

1989 BILL Pr6

First Session, 22nd Legislature, 38 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr6

**CALGARY RESEARCH AND
DEVELOPMENT AUTHORITY ACT, 1989**

MR. NELSON

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr6
Mr. Nelson

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1989

CALGARY RESEARCH AND DEVELOPMENT AUTHORITY ACT, 1989

(Assented to , 1989)

WHEREAS the Calgary Research and Development Authority was incorporated by chapter 84 of the Statutes of Alberta 1981, and amended by chapter 37 of the Statutes of Alberta, 1988; and

WHEREAS the Calgary Research and Development Authority has presented a petition praying that it be enacted as herein 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:

Interpretation

1(1) In this Act,

(a) "Affiliate" means an affiliated body corporate within the meaning of subsection (2);

(b) "Associate", when used to indicate a relationship with any person, means:

(i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10% of the voting rights under all circumstances or under any circumstances that have occurred and are continuing, or a currently exercisable option or right to purchase those shares

or those convertible securities;

(ii) a partner of that person acting on behalf of the partnership of which they are partners;

(iii) a trust or estate in which that person has a substantial interest or in respect of which he serves as a trustee or in a similar capacity;

(iv) a spouse of that person; or

(v) a relative of that person or of his spouse if that relative has the same residence as that person.

(c) "Authority" means the Calgary Research and Development Authority;

(d) "Chairman" means the Chairman of the Authority;

(e) "City" means the City of Calgary;

(f) "Chamber" means the Calgary Chamber of Commerce;

(g) "Council" means the Council of the City;

(h) "President" means the President of the Authority;

(i) "University" means the University of Calgary;

(j) "Vice-Chairman" means the Vice-Chairman of the Authority.

Affiliated
Corporations

(2) For the purposes of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other, or both are subsidiaries of the same body corporate, or each of them is controlled by the same person; and

(b) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

(3) For the purposes of this Act, a body corporate is controlled by a

person if:

(a) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

(4) For the purposes of this Act, a body corporate is the holding body corporate of another if that other body corporate is its subsidiary;

Continuation

2(1) The Calgary Research and Development Authority is continued under this Act.

(2) The members of the Authority shall have direction and control of the conduct of the business and affairs of the Authority.

(3) The Authority is a continuing body notwithstanding any change or vacancy in membership.

Objects of the Authority

3 The Authority shall have as its objects the promotion of research and activities which are necessary or convenient in the support of research, including the establishment, development, maintenance and operation of research and development parks.

Powers

4 Without limiting the generality of section 3, the Authority shall have the power

(a) to appoint a President;

(b) in addition to the powers accruing to it pursuant to section 16(a)(v) of the *Interpretation Act*, to acquire any rights or privileges that the Authority may think necessary or convenient for the purpose of its business;

(c) to engage the services of any bank, treasury branch, trust company or credit union and to enter into agreements for that purpose, in connection with its business;

(d) to draw, make, accept, endorse, execute and issue

promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;

(e) to delegate in writing any power or powers contained in clauses (c) and (d);

(f) to buy, sell and deal in any personal property;

(g) to incorporate bodies corporate, to take or otherwise acquire and hold the shares, stock, debentures, or other securities of any body corporate, wheresoever incorporated, having objects altogether or in part similar to those of the Authority or carrying on any business capable of being conducted so as, directly or indirectly, to benefit the Authority, and the power to sell or reissue, with or without guarantee, or otherwise deal with the same;

(h) to borrow or raise or secure the payment of money in such manner as the Authority thinks fit, and, without limiting the generality of the foregoing, by the issue of debentures or debenture stock, perpetual or otherwise, charged upon all or any of the Authority's property or the Authority's interest in it, and the power to purchase, redeem or pay off any such securities;

(i) to make by-laws or regulations for the government and proper administration of the property, affairs and interest of the Authority;

(j) to enter into with any governments or authorities, municipal, local or otherwise, any agreements that may seem conducive to the Authority's objects or any of them, the power to obtain from any such government or authority any rights, privileges, and concessions that the Authority may think it desirable to obtain, and the power to carry out, exercise, and comply with any such arrangements, rights, privileges and concessions;

(k) to construct, improve, maintain, develop, work or manage any and all works necessary or desirable in carrying out the objects of the Authority;

(l) to receive gifts, donations and grants of money or other property from any source for the purpose of enabling the

Authority to carry out its general or special powers;

(m) to acquire and undertake the whole or any part of the business, property, and liabilities of any person or company, wheresoever incorporated, carrying on any business that the Authority is authorized to carry on, or possessed of property suitable for the purposes of the Authority;

(n) to apply for, purchase or otherwise acquire any patents, licences, concessions and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention capable of being used for any of the purposes of the Authority or the acquisition of which may seem calculated, directly or indirectly, to benefit the Authority, and the power to use, exercise, develop or grant licences in respect of, or otherwise turn to account the property, rights or information so acquired;

(o) to raise and assist in raising money for, and, subject to section 5, to aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person with whom or with which the Authority may have business relations or any of whose shares, securities or other obligations are held by the Authority and to guarantee the performance or fulfillment of any contracts or obligations of any such person and in particular to guarantee the payment of the principal of and interest on securities, mortgages and liabilities of any such person;

(p) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the Authority;

(q) to invest and deal with such moneys of the Authority as are not immediately required, in such manner as may from time to time be determined; and

(r) generally, to do or cause to be done all things necessary for or incidental to the objects of the Authority.

Prohibition on
Authority
granting financial
assistance to
members

5(1) The Authority shall not, directly or indirectly, give financial assistance by means of a gift, loan, guarantee or otherwise:

(a) to a member of the Authority or any Associate of such member or officer; or

(b) to a director or officer of any Affiliate of the Authority or any Associate of such director or officer.

(2) Notwithstanding subsection (1) the Authority may give financial assistance, by way of a loan or guarantee, to the President or any officer or employee of the Authority, if such loan or guarantee is set forth in an employment agreement between the Authority and the party receiving the loan or guarantee.

(3) A contract made by the Authority in contravention of this section may be enforced by the Authority or by a lender for value in good faith without notice of the contravention.

Composition of
Authority

6(1) The Authority shall be composed of:

- (a) 4 members appointed by the Council of the City;
- (b) 4 members appointed by the Board of Governors of the University on recommendation of the University's president;
- (c) 4 members appointed by the president of the Chamber;
- (d) the President.

(2) The Chamber, City and University shall have the power to jointly appoint up to 6 additional members, and the terms of the additional members shall be determined by the Chamber, City and University at the time of their appointment.

Appointment of
members of the
Authority

7(1) The 12 members of the Authority appointed pursuant to section 6 shall appoint the President.

(2) In each year, the Chamber, City and University shall each appoint 2 members whose term of office shall be 2 years, together with such additional members as may be appointed pursuant to section 6(2).

(3) One of the members appointed by the City shall be the person appointed as the Director of the Calgary Economic Development Authority.

(4) Notwithstanding the period for which he is appointed as a

member of the Authority, a member of the Council may hold office as a member of the Authority only so long as he remains a member of the Council, and the Council shall forthwith name a successor to complete the balance of the term of any member who ceases to be a member of Council.

(5) Notwithstanding the period for which he was appointed as a member of the Authority, a member of the Authority shall remain in office until his successor has been appointed, unless disqualified pursuant to subsection (4).

Vacancy in
membership

8 Where a vacancy occurs in membership in the Authority by any cause other than the expiration of the term for which such member was appointed, the Chamber, City or University, as the case may be, that appointed the member creating the vacancy shall appoint a successor to fill the vacancy for the remainder of the term of the vacating member.

Qualification

9 A person is not qualified to be appointed as or to remain a member of the Authority if he

(1) is convicted of:

(a) an indictable offence punishable by death or by imprisonment for a term of 5 or more years;

(b) an offence under section 123 of the *Criminal Code Canada* or any section passed in substitution therefor.

(2) absents himself, without excuse, from 3 consecutive meetings of the Authority.

(3) is:

(a) a judge of a Court of civil jurisdiction;

(b) a member of the House of Commons of Canada;

(c) a member of the Legislative Assembly of Alberta;

(d) the Auditor or a member of the firm of Auditors of the Authority;

(e) an undischarged bankrupt.

Irregularity in appointment	10 An act of a member is valid notwithstanding an irregularity in his appointment or a defect in his qualifications.
Chairman	<p>11(1) At each annual meeting the members of the Authority shall elect one of the members to act as Chairman and one of the members to act as Vice-Chairman.</p> <p>(2) The Chairman shall preside at meetings of the Authority and, in his absence, the Vice-Chairman.</p>
Powers of President	<p>12(1) The Authority shall have a chief executive officer entitled the President of the Authority, who shall, subject to the directions of the Authority, exercise supervision and control over the daily administration of the Authority and manage its business and affairs.</p> <p>(2) The President shall, in the absence of the Chairman and the Vice-Chairman, preside at meetings of the members of the Authority.</p> <p>(3) The President shall be responsible to the Authority.</p> <p>(4) The President shall have such powers and duties as may be assigned to him by the Authority.</p> <p>(5) The President shall be paid a salary fixed by the Authority.</p>
Appointment of committees	13 The members of the Authority may appoint from their number a committee of members and delegate to the committee any of the powers of the Authority.
Council to provide Authority with funds	14 The Council shall provide to the Authority whatever money is, in the opinion of the Council, necessary for the operation of the Authority.
Authority not to be carried on for gain	<p>15(1) The Authority shall not be carried on for the purpose of gain for its members.</p> <p>(2) Any profits or other accretions to the Authority shall be used in promoting its objects and no part of the income of the Authority shall be payable to or be otherwise available for the personal benefit of any member of the Authority.</p>
Disclosure of interest	16(1) A member or officer of the Authority who

(a) is a party to a material contract or proposed material contract with the Authority, or

(b) is a director or an officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the Authority,

shall disclose in writing to the Authority or request to have entered in the minutes of meetings of members the nature and extent of his interest.

(2) Subject to subsection (3), the disclosure required by subsection (1) shall be made, in the case of a member,

(a) at the meeting at which a proposed contract is first considered,

(b) if the member was not interested in a proposed contract at the time of the meeting referred to in clause (a), at the first meeting after he becomes so interested,

(c) if the member becomes interested after a contract is made, at the first meeting after he becomes so interested, or

(d) if a person who is interested in the contract later becomes a member, at the first meeting after he becomes a member.

(3) Where a proposed contract is dealt with by resolution pursuant to section 18, the disclosure that would otherwise be required to be made in accordance with subsection (2) shall be made:

(a) forthwith on receipt of the resolution; or

(b) if the member was not interested in the proposed contract at the time of receipt of the resolution, at the first meeting after he becomes so interested.

(4) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a member,

(a) forthwith after he becomes aware that the contract or proposed contract is to be considered or has been considered at

a meeting of members,

(b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested, or

(c) if a person who is interested in a contract later becomes an officer, forthwith after he becomes an officer.

(5) If a material contract or proposed material contract is one that in the ordinary course of the Authority's business would not require approval by the members, a member or officer shall disclose in writing to the Authority or request to have entered in the minutes of meetings of members, the nature and extent of his interest forthwith after the member or officer becomes aware of the contract or proposed contract.

(6) A member referred to in subsection (1) shall not vote on any resolution to approve the contract unless the contract is a contract for indemnity or insurance under section 21.

(7) For the purpose of this section, a general notice to the members by a member or officer is a sufficient disclosure of interest in relation to any contract made between the Authority and a person in which the member or officer has a material interest or of which he is a director or officer, if:

(a) the notice declares he is a director or officer of or has a material interest in the person, and is to be regarded as interested in any contract made or to be made by the Authority with that person, and states the nature and extent of his interest;

(b) at the time of disclosure would otherwise be required under subsection (2), (3), (4) or (5), as the case may be, the extent of interest in that person is not greater than that stated in the notice; and

(c) the notice is given within the 12-month period immediately preceding the time in which disclosure would otherwise be required under subsection (2), (3), (4) or (5), as the case may be.

(8) If a material contract is made between the Authority and one or more of its members or officers, or between the Authority and another person of which a member or officer of the Authority is a

director or officer or in which he has a material interest:

(a) the contract is neither void nor voidable by reason only of that relationship, or by reason only that a member with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of members or a committee of members that authorized the contract; and

(b) a member or officer or former member or officer of the Authority to whom a profit accrues as a result of the making of the contract is not liable to account to the Authority for that profit by reason only of holding office as a member or officer,

if the member or officer disclosed his interest in accordance with subsection (2), (3), (4), (5) or (6), as the case may be, and the contract was approved by the members, and it was reasonable and fair to the Authority at the time it was approved.

(9) If a member fails to disclose his interest in a material contract in accordance with this section, the Court may, on the application of the Authority or a member of the Authority, set aside the contract on any terms it thinks fit.

(10) The provisions of this section shall apply mutatis mutandis to an officer or director of an Affiliate of the Authority who is party to a material contract or proposed material contract with the Affiliate or who is a director or officer of or has a material interest in any person who is a party to a material contract or a proposed material contract with the Affiliate.

Quorum

17 Five members shall form a quorum at any meeting of members of the Authority for the transaction of business provided that there is at least one member present appointed by each of the Chamber, the City and the University.

Resolution
signed by all
members

18(1) Subject to the by-laws of the Authority, a resolution in writing, signed by all the members entitled to vote on that resolution at a meeting of members or a committee of members, is as valid as if it had been passed at a meeting of members or committee of members.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the members or committee of members.

Duties and
exercises of
power

19(1) Every member or officer of the Authority in exercising his powers and discharging his duties shall:

(a) act honestly and in good faith with a view to the best interests of the Authority; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every member shall comply with this Act and the by-laws of the Authority.

(3) No provision in a contract, the by-laws or a resolution relieves a member from the duty to act in accordance with this Act or relieves him from liability for breach of that duty.

(4) In determining whether a particular transaction or course of action is in the best interests of the Authority, the member may give special, but not exclusive, consideration to the interests of the party who appointed him.

Member present
deemed to
consent;
exceptions

20(1) A member who is present at a meeting of members or committee of members is deemed to have consented to any resolution passed or action taken at the meeting, unless

(a) he requests that his abstention or dissent be, or his abstention or dissent is, entered in the minutes of the meeting,

(b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned,

(c) he sends his dissent by registered mail or delivers it to the registered office of the Authority immediately after the meeting is adjourned, or

(d) he otherwise proves that he did not consent to the resolution or action.

(2) A member who votes for or consents to a resolution or action is not entitled to dissent under subsection (1).

(3) A member or officer is not liable under section 19 if he relies in good faith on

(a) financial statements of the Authority or of an Affiliate represented to him by an officer of the Authority or in a written report of the auditor of the Authority fairly to reflect the financial condition of the Authority, or

(b) an opinion or report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Power of
Authority to
indemnify officer
or director

21(1) Except in respect of an action by or on behalf of the Authority or an affiliated body corporate to procure a judgment in its favour, the Authority shall have the power to enter into an agreement with

(a) a member or officer of the Authority or of an Affiliate, or

(b) a former member or officer of the Authority or of an Affiliate, or

(c) a person who acts or acted at the request of the Authority or of an Affiliate as a director or officer of a body corporate of which the Authority or an Affiliate was or is a shareholder or creditor indemnifying such person, his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a member or officer of the Authority or director or officer of such other body corporate, if:

(i) he acted honestly and in good faith with a view to the best interests of the Authority or such other body corporate; or

(ii) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

Directors' and
officers' liability
insurance

(2) The Authority may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by him,

(a) in his capacity as a member or officer of the Authority or of an Affiliate, except when the liability relates to his failure to act honestly and in good faith with a view to the best interests of the Authority; or

(b) in his capacity as a director or officer of a body corporate referred to in subsection (1), if he acts or acted in that capacity at the request of the Authority or of an Affiliate, except when the liability relates to his failure to act honestly and in good faith with a view to the best interests of the body corporate.

Seal

22 The Authority shall have a common seal.

Head office of
Authority

23 The head office of the Authority shall be in the City.

Authority to audit
accounts
annually

24(1) The Authority shall cause an annual audit of its accounts to be made at least once in every fiscal year by an independent auditor who shall be a chartered accountant or a firm of chartered accountants.

Auditor

(2) An auditor shall be appointed at the annual meeting of the members of the Authority and may be the auditor or firm of auditors of the City or the University.

Fiscal year of
Authority

(3) The fiscal year of the Authority shall coincide with the fiscal year of the City, and the Authority shall submit its annual audited statements to the Chamber, City and University.

(4) The Authority shall give the auditor such information and permit such inspections as are necessary to enable the audit to be carried out, and shall cause a certified statement of each audit, showing the receipts and expenditures of the Authority for the preceding fiscal year and investments, if any, held by the Authority at the time of the audit for that year, to be laid before the first meeting of the members of the Authority held after the completion of the audit.

Records

25(1) The Authority shall prepare and maintain at its head office records containing:

(a) the by-laws, and all amendments to the by-laws;

- (b) minutes of meetings of the members;
- (c) a register of disclosures made pursuant to section 16;
- (d) adequate accounting records; and
- (e) resolutions of the members and of any committee of the members.

Records to be kept at head office

(2) The records described in subsection (1) shall be kept at the head office of the Authority or at any other place the members think fit and shall at all reasonable times be open to examination by the members.

Examination of records

(3) The members, their agents and legal representatives may examine the records referred to in subsection (1) during the usual business hours of the Authority free of charge.

Form of records

26(1) All records required by this Act to be prepared and maintained may be in a bound or loose-leaf form, or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

Examination of records

(2) If a person is entitled to examine any record that is maintained by the Authority in a form other than a written form and makes a request of the Authority to do so, the Authority shall:

- (a) make available to that person within a reasonable time a reproduction of the text of the record in legible written form; or
- (b) provide facilities to enable that person to examine the text of the register or record in a legible written form otherwise by providing a reproduction of that text, and shall allow that person to make copies of that record.

Disposition of funds on winding up

27 In the event the Authority is wound up or otherwise ceases to carry on business the Authority's interest in any property, real or personal, shall vest in the University, provided, however, that upon the sale or disposition by the University of any such property the proceeds from such sale or disposition shall be applied firstly in

repaying the City any money that has been advanced by it to the Authority.

c.84, 1981
Alberta Statutes

28 *The Calgary Research and Development Authority Act is repealed.*