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Bill Pr23

An Act respecting The Kitchener and Waterloo Community Foundation

Mr. Wettlaufer

Private Bill

1st Reading May 22, 2003
2nd Reading
3rd Reading
Royal Assent

*(Reprinted as amended by the Standing Committee on
Regulations and Private Bills and as reported to
the Legislative Assembly June 4, 2003)*

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This reprint of the Bill is marked to indicate the changes that were made in Committee.

Marginal side bars in the outer margin indicate that either a provision has been replaced, a new provision has been added or that there has been a change within a provision in either or both the English and French version of the bill. The changes are indicated by underlines for new text and a ~~strike through~~ for deleted text.

EXPLANATORY NOTE

The purpose of the Bill is set out in the Preamble.

An Act respecting The Kitchener and Waterloo Community Foundation

Preamble

The Kitchener and Waterloo Community Foundation has applied for special legislation to amend its objects, the composition of its Board of Directors and nominating committee, its powers and its obligations with respect to the publication of financial statements. The applicant represents that it was incorporated by special Act in 1984, which Act was amended by special Acts in 1988 and 1993.

It is appropriate to grant the application.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 4 of the *Kitchener-Waterloo Foundation Act, 1984* is repealed and the following substituted:

Objects

4. (1) The objects of the Foundation are to improve the quality of life for the inhabitants of the Kitchener Waterloo district by receiving, maintaining, managing, controlling and using donations for charitable purposes.

Assistance to other institutions, etc.

(2) To carry out the objects of the Foundation, the Board may, in each year, direct that all or part of the funds available to the Foundation, in amounts determined by the Board, be used to assist institutions, organizations, agencies and bodies specified by the Board that are engaged in improving the quality of life for the inhabitants of the Kitchener Waterloo district, whether or not the institutions, organizations, agencies or bodies are within the Kitchener Waterloo district.

2. Sections 6 and 7 of the Act, as re-enacted by the Statutes of Ontario, 1993, chapter Pr8, section 2, are repealed and the following substituted:

Board

6. (1) The affairs of the Foundation shall be managed by the Board.

Composition

(2) Subject to subsection (10), the Board shall be composed of that number of directors, not less than nine,

as determined by by-law of the Board, who are appointed by the nominating committee.

Appointment of immediate past chair

(3) Despite subsection (6), the Board may by resolution appoint the immediate past chair of the Board as a director for a maximum term of three years, as the Board may determine, and may by resolution terminate that appointment at any time.

Term

(4) Subject to subsection (5), directors, other than the immediate past chair of the Board appointed under subsection (3), shall be appointed for three years.

Rotating terms

(5) Directors shall be appointed so that, as nearly as may be, the term of one-third of the directors, excluding the immediate past chair of the Board appointed under subsection (3), expires each year.

Reappointment

~~—(6) Directors are eligible for reappointment for such consecutive terms, not exceeding three, as determined by by-law of the Board, but may be reappointed after one year has elapsed after ceasing to hold office.~~

Reappointment

(6) Directors are eligible for reappointment for such consecutive terms, not exceeding two, as determined by by-law of the Board, so that no person may serve for more than three consecutive terms, but a person may be reappointed after one year has elapsed after he or she ceased to hold office.

Same

(7) The immediate past chair of the Board appointed under subsection (3) may be reappointed after one year has elapsed after he or she ceases to hold office under that subsection.

Vacancy

(8) A vacancy arising in the membership of the Board for any reason, other than an increase in the number of directors or the expiration of a term of office, shall be filled for the rest of the term of office by appointment by

the remaining directors, and a person who is appointed to fill such a vacancy shall be deemed to have held office for the entire term for the purpose of subsection (6).

Same

(9) A vacancy arising in the membership of the Board by reason of an increase in the number of directors or the expiration of a term of office shall be filled by appointment by the nominating committee.

Same

(10) If the nominating committee fails to appoint a person to fill a vacancy in the membership of the Board within 90 days after the vacancy occurs, the remaining directors may fill the vacancy.

Remuneration

(11) Directors shall serve without remuneration but are entitled to reimbursement of reasonable expenses.

Directors remain in office despite by-law reducing size of Board

(12) Despite any reduction in the size of the Board pursuant to a by-law made under subsection (2), the directors in office immediately before the coming into force of the by-law shall remain in office until the expiry of their terms.

Nominating committee

7. (1) The nominating committee shall consist of the persons holding the following offices:

1. The Mayor of the City of Kitchener.
2. The Mayor of the City of Waterloo.
3. The Chair of The Regional Municipality of Waterloo.
4. The Chair of the Chamber of Commerce of Kitchener and Waterloo.
5. The Chair of the United Way of Kitchener-Waterloo and Area.

Vacancy

(2) If a person holding an office referred to in subsection (1) is unable or unwilling to act as a member of the nominating committee, the remaining members of the nominating committee shall appoint another person in his or her place.

Same

(3) If an office referred to in subsection (1) ceases to exist, the person who is a member of the nominating committee by virtue of that office ceases to be a member and the remaining members of the nominating committee shall designate another office to replace it.

Meetings

(4) Upon the call of the secretary of the Board, if any, or upon the call of the chair of the nominating committee, the nominating committee shall meet annually and whenever it is necessary to fill a vacancy on the Board or on the nominating committee.

Procedures

(5) The nominating committee may make rules governing its procedure, including the appointment of a chair, as it considers advisable.

Quorum

(6) A quorum of the nominating committee for any meeting shall be a majority of its members present in person.

Majority required

(7) A majority vote of the members of the nominating committee present is required for the appointment of a member of the nominating committee under subsection (2), for the designation of another office under subsection (3) or for the appointment of a member of the Board under subsection 6 (2) or (9).

3. Section 12 of the Act is repealed and the following substituted:

Powers

12. (1) Except as limited by this Act, the Foundation has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects.

Restrictions on distribution of capital

(2) The Foundation may distribute such portions as the Board considers advisable of the capital of the funds held directly or indirectly by it, to and for such charitable purposes as the Board considers advisable but,

- (a) unless otherwise specifically provided by the donor of any sum or fund, not more than a total of 10 per cent of the balance of the capital of the sum or fund shall be so distributed during any year; and
- (b) no distribution of capital shall be made without the approval of two-thirds of the directors, given in person at a meeting of the Board or, if not present at a meeting, then in writing within 60 days after the meeting.

Authority to invest and retain assets

(3) Subject to the *Charitable Gifts Act* and the *Charities Accounting Act*, the Board may authorize and direct the retention of any specific assets donated or bequeathed to the Foundation for such length of time as the Board in its sole discretion considers advisable.

Special funds

(4) The Foundation may establish from time to time a special fund for the relief of persons or families who suffer from death, injury, calamitous deprivation of the necessities of life, health or education as a result of disasters, fires, floods or accidents of major proportions within Ontario that, in the opinion of the Board, merit the establishment of a special fund.

Same

(5) As part of establishing a special fund under subsection (4), the Foundation may solicit and receive funds

and disburse them for relief as described in that subsection and for the expenses of advertising and operating the fund.

Same

(6) The restrictions on the distribution of capital set out in subsection (2) shall not apply to a special fund established under subsection (4), provided that any surplus in a special fund may be used for other emergency relief purposes.

4. Section 18 of the Act is repealed and the following substituted:

Gifts for the benefit of persons outside the Kitchener Waterloo district

18. (1) Where property has been donated to the Foundation and the donor directs that the donation or a portion of it be used in accordance with the objects of the Foundation, but in whole or in part for the benefit of persons not resident in the Kitchener Waterloo district, the Board may accept and exercise the trust in respect of the donation.

Same – for persons outside Canada

(2) Where the donation, in whole or in part, is directed to be applied to charitable purposes outside of Canada, the recipient of the benefit must be a registered charity under the *Income Tax Act* (Canada).

5. Section 20 of the Act is repealed and the following substituted:

General fund

20. (1) Subject to subsection (2) and subject to any direction by the donor, all donations made directly or indirectly to the Foundation may be treated for all purposes as a general fund and in the absence of any direction by the donor, all contributions shall be deemed to be received as capital and shall be invested and the net income from that capital shall be devoted for charitable purposes.

Separate fund

(2) In the case of a donation of \$50,000 or more, the donor may require that the donation be maintained as a separate fund, in which case, in each year afterwards, a separate accounting of the fund shall be set out in the annual audited report.

6. Section 22 of the Act is repealed and the following substituted:

Audit

22. (1) The Foundation shall appoint an accountant licensed under the *Public Accountancy Act* to conduct an audit, at least once a year, of the books and records of the Foundation.

Restrictions re auditor

(2) No person shall be appointed as auditor of the Foundation who is an officer or employee of the Foundation or a partner, employer or employee of any member of the Board.

Assets to be included in audit

(3) The audit shall include an examination of all assets held by the Foundation, by any trust company on the Foundation's behalf, by any trustee in trust for the Foundation and by a trustee pursuant to the provisions of a testamentary document or deed of trust.

Full disclosure to auditor

(4) The Board and any trust company or trustee holding assets on behalf of or in trust for the Foundation shall give full information and permit all necessary inspection to enable the audit to be made.

Standards

(5) The financial statements shall be prepared in accordance with generally accepted accounting principles and audit standards.

Publication

(6) The Foundation shall cause the Foundation's financial statements, including the balance sheet, statement of revenues and expenses and notes to the financial statements, to be published annually in the newspaper published in the Kitchener Waterloo district that is reputed to have the largest circulation.

Commencement

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. The short title of this Act is the *Kitchener-Waterloo Foundation Act, 2003*.