appoint a Treasurer and a Secretary, or a Secretary-Treasurer, and such other officers and employees of the Foundation as it deems expedient, and may prescribe their respective duties, powers and authority, and may determine the tenure of each such office or the period of appointment of each such employee; and such officers and employees, other than the President and Vice-President of the Board, need not be members of the Board;

(b) fix and determine the remuneration of officers and employees of the Foundation provided that members of the Board shall receive no compensation for their services except reasonable expenses;

(c) use, invest or distribute all or any portion or portions of the funds which are available to it, according to the provisions of this Act;

(d) act by such Committee of, or appointed by, the Board as it deems proper to constitute or appoint;

(e) make by-laws, resolutions, rules and regulations, not inconsistent with any of the provisions of this Act, touching or respecting any or all of the aforesaid powers of the Foundation or the Board, and also in respect of all matters pertaining to the business, meetings and proceedings of the Board; and

(f) exercise in its full and absolute discretion all powers and authority that under this Act, and all other applicable statutes are exercisable by the Foundation or the Board.

By-law establish a Consolidated Trust Fund in which property received by the Foundation by way of separate donations is combined for the purpose of facilitating investment and administration, and to regulate the operation of the Fund, the method of valuation of the Fund, the distribution of income of the Fund, property that may be included in the Fund and equitable allocation of the costs of maintaining the Fund.

(5) A direction by a donor that property included in a donation shall not be included in the Fund shall be binding on the Board.

(6) No Policy By-law is effective unless confirmed by a majority of the Governors.

10 Section 12 is amended by adding the following at the end of it:

(3) The Board shall, in deciding the manner in which funds shall be distributed, used, invested or applied, respect and be governed by any direction, or trust imposed by the donor in the instrument affecting any gift, bequest, transmission or trust.

(4) If in the course of time and after the death of a donor, or if the donor was a corporation after its dissolution, liquidation or winding-up, conditions arise whereby in the opinion of the Board a departure from the terms of the original instructions would further the intent and purpose of the donor, the Board may in its discretion make such a departure from the instructions to the extent necessary to further the intent and purpose of the donor, and if such changed conditions make it no longer possible or practical, in the opinion of the Board, to meet the expressed wish of the donor, the Board may in its discretion use and apply the funds for such purposes as are in its opinion most clearly related to the original intent and purpose of the donor.

(5) No resolution of the Board pursuant to subsection (4) shall be effective unless confirmed by a majority of the Governors.

10 New subsections provide for following directions of donor in use of funds and allow for deviation from directions to fulfill the donor's original intent, under certain conditions.

11 Section 13 is amended

- (a) by renumbering it as subsection (2);*
- (b) by striking out "Judge of the Trial Division of The Supreme Court" and substituting "Justice of the Court of Queen's Bench";*
- (c) by striking out "Judge is hereby empowered to make such Order" and substituting "Justice is hereby empowered to make such Order".*
- (d) by adding the following as subsection (1):*

(1) Any trustee, foundation, charitable body, non-profit organization, governmental authority, institution, person or corporation may entrust funds to the Foundation for administration pursuant to the purposes of the Act and the Foundation may, on terms agreeable to both parties, which may include representation on the Board, invest and manage the funds.

12 Section 14 is amended

- (a) in subsection (1) by striking out "custody and management" and substituting "custody and, if the Board so requires, the management"; and*
- (b) in subsection (2) by striking out "vote" +and substituting "revoke".*

11 Section 13 presently reads:

13 Where any person holds any property in trust for any purpose of a nature similar to the objects of the Foundation, and by reason of the object of the Trust having ceased to exist, or the Trust having for any cause become incapable of performance, or the Trust having for any cause become difficult to perform, such person as Trustee may upon notice to the Foundation apply to a Judge of the Trial Division of The Supreme Court of Alberta in the Judicial District of Edmonton, for an Order directing him to hand over such property to the Foundation to be used by the Foundation in the same manner and for the same purposes as other donations made to the Foundation under this Act; and such Judge is hereby empowered to make such Order for the handing over of such property to the Foundation; and any Trustee complying with such an Order shall thereupon be relieved and discharged of all further responsibility in respect of such property.

12 Section 14 presently reads:

14(1) The Foundation, after a donation has been received, may appoint, subject to the provisions of any trust imposed by the donor, one or more trust companies, banks, or other fiscal institutions authorized to carry on business in the Province, to assume the custody and management of the property comprising such donation, or such portion or portions thereof as may be allotted by the Board to such trust companies, banks or other fiscal institutions, to act as trustees for the Foundation.

(2) The Foundation may at any time, by resolution of the Board, vote the appointment of any trust company, bank or other fiscal institution as such Trustee, and may appoint such other trust company, bank or other fiscal institution in place thereof as trustee, as the Board may deem advisable.

13 Section 16 is amended in clause (a) by adding "or otherwise permitted by the Act and authorized or instructed by the Board" at the end of it.

14 Section 17 is amended by adding the following at the end of it:

(3) For all purposes of the Act, where not inconsistent with other provisions thereof, a legacy, a devise or other testamentary bequest and any donation or other conveyance or transmission, whether on terms of trust or endowment or otherwise, shall be deemed a donation of capital to be held and administered pursuant to the provisions of the Act and shall be invested and the net income from it devoted in perpetuity to charitable purposes as permitted by this Act.

15 Section 20 is repealed and the following is substituted

20 Where property has been donated to the Foundation upon a condition imposed by the donor that the donation be used,

- (a) for a particular object or objects of the Foundation; or
- (b) in whole or in part for the benefit of citizens of places other than the Edmonton Community, whether or not in Alberta or Canada;

the Board may accept the donation subject to the conditions imposed by the donor.

13 Section 16(a) presently reads:

16 Every trust company, bank or other fiscal institution during its continuance in office as trustee for the Foundation shall:

(a) have the custody of and efficiently manage all property entrusted to it by the Foundation or by any donor on behalf of the Foundation and make all investments, reinvestments, conversions, sales or dispositions thereof which may at any time or from time to time appear necessary or desirable, but no trust company shall make any new investments or reinvestments in any property or security other than security in which a Trustee or trust company may invest monies under the laws of the Province of Alberta, or any applicable laws of the Dominion of Canada;

14 Legacies and donations deemed to be capital.

15 Section 20 presently reads:

20 Where property has been donated to the Foundation and the donor is desirous that a part of the income derivable therefrom shall be distributed for the benefit of citizens of other municipalities and so indicates in the instrument creating the trust, the Board may accept and exercise the trust in respect of the distribution of such part as fully and effectually as in respect of the remainder.

16 Section 21 is repealed and the following is substituted:

21(1) The Foundation shall cause an audit to be made at the end of each fiscal year of the Foundation by an independent auditor who shall be a member in good standing of the Institute of Chartered Accountants of Alberta and financial statements to be prepared in accordance with the standards of accounting principles set forth in the handbook of the Canadian Institute of Chartered Accountants.

(2) Every member of the Board, or of a Committee established or appointed by the Board, and every officer and employee of and any trustee or custodian of the Foundation shall give the auditor full information and permit him to make all necessary inspections to enable such audit to be made.

(3) The Board shall cause the annual report of the auditor and a meaningful summary of the annual audited statements to be published in a newspaper circulating in the Edmonton Community.

17 Section 22 is repealed and the following is substituted:

22 The Board shall appoint an Audit Committee of not less than 3 individuals, 2 of which shall be members of the Board, with such functions, duties and powers as are usual or prescribed for the Audit Committee of a corporation.

16 Section 21 presently reads:

21(1) The Foundation shall cause an audit of the receipts and disbursements of the Foundation to be made at least once in every fiscal year by an independent auditor, and shall file with the Registrar of Companies a certified statement by such auditor showing the investments made of all funds donated to and invested in trustees for the Foundation, the amount of income received during the preceding fiscal year, the purpose for which the income has been used, and a classified statement of the expenses of the Trustees of the Board.

(2) It shall be the duty of the trustees to give such auditor full information and permit him to make all necessary inspections to enable such audit to be made.

17 Section 22 presently reads:

22 The Secretary of the Board shall, once in each calendar year, file with the Registrar of Companies the following:

(a) a statement in the form of a balance sheet, audited and signed by the Foundation's auditor, and containing general particulars of its liabilities, assets and expenditures;

(b) a list of members for the time being of the Board, with their address and occupations; and

(c) a copy of any Resolution made in the preceding year required by this Act to be filed with the Registrar.