

Toronto Atmospheric Fund Act, 2005

EXPLANATORY NOTE

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

**An Act respecting the Toronto Atmospheric Fund and the Clean Air Partnership
(formerly known as the Toronto Atmospheric Fund Foundation)**

Preamble

The council of the City of Toronto, the board of directors of the Toronto Atmospheric Fund and the board of directors of the Toronto Atmospheric Fund Foundation have applied for special legislation to continue the Fund and the Foundation, to change the name of the Foundation to the Clean Air Partnership and to alter the composition, structure, objects and powers of the Fund and the Foundation and their relationship to the City of Toronto.

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:

**PART I
INTERPRETATION**

Definitions

1. (1) In this Act,

“carbon sinks” means the storage of carbon in the form of forests and other land plants and in the soil as soil organic matter;

“City” means the City of Toronto;

“Fund” means the Toronto Atmospheric Fund;

“greenhouse gases” means those gases and aerosols that contribute to the warming of the climate by absorbing infrared radiation;

“greenhouse gas precursors” means gases and aerosols that are not greenhouse gases but that create or increase the concentration of greenhouse gases through their effect on atmospheric chemistry;

“Partnership” means the Clean Air Partnership.

Interpretation: subsidiary organization

(2) For the purposes of this Act, a body corporate shall be deemed to be a subsidiary of the Fund or the Partnership if, but only if,

- (a) it is controlled by,
 - (i) the Fund or the Partnership, or
 - (ii) the Fund or the Partnership and one or more bodies corporate each of which is controlled by the Fund or the Partnership, or
 - (iii) two or more bodies corporate each of which is controlled by the Fund or the Partnership; or
- (b) it is a subsidiary of a body corporate that is a subsidiary of the Fund or the Partnership.

**PART II
TORONTO ATMOSPHERIC FUND**

Corporation continued

2. (1) The Toronto Atmospheric Fund is continued as a corporation without share capital under the same name and is composed of the members of its board of directors.

Head office

(2) The head office of the Fund shall be in Toronto.

Board of directors

3. (1) The City council shall appoint the members of the Fund's board of directors, who shall serve at the pleasure of the City council.

Board's structure, procedures, etc.

(2) The City council shall establish policies, as in its sole discretion it considers advisable, governing the structure, composition, appointment, removal, meetings and procedures of the Fund's board of directors, including rules respecting quorum, vacancies and other matters necessary for the board to function.

Same

(3) The City council may, in its sole discretion and subject to any conditions it considers appropriate, delegate any of its powers under subsection (2) to the Fund's board of directors.

Remuneration

(4) Board members serve without remuneration but may be paid for reasonable expenses incurred in the performance of their duties.

Profit

(5) A board member shall not directly or indirectly receive any profit from his or her position on the board.

Transition

(6) The members of the Fund's board of directors who are in office immediately before this Act receives Royal Assent shall remain in office until their successors are appointed under this section.

Objects of the Fund

4. The objects of the Fund are:

1. To promote global climate stabilization by the reduction of emissions of greenhouse gases and greenhouse gas precursors into the atmosphere through public education, scientific research and technology development.
2. To promote air quality improvement.
3. To promote public understanding of global warming and air quality problems and their implications for the urban environment.
4. To create and preserve carbon sinks.
5. To promote energy conservation and efficiency.
6. To provide support and funding for projects related to energy efficiency, global climate stabilization and air quality improvement in co-operation with non-government organizations, governments, industries, corporations, official committees, neighbourhood organizations, universities and public and private schools.

Powers of the Fund

5. (1) Subject to subsections 3 (2), 8 (1), (3) and (4), 12 (1) and 13 (1), the Fund has the powers of a company under clauses 23 (1) (a) to (p) and (s) to (v) of the *Corporations Act* and has the following additional powers:

1. To receive directly donations of cash, of money appropriated for its use by the City and of property of any kind wherever situate and donations or the benefit of donations made by way of testamentary disposition or deed of trust or otherwise.
2. To maintain, manage, control and use donations and the income from donations for the objects of the Fund.

3. To pay, apply and distribute the money of the Fund to carry out its objects and to assist institutions, organizations, agencies and bodies engaged in the promotion or advancement of any of the objects of the Fund.

Recipients of assistance

(2) The Fund's board of directors shall determine what institutions, organizations, agencies or bodies are to benefit by assistance from the Fund in each year and to what extent.

Sale of land

(3) Section 268 of the *Municipal Act, 2001* applies with necessary modifications to a sale of land by the Fund's board of directors as if it were a sale of land by a municipal council.

No gain

(4) The Fund shall be carried on without the purpose of gain for its members and any profits or other accretions to the property of the Fund shall be used in promoting its objects.

By-laws

6. (1) Subject to subsections 3 (2), 12 (1) and 13 (1), the Fund's board of directors may pass by-laws regarding such matters as are necessary to conduct the business and carry out the objects of the Fund.

Continuation of by-laws, procedures

(2) The by-laws and procedures of the Fund that are in force immediately before this Act receives Royal Assent shall remain in force until they are repealed or replaced.

Open meetings

7. (1) Section 239 of the *Municipal Act, 2001* applies with necessary modifications to meetings of the Fund's board of directors and to meetings of its committees.

Power to expel, etc.

(2) The presiding officer may expel or exclude from a meeting of the Fund's board of directors a person who has engaged in improper conduct at the meeting.

Custody and investment of the Fund's money

8. (1) The money of the Fund shall be in the custody of the City treasurer.

Transfer of money

(2) At the request of the Fund's board of directors, the City treasurer shall transfer to the Fund such of its money as the board of directors requires to carry out the objects of the Fund and subsection (6) does not apply to the money transferred.

Investment guidelines

(3) The City council shall establish guidelines, as in its sole discretion it considers advisable, for the investment of the money of the Fund that is not immediately required for the Fund's objects.

Investment

(4) The City treasurer shall ensure that the Fund's money is managed and invested in accordance with the investment guidelines established under subsection (3) and with specific investment instructions issued by the Fund's board of directors, in so far as those instructions are consistent with the investment guidelines.

Investment earnings

(5) The earnings derived from the investment of the Fund's money form part of the Fund's money.

Application of *Trustee Act*

(6) Subject to subsection (3), sections 27 to 31 of the *Trustee Act* apply with necessary modifications to the investment of the Fund's money.

Delegation

(7) The City council may, in its sole discretion and subject to any conditions it considers appropriate, delegate any of the powers of the City treasurer under subsection (1) or (4) to the Fund's board of directors.

Audit

9. (1) The City council shall appoint a licensed public accountant as the auditor for the Fund.

Same

(2) If no auditor is appointed by the end of the Fund's fiscal year, the Fund's board of directors may appoint a licensed public accountant as the auditor for the Fund for that fiscal year.

Restrictions re auditor

(3) The following shall not be appointed auditor for the Fund:

1. A director, officer or employee of the Fund or the Partnership.
2. A director, officer or employee of an agency, board or commission of the City.
3. A director, officer or employee of a subsidiary of the Fund, the Partnership or the City.

4. A director, officer or employee of a partner of the Fund or the Partnership.
5. A director, officer or employee of a co-venturer of the Fund or the Partnership.
6. A partner, employee or employer of a person described in paragraph 1, 2, 3, 4 or 5.

Annual audit

(4) The Fund's board of directors shall ensure that the books and records of the Fund are audited each fiscal year.

Assets to be included in audit

(5) The audit shall include an examination of all assets held by the Fund, including assets held by a subsidiary of the Fund and assets held by a trustee for the Fund.

Audit standards

(6) The financial statements shall be prepared in accordance with the *Corporations Act* and with generally accepted accounting principles and audit standards.

Audit requirements

(7) The City council may establish policies and procedures, as in its sole discretion it considers advisable, governing the scope, conduct, timing and reporting of audits.

Access to records, etc.

(8) The Fund's board of directors, the subsidiaries of the Fund, the City treasurer and every trustee holding assets in trust for the Fund shall provide the auditor appointed under this section and the City auditor with full information and access to records in order to conduct audits under this section.

Fiscal year

(9) The Fund's fiscal year begins on January 1 in each year and ends on December 31 of that year.

Annual financial statements

10. (1) The Fund's board of directors shall submit the annual audited financial statements for the Fund to the City council in the form, at the time and containing the information that the City requires.

Additional financial reports

(2) The Fund's board of directors shall submit additional financial reports for the Fund to the City for the periods, in the form, at the time and containing the information that the City requires.

Money from the City

11. (1) Despite section 106 of the *Municipal Act, 2001*, the City council is authorized to grant, loan or by any other method provide the Fund with a maximum of \$23,000,000 over the lifetime of the Fund.

Money from third parties

(2) The City may transfer or direct to the Fund grants or donations of money from third parties for purposes consistent with the Fund's objects and this money is not counted towards the maximum that the City may provide to the Fund under subsection (1).

Emission credits

(3) The City may give donations or transfers in the form of emission credits to the Fund and these credits are not counted towards the maximum that the City may provide to the Fund under subsection (1).

Interest on loans to the Fund

(4) The City may charge interest on any money it lends to the Fund.

Interest on loans to the City

(5) The Fund may charge interest on any money it lends to the City and the interest payments to the Fund are not counted towards the maximum that the City may provide to the Fund under subsection (1).

Amount of interest

(6) The interest charged under subsection (4) or (5) shall be at a rate agreed upon by the City and the Fund.

Restrictions on use

(7) The Fund shall not use any money received from the City for the purpose of directly or indirectly inducing any industrial, commercial, manufacturing or business enterprise to locate in Toronto.

Effect on City's debt limits

(8) For the purpose of calculating its debt and financial obligation limits under section 401 of the *Municipal Act, 2001*, the City shall be deemed to have incurred as a long-term debt any financial commitment, liability or contractual obligation of the Fund in respect of which the Fund is required to make payments after the expiry of the term for which the City council was elected.

Approval

(9) The Fund shall not undertake a financial commitment, liability or obligation described in subsection (8) without the prior authorization of the City council.

Operating policies, agreements

12. (1) The City council may establish policy, reporting and approval requirements, as in its sole discretion it considers advisable, for the management and operation of the Fund.

Delegation

(2) The City council may, in its sole discretion and subject to any conditions it considers appropriate, delegate any of its authority under subsection (1) to the Fund's board of directors.

Agreements

(3) The City council may enter into agreements with the Fund's board of directors as it considers advisable.

Assumption of powers by the City

13. (1) The City council may at any time, as in its sole discretion it considers advisable, assume one or more powers of the Fund's board of directors under this or any other Act.

Same

(2) The City council stands in the place of the Fund's board of directors for the purpose of exercising those powers assumed under subsection (1) and the Fund's directors shall not be held liable for the exercise by the City council of such powers.

Donations to the Fund

14. (1) Any form of words is sufficient to constitute a donation to the Fund if the donor indicates an intention to contribute to it now or in the future.

Same

(2) The Fund may accept a donation even if some portion of the benefit of the donation is directed to be applied to purposes outside Toronto or outside Ontario.

Same

(3) With respect to a donation, neither the Fund nor the City shall exercise its powers in contravention of any intention expressed in the document governing the donation unless directed or allowed to do so by an order or judgment obtained under the *Charities Accounting Act* or by any other order or judgment of the Superior Court of Justice.

Exception

(4) Subsection (3) does not apply to any money or other assets received by the Fund from the City pursuant to subsection 11 (1), (2) or (3).

Application of other Acts

Municipal Conflict of Interest Act

15. (1) The *Municipal Conflict of Interest Act* applies with respect to the Fund as if it were a local board.

Municipal Freedom of Information and Protection of Privacy Act

(2) The Fund shall be deemed to have been designated as an institution to which the *Municipal Freedom of Information and Protection of Privacy Act* applies.

Dissolution

16. (1) The City may pass a by-law to dissolve the Fund and the Fund is dissolved on the day the by-law comes into force.

Notice

(2) The City shall do the following within 14 days after a passing a by-law to dissolve the Fund:

1. Publish a notice of the passing of the by-law, including the date the Fund is dissolved, in a newspaper having general circulation in Toronto.
2. Publish the notice in *The Ontario Gazette*.
3. File the notice with the Minister of Consumer and Business Services.

Disposal of property on dissolution

(3) Subject to subsection 14 (3), if the Fund is dissolved, its remaining property vests in the City after its debts and liabilities are paid.

**PART III
CLEAN AIR PARTNERSHIP**

Corporation continued

17. (1) The Toronto Atmospheric Fund Foundation is continued as a corporation without share capital under the name Clean Air Partnership and is composed of the members of its board of directors.

Head office

(2) The head office of the Partnership shall be in Toronto.

Board of directors

18. (1) The City council shall establish policies, as in its sole discretion it considers advisable, governing the structure, composition, appointment, removal, meetings and procedures of the Partnership's board of directors, including rules respecting quorum, vacancies and other matters necessary for the board to function.

Delegation

(2) The City council may, in its sole discretion and subject to any conditions it considers appropriate, delegate any of its powers under subsection (1) to the Fund's board of directors or the Partnership's board of directors.

Remuneration

(3) Board members serve without remuneration but may be paid for reasonable expenses incurred in the performance of their duties.

Profit

(4) A board member shall not directly or indirectly receive any profit from his or her position on the board.

Transition

(5) The members of the board of directors of the Toronto Atmospheric Fund Foundation who are in office immediately before this Act receives Royal Assent shall remain in office as the members of the Partnership's board of directors until their successors are appointed under this section.

Objects of the Partnership

19. The objects of the Partnership are to receive, control and use donations:

1. To promote global climate stabilization by the reduction of emissions of greenhouse gases and greenhouse gas precursors into the atmosphere through public education, scientific research and technology development.
2. To promote air quality improvement.
3. To promote public understanding of global warming and air quality problems and their implications for the urban environment.
4. To promote projects related to energy conservation and efficiency, global climate stabilization and air quality improvement, including projects promoting the creation and preservation of carbon sinks.

Powers of the Partnership

20. (1) Subject to subsection 18 (1), the Partnership has the powers of a company under clauses 23 (1) (a) to (p) and (s) to (v) of the *Corporations Act* and has the following additional powers:

1. To invest and reinvest the funds of the Partnership in the manner determined by the Partnership's board of directors from time to time and, for such purposes, sections 27 to 31 of the *Trustee Act* apply with necessary modifications to the Partnership's board of directors.
2. To employ an investment manager or managers to invest money that is required to be invested and to pay the compensation of such investment manager or managers from the capital or income, or both, of such invested money as it considers appropriate.

3. To solicit, receive and use donations of property whether by gift, testamentary disposition, deed or trust.
4. Unless otherwise provided by a donor, to convert any property held by it or on its behalf into any other form and for that purpose to sell or otherwise dispose of it.
5. To carry on, in accordance with the *Charitable Gifts Act*, a related business or a business donated to it in which the net profit from the business is used solely for the Partnership's objects.
6. To retain, in accordance with the *Charitable Gifts Act* and the *Charities Accounting Act*, any property in the form in which it is received by it for such length of time as the Partnership's board of directors considers advisable.
7. To determine in respect of all of its funds what shall be treated as income and what shall be treated as capital and to charge or apportion any losses or expenses to capital or income as the Partnership's board of directors considers advisable.
8. To employ and pay assistants, clerks, agents, representatives and employees, to establish, equip, furnish, maintain, operate, manage and staff appropriate offices, facilities and programs for purposes consistent with the objects of the Partnership and to incur necessary reasonable expenses related to these powers.
9. To accumulate from time to time part of the fund or funds of the Partnership or the income from such fund or funds.
10. To exercise all voting rights and to authorize and direct the execution and delivery of proxies in connection with any securities or obligations in any company, corporation, trust, partnership or other form of business entity held by the Partnership.
11. Subject to the *Charitable Gifts Act*, to take up proportions of any increased capital of a business entity in which the Partnership may at any time hold securities or obligations, to purchase any additional securities or obligations in such business entity, to join in any plan for the reconstruction, reorganization or amalgamation or for the sale of assets of any business entity, or part of any business entity, to enter into any pooling or other agreement in connection with the securities or obligations of a business entity held by the Partnership and to give consent to the creation of any mortgage, lien or indebtedness of any business entity whose securities or obligations are held by the Partnership.
12. To require payment of all sums of money and claims to any real or personal property in which the Partnership may have an interest, and to compromise any such claims.

13. To sue and be sued in its corporate name and generally to pursue payment in its corporate name through whatever means are available at law.
14. To incur debts, liabilities and charges for carrying out its objects.

Earnings

(2) The earnings derived from the investment of the funds under paragraph 1 of subsection (1) form part of the funds of the Partnership.

No gain

(3) The Partnership shall be carried on without the purpose of gain for its members and any profits or other accretions to the property of the Partnership shall be used in promoting its objects.

By-laws

21. (1) Subject to subsection 18 (1), the Partnership's board of directors may pass by-laws regarding such matters as are necessary to conduct the business and carry out the objects of the Partnership.

Continuation of by-laws, procedures

(2) The by-laws and procedures of the Toronto Atmospheric Fund Foundation that are in force immediately before this Act receives Royal Assent shall remain in force as by-laws and procedures of the Partnership until they are repealed or replaced.

Approval of by-laws

(3) A by-law is not effective until,

- (a) a majority of the members of the Partnership's board of directors has approved it in person at a meeting of the board duly called for that purpose; or
- (b) all of the members of the Partnership's board of directors have consented to it in writing.

Open meetings

22. (1) Section 239 of the *Municipal Act, 2001* applies with necessary modifications to meetings of the Partnership's board of directors and to meetings of its committees.

Power to expel, etc.

(2) The presiding officer may expel or exclude from a meeting of the Partnership's board of directors a person who has engaged in improper conduct at the meeting.

Trust funds

23. Subject to the *Charities Accounting Act*, the Partnership may establish one or more common trust funds in which donations received by the Partnership are combined for the

purpose of facilitating investment and the Partnership may operate such fund or funds in accordance with the terms of reference established by the Partnership's board of directors from time to time.

Audit

24. (1) The Partnership's board of directors shall annually appoint a licensed public accountant as the auditor for the Partnership.

Restrictions re auditor

(2) The following shall not be appointed auditor for the Partnership:

1. A director, officer or employee of the Fund or the Partnership.
2. A director, officer or employee of an agency, board or commission of the City.
3. A director, officer or employee of a subsidiary of the Fund, the Partnership or the City.
4. A director, officer or employee of a partner of the Fund or the Partnership.
5. A director, officer or employee of a co-venturer of the Fund or the Partnership.
6. A partner, employee or employer of a person described in paragraph 1, 2, 3, 4 or 5.

Annual audit

(3) The Partnership's board of directors shall ensure that the books and records of the Partnership are audited each fiscal year.

Assets to be included in audit

(4) The audit shall include an examination of all assets held by the Partnership, including assets held by a subsidiary of the Partnership and assets held by a trustee for the Partnership.

Audit standards

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

Access to records, etc.

(6) The Partnership's board of directors, the subsidiaries of the Partnership and every trustee holding assets in trust for the Partnership shall provide the auditor appointed under this section with full information and access to records in order to conduct audits under this section.

Auditor's certified statement

25. (1) Each year, the Partnership shall make public a certified statement by the auditor in accordance with the requirements that may be established by the City council.

Contents of statement

(2) The statement must set out information separately for assets held in the common trust fund and assets held in separate accounts and must,

- (a) set out the revenue and expenses, balance sheet and capital account and grants paid or held in trust for the Partnership; and
- (b) describe in detail the purposes for which the income has been used and expenses incurred.

Donations to the Partnership

26. (1) Any form of words is sufficient to constitute a donation to the Partnership if the donor indicates an intention to contribute to the Partnership or to it under its previous name, the Toronto Atmospheric Fund Foundation, now or in the future.

Same

(2) The Partnership may accept a donation even if some portion of the benefit of the donation is directed to be applied to purposes outside Toronto or outside Ontario.

Same

(3) With respect to a donation, the Partnership shall not exercise its powers in contravention of any intention expressed in the document governing the donation unless directed or allowed to do so by an order or judgment obtained under the *Charities Accounting Act* or by any other order or judgment of the Superior Court of Justice.

Donations from the City

(4) The City is not permitted to contribute funds to the Partnership, but is permitted to pay the Partnership for services provided to the City under contract and is permitted to transfer emission credits to the Partnership.

Application of other Acts

Municipal Act, 2001, Municipal Affairs Act

27. (1) The Partnership shall be deemed not to be a local board of the City for the purposes of the *Municipal Act, 2001*, except section 216 of that Act, and the *Municipal Affairs Act*.

Municipal Conflict of Interest Act

(2) The *Municipal Conflict of Interest Act* applies with respect to the Partnership as if it were a local board.

Municipal Freedom of Information and Protection of Privacy Act

(3) The Partnership shall be deemed to have been designated as an institution to which the *Municipal Freedom of Information and Protection of Privacy Act* applies.

Dissolution

28. (1) The City may pass a by-law to dissolve the Partnership and the Partnership is dissolved on the day the by-law comes into force.

Notice

(2) The City shall do the following within 14 days after a passing a by-law to dissolve the Partnership:

1. Publish a notice of the passing of the by-law, including the date the Partnership is dissolved, in a newspaper having general circulation in Toronto.
2. Publish the notice in *The Ontario Gazette*.
3. File the notice with the Minister of Consumer and Business Services.

Disposition of property on dissolution

(3) Subject to subsection 26 (3), if the Partnership is dissolved, its remaining property shall be distributed or disposed of to charitable organizations in Canada having objects similar to those of the Partnership after its debts and liabilities are paid.

**PART IV
REPEAL, COMMENCEMENT AND SHORT TITLE**

Repeal

29. *The Toronto Atmospheric Fund Act, 1992 is repealed.*

Commencement

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

Short title

31. *The short title of this Act is the Toronto Atmospheric Fund Act, 2005.*

Bill Pr15, Toronto Atmospheric Fund Act, 2005. **Mr. Duguid (Member Position). First Reading May 30, 2005. Ordered referred to the Standing Committee on Regulations and Private Bills. Reported without amendment June 8. Second and Third Reading June 13. Royal Assent June 13.**