

1970 Bill Pr. 1

Third Session, 16th Legislature, 19 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr. 1

An Act respecting the Alberta Wheat Pool

MR. SAYERS

First Reading

Second Reading

Third Reading

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An Act respecting the Alberta Wheat Pool

WHEREAS, Alberta Wheat Pool was originally incorporated by Chapter 73 of the Statutes of Alberta, 1929; and

WHEREAS, various enactments passed since 1929 have amended the original Act and enacted additional provisions respecting the said corporation; and

WHEREAS, it is deemed expedient to revise and consolidate the said Acts; and

WHEREAS, a petition has been presented praying that it be enacted as herein set forth and it is expedient to grant the prayer of the petitioner;

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

Short title **1.** This Act may be cited as *The Alberta Wheat Pool Act, 1970*.

Interpre-
tation **2.** In this Act, unless the context otherwise requires,

- (a) "corporate member" shall mean a member of the Pool which is a corporation, company, society or association validly and lawfully incorporated under the laws of the Province, State or Country where it was formed, a colony or community established and operated by a religious sect or group, a municipal corporation, a department or agency of the Government of Canada or of any of the provinces of Canada or of any foreign State or Country, and a corporation formed or constituted by or under the provisions of any statute of Canada or of any of the provinces of Canada;
- (b) "member" is any person who qualifies for membership under section 5 hereof;
- (c) "the Pool" shall mean Alberta Wheat Pool;
- (d) "person" shall include any body corporate or politic and the executors, administrators or other legal representatives of a person to whom the context can apply by law.

Confirmation
of in-
corporation

Name

Capacity
and powers

3. (1) The said incorporation is hereby confirmed under the name and style of "Alberta Wheat Pool."

(2) The said body corporate and politic by that name shall have perpetual succession and a common seal, and by that name may sue and be sued, plead, and be impleaded in all Courts whatsoever.

4. The said corporation is declared to have and shall be deemed to have had since the eighteenth day of August, A.D. 1923, the general capacity and powers which the common law ordinarily attaches to corporations created by charter insofar as it is within the legislative authority of the Province to grant such general capacities and powers, and for greater certainty, but without in any way restricting the generality of the foregoing, the corporation shall be deemed to have and to have had since the eighteenth day of August, A.D. 1923, the following capacities and powers:

- (a) to act as agent and factor, to receive and take delivery of, handle, grade, classify, mix, clean and otherwise process, store, mortgage, pledge, hypothecate, insure, transport, sell, market and otherwise dispose of and deal in the wheat and grain and other cereals or seed produced or delivered to it by the members of the Pool or others and any documents of title, warehouse receipts, storage receipts or other documents with respect thereto;
- (b) to enter into any contracts or arrangements whatsoever for or incidental to or useful in the co-operative selling or marketing of wheat and other grains or seed;
- (c) to lend money to members of the Pool or other persons with or without security;
- (d) to buy, sell and deal in all classes of wheat, grain and other cereals or seed and agricultural products;
- (e) to construct or acquire by purchase, lease, or otherwise, and sell, lease, maintain, improve, equip and operate all classes of grain elevators, warehouses, granaries, buildings, factories and mills, for the storage, treatment and manufacture of all kinds of goods that may be produced from or with grain, seed or cereals of any kind;
- (f) to amalgamate or enter into a partnership or any agreement or arrangement for union of interest, co-operation, joint venture, profit-sharing, reciprocal concession or otherwise, with any other person carrying on or engaged in any business that may be usefully operated in conjunction with any venture of the Pool and to confer upon or delegate to any such person all of the powers, rights and priv-

illeges of the Pool hereunder or under any contract made by the Pool with any member or other person;

- (g) to acquire and dispose of and hold shares, bonds, debenture stock or other securities or obligations in any other company or association carrying on any business capable of being conducted so as directly or indirectly to benefit the Pool and to exercise such voting rights as may attach thereto by such means as the directors may determine;
- (h) to carry on any business (whether manufacturing or otherwise) which may seem to the Pool capable of being conveniently carried on in connection with the business of the Pool or calculated directly or indirectly to enhance the value of or render more profitable any of the Pool's property;
- (i) to buy and sell real and personal property, and give security thereon in any form required by the person by whom the security is being taken;
- (j) to apply for or join in applying for purchase or by other means acquire and protect, prolong and renew any trademarks and trade names, patents, rights, brevets d'invention, license protections and concessions which may appear likely to be advantageous or useful to the Pool, and to use and turn to account and to manufacture under or grant licenses or privileges in respect of the same, and to expend money in experimenting upon and testing and in improving or seeking to improve any patents, inventions or rights which the Pool may acquire or propose to acquire;
- (k) to raise or assist in raising money for and to aid by way of promise, endorsement, guarantee or otherwise any other company, corporation or agency with which the Pool may have business relations or in which it may be a shareholder, and to guarantee the performance of contracts and the payment of debts by any such company, corporation or agency;
- (l) to advertise in such a way as the Pool may deem expedient and in particular by advertising in the press, by circulars, pamphlets, lectures, radio broadcasting, publication of books, newspapers and periodicals, and by granting prizes, rewards and donations;
- (m) to invest and deal with the moneys of the Pool in such securities and in such manner as the Pool may from time to time determine;
- (n) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills

of lading, warehouse receipts or storage receipts, warrants, debentures, and other instruments negotiable or non-negotiable, useful in carrying on the business of the Pool;

- (o) to carry on any of the business of the Pool through or by means of agents, brokers, sub-contractors or others;
- (p) to promote any other company or association for the purpose of acquiring all or any of the property and undertaking any of the liabilities of the Pool or of undertaking any business or operations which may appear likely to assist or benefit the Pool or to enhance the value of any property or business of the corporation, and to place or guarantee the placing of, underwrite, subscribe for, or otherwise acquire all or any part of the shares or securities of any such company or association as aforesaid;
- (q) to sell or otherwise dispose of the whole or any part of the undertaking of the Pool either together or in portions for such consideration as the Pool may think fit, and in particular for shares, debentures or securities of any company purchasing same;
- (r) to distribute among the members of the Pool in kind any property of the Pool and in particular any shares, debentures or securities of other companies or associations belonging to the Pool or of which the Pool may have the power of disposing;
- (s) to accept from any authority outside the Province of Alberta and exercise such powers to carry on business outside Alberta as such authority may confer on the Pool;
- (t) to apply for, hold, and operate under any licenses or permit that may be necessary to enable the Pool to carry on any of its business;
- (u) to borrow money in such manner as the Pool shall think fit, and secure the payment thereof by security covering any assets of the Pool or the assets of any of its members which are in the custody or control of the Pool or its agents;
- (v) to give such security in such form as the lender may require, which without limiting the generality of the foregoing may be by the issue of debentures (perpetual or otherwise), mortgage, charge or lien on the assets of the Pool or of the assets of any of its members which are in the custody or control of the Pool or its agents;
- (w) to secure the performance of any obligation of the Pool including a guarantee by giving to the obligee security in like form and on such assets of the Pool

or its members as the Pool would be authorized to give if the obligee were a creditor of the Pool;

- (x) to do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.

Acceptance
of new
members

5. All persons who were members prior to the passing of this Act and any person who has made application to the Board of Directors in writing in such form and upon such conditions as may be from time to time prescribed by the Board of Directors for membership in the Pool may be declared by the Board of Directors to be a member of the Pool if

- (a) he is a grower of grain or seed or the owner, purchaser, share crop purchaser or vendor, lessor or lessee of farm lands capable of producing grain or seed,
- (b) he has,
 - (i) between the first day of August, 1935, and the date of his application for membership delivered to the Pool or to the elevator facilities of Alberta Pool Elevators Limited, 500 bushels of grain or such other amount of grain as may be determined from time to time, by a resolution passed by the delegates at an annual or special meeting, or
 - (ii) on or prior to the date of his application delivered to the Pool or to the elevator facilities of Alberta Pool Elevators Limited, at least 100 bushels of cleaned cereal seed or 1,000 lbs of any other cleaned seed,
- and
- (c) he has acquired the ownership of an interest in the commercial or elevator reserves or both totaling five dollars or such other amount as may be determined from time to time by resolution passed by the delegates at an annual or special meeting

Voting

6. Any person who at the time of voting has been declared by the Board of Directors to be a member under section 5 hereof shall be entitled to cast one vote in person

- (a) on the election of any delegate for that member's sub-district;
- (b) on the recall of any delegate for that member's sub-district;
- (c) on any referendum made under the by-laws.

Voting by
delegates

7. On all matters other than those mentioned in the next preceding section the vote of any member who is at the

time of voting entitled to vote shall be cast for that member by his delegate, and the vote of a delegate as such on any matter shall be deemed to be the vote of each of the members in the sub-district represented by such delegate.

Cancellation
of member-
ship

8. The Board of Directors may by resolution cancel the membership of any member

- (a) whose reserves have been acquired by the Pool under section 26, clauses (c) and (f),
- (b) who has ceased to farm and does not hold any reserves in Alberta Wheat Pool.

Districts
and sub-
districts

9. The Province of Alberta shall be divided into districts, and each district shall be divided into sub-districts. The number of districts and sub-districts shall be fixed by by-law. The boundaries of districts and sub-districts shall be determined by the directors and may be altered by them from time to time.

Delegates

10. There shall be as many delegates as there are sub-districts and the members of each sub-district shall elect a delegate for that sub-district, in the manner provided by the by-laws of the Pool.

Allocation
of members

11. A member shall be deemed to be a member of the sub-district to which he is allocated by the by-laws of the Pool.

Number of
districts and
boundaries

12. Until altered by by-law there shall continue to be seven districts, each of which shall continue to be divided into ten sub-districts. Until altered by the directors, the boundaries of such districts and sub-districts shall continue to be as they existed on the thirtieth day of November, 1969.

Number of
directors

13. The number of directors shall equal the number of districts into which the Province is divided. The delegates of each district shall elect a director in the manner provided by the by-laws of the Pool.

Election of
directors.

14. (1) There shall be a director of the Pool for each district, to be elected by the delegates of that district in the manner provided by the by-laws of the Pool.

Tie vote

(2) If at any election of a director by the delegates of a district, an equal number of votes are cast for the candidates receiving the most votes thereat, the delegates shall report the result of such vote to the annual general meeting

of the delegates then in session, and the director for such district for the ensuing year shall be elected by the delegates in attendance at such general meeting.

Responsi-
bility and
powers of
directors

15. The directors of the Pool shall administer the affairs of the Pool in all things and shall have power to do all things in their opinion necessary or useful for the conduct of the business of the Pool.

Validation
of election
of directors
and
delegates

16. The persons whose names appear on the books of the Pool at the date of the passing of this Act as delegates and directors respectively of the Pool are hereby declared to have been duly elected and shall be and continue to be the delegates and directors respectively of the Pool until their successors are elected.

Defects in
appointment

17. All acts done by any person purporting to act as a delegate or director shall notwithstanding any defect in the appointment or qualification of such person be as valid as if such person had been duly elected to and qualified for the office which he purports to hold.

Validation
of by-laws

18. The by-laws purporting to be the by-laws of the Pool are hereby declared to have been validly and legally made and shall continue to be the by-laws of the Pool until they are duly repealed, altered or amended.

Liability of
members

19. The members of the Pool shall not be held personally responsible for any account, default or liability whatsoever of the Pool or for any engagement, claim, payment, loss, injury, action, matter or thing whatsoever relating to or connected with the Pool.

Amending
and repeal-
ing by-laws

20. The delegates may from time to time make, amend or repeal by-laws not contrary to this Act for the regulation of the affairs of the Pool not otherwise provided for in this Act. Such by-laws shall bind the Pool and the members thereof to the same extent as if each member has for valuable consideration subscribed his name and affixed his seal thereto, and such by-laws contained a covenant on the part of each member, his executors, administrators and successors, to observe all the provisions of such by-laws, subject to the provisions of this Act;

Provided that no by-law shall be amended or repealed unless three-fifths of the delegates entitled to vote on the amendment or repeal cast votes in favour of the amendment or repeal.

Procedure
for amend-
ment to Act

21. A petition to the Legislative Assembly of the Province of Alberta for amendment to this Act may only be made by Alberta Wheat Pool upon compliance with all provisions for the amendment or repeal of by-laws of the delegates whether contained in the said by-laws or in this Act.

Elevator
reserve.

22. All money heretofore or hereafter deducted by the Pool for elevator purposes (hereinafter called "elevator reserve") from the proceeds of the sale of members' grain or seed and all assets heretofore or hereafter acquired therewith, shall be held and dealt with and shall be deemed to have been held and dealt with by the Pool in its name or in the name of its directors for the time being in trust for the members from the proceeds of whose grain or seed it was deducted, and may be retained by the Pool so long as its directors are of opinion that it is useful in carrying on the business of the Pool.

Investment
of elevator
reserve

23. The Pool shall be deemed to have and to have had from the eighteenth of August, 1923, the right to invest the elevator reserve or any part thereof in any manner designed to provide elevator or shipping facilities for members or customers of the Pool, or any of them, whether such undertakings operate on a profit, non-profit, patronage dividend basis or otherwise.

Refunding
reserves

24. No member or anyone claiming under him by assignment, process or operation of law or otherwise shall be entitled to repayment of any money which is being used as part of the elevator or commercial reserve of the Pool, so long as the directors are of the opinion that it is useful in carrying on the business of the Pool.

Ratification
by delegates

25. The delegates may, at a meeting of which notice has been given specifying the nature of the business to be considered, ratify and validate any acts, resolutions, payments, distributions of moneys among members and any other matters heretofore done or dealt with by the delegates, directors, agents or employees of the Pool or Alberta Pool Elevators Limited, notwithstanding that such acts, resolutions, payments, distribution of moneys and other matters were at variance, contrary to, or inconsistent with the provisions of any marketing or other agreement entered into between a member and the Pool, and such ratification and validation shall be binding on each member or past member of the Pool, and all acts, resolutions, payments, distribution of moneys and other matters so ratified and validated shall be deemed to have been as lawfully and validly done as if the same had been expressly authorized by such agreement.

Purchase of
reserves

26. When authorized by resolution of the delegates Pool may use the commercial and elevator reserves or a earnings in its hands to buy such reserves

- (a) from members, rateably, a percentage of the respective interests in the said reserves;
- (b) from the personal representatives or beneficiaries of members who died on or before a date to be fixed by delegate's resolution;
- (c) from members owning reserves who have ceased farm or hold any interest in land capable of producing grain or seed in the Province of Alberta or those parts of British Columbia and Saskatchewan served by the facilities of Alberta Pool Elevators Limited;
- (d) from members owning reserves who have attained such age as may be fixed by delegate's resolution

Provided that this age shall not be less than years except by way of amendment to this clause

Provided further that any member who has received payment under this clause shall not be entitled to further payment or purchase of reserves except a payment or purchase authorized by delegates under clause (b), (c) or (e) hereof;

- (e) from members or corporate members who have been allotted and hold such membership number as may be specified by delegate's resolution;
- (f) from corporate members which have ceased farm or to hold any interest in land capable of producing grain or seed in the Province of Alberta or those parts of British Columbia and Saskatchewan served by the facilities of Alberta Pool Elevators Limited and from corporate members which have been or are being dissolved, liquidated, wound up, and which have ceased to carry on business except for the purposes of such dissolution, liquidation, or winding up.

Provided, that no payment shall be made to any member under the provisions of clause (a) hereof where the effect would be to reduce his holding of reserves below the nominal value of five dollars (\$5.00).

Provided further that any members who have become members after a date to be specified by delegate's resolution shall only be eligible for purchase of their respective interest in reserves if they qualify under clause (b), (c) or (e) hereof.

Commercial
and elevator
reserves

27. The amounts of commercial and elevator reserves so purchased pursuant to the provisions of section 26 shall be held by the Pool in trust for the members of the Pool in the proportions in which the members from time to time own reserves, and the interest of the members in the assets of the Pool shall be in proportion to their ownership of the reserves.

Powers of
directors

28. (1) Notwithstanding the provisions of this Act the directors of the Pool may, when authorized by resolution of the delegates:

- (a) cancel or write off the whole or any part of the commercial and elevator reserves or either of them purchased pursuant to section 26 of this Act;
- (b) sell to applicants for membership under section 5 of this Act the minimum interest from time to time required under clause (c) of section 5 of this Act and re-issue to patrons who are members the whole or any part of the elevator and commercial reserves or either of them purchased pursuant to section 26 of this Act that have not been cancelled under clause (a) of this subsection;
- (c) refund a portion of the earnings made by the operation of the facilities of the Pool in any year to patrons who are members on a date to be fixed by resolution of the directors before distribution of any such refund;
- (d) make allocations in proportion to patronage to customers who are members on a date to be fixed by resolution of the directors prior to allocation, who purchased in any year fertilizers and other commodities or any of them handled by the Pool.

(2) Refunds and allocations in proportion to patronage which may be made under clauses (c) or (d) of subsection (1) hereof may be made in cash or its equivalent or in elevator and commercial reserves or either of them purchased under section 26 of this Act and not cancelled under clause (a) of subsection (1) hereof, or partly in cash or its equivalent and partly in the said reserves or either of them.

(3) Any refunds of earnings made under the provisions of clause (c) of subsection (1) hereof and any allocations in proportion to patronage made under clause (d) of subsection (1) hereof shall be made, in the case of grain and seed, on the basis of the contribution of grain or seed made by the respective patrons to the facilities of the Pool and, in the case of fertilizers or other commodities sold by the Pool, on the basis of the amount or amounts thereof purchased from the Pool, in any fiscal year or years

preceding such refund or allocation in a manner to be determined by the directors, who may take into account in fixing the amounts to be distributed or allocated:

- (a) in the case of grain the volume of grain delivered;
- (b) in the case of seed either the volume or the dollar value of the amount delivered;
- (c) in the case of fertilizers or other commodities sold by the Pool, the dollar value of the amounts purchased;
- (d) in all cases, the earnings made by any particular grain, seed or commodity;
- (e) the extent of the use of the pool facilities by any member.

Reserve
holders
obliged
to sell

29. Each member and every person claiming through or under him having an interest in the commercial and elevator reserves or either of them shall be bound to sell to the Pool the whole or the part of such interest which the Pool elects to purchase under the provisions of section hereof;

Provided that, notwithstanding that a member may have assigned his reserves or part thereof, the Pool may pay the member the purchase money under section 26 unless the assignment in writing is registered with the Pool at its office in the Alberta Wheat Pool Building in Calgary, in the Province of Alberta, with respect to purchases, if any, to be made under section 26 hereof in any year before a date and place to be fixed by a resolution of the directors or the Pool at least thirty days before the date of the purchases in that year.

Regulations
by direc-
tors

30. The directors may make regulations setting out the manner in which purchases are to be made under the provisions of section 26 and they may from time to time alter, repeal and re-enact any such provisions and without limiting the generality of the foregoing the directors may by such regulations,

- (a) fix a cut-off date in any year after which, pending a delegates' meeting, they may refuse to acquire reserves from any of the classes of members or persons from whom purchases have been authorized by resolution of the delegates;
- (b) terminate the purchases of all or any reserves at any time pending a delegates' meeting;
- (c) fix a maximum amount that may be acquired from any one person coming within the class from whom purchases have been authorized by resolution of the delegates.

Reserves
increased

31. The reserves of the Pool are declared to be \$30,-000,000.00.

Reserves -
liability of
for
members

32. When authorized by resolution of the delegates, the Pool may issue the reserves created by section 31 or acquired by purchase under section 26 hereof that have not been re-issued to members who were patrons in any crop year in proportion to their patronage in that year, and each member to whom reserves are so issued shall thereupon become liable to the Pool for the reserves so issued to him at the par value thereof, and the Pool shall apply against the liability of each such member the cash patronage dividend then or thereafter payable to the member in proportion to patronage for the same crop year, provided that if within twelve (12) months of such issue of reserves the Pool does not authorize payment of a cash dividend in proportion to patronage equivalent to the liability of the respective members for the reserves so issued to the members, any member may advise the Pool in writing that he elects to reject the issue of reserves to him and his liability therefor shall cease and determine.

Arbitration

33. If any question arises between the Pool and any member touching anything done, to be done, or not to be done, or any money paid, to be paid or not to be paid, under the provisions of this Act, the by-laws of the Pool or the marketing agreement, then, unless by this Act otherwise expressly provided, such question shall be determined by arbitration in the manner provided by *The Arbitration Act*.

Provided that the provisions of this section shall not preclude the Pool from bringing actions against a member in any court on any cause of action which the Pool may have against any such member under the marketing agreement.

Limitation
of action

34. No action or other proceeding respecting any matter shall be brought against the Pool by any person who is or has been a member of the Pool unless it is commenced within one year after the date on which cause of action arose.

Grain or
seed not
liable to
seizure

35. No grain or seed received by the Pool from any person or persons for sale, nor the proceeds of any such grain or seed shall be liable to seizure or attachment by any creditor of the Pool; except only for the purpose of or on account of any security held by any creditor who has loaned money to the Pool on the security of such grain or on documents or other evidence of title to such grain or seed.

Assignment
of proceeds
of grain
or seed

36. No assignment of the proceeds of a member's grain or seed marketed through the Pool shall be binding on the Pool unless

- (a) the assignment, accompanied by the delivery checking coupon for the grain or seed, the proceeds of which are assigned, is filed with the Pool; or
- (b) the assignment conforms to the regulations prescribed by the directors from time to time, as to the form and conditions in and under which a member may assign the proceeds; or
- (c) if in any year heretofore or hereafter the total amount of the advances made by the Pool to a member on account of the grain or seed delivered by such member to the Pool is in excess of the amount which ultimately becomes payable by the Pool on account of the proceeds of such grain or seed, the Pool shall be entitled to set off, and shall be deemed to have always been entitled to set off the amount of such excess against any moneys in the hands of the Pool which are payable to such member in respect of any grain or seed delivered by such member of the Pool in any previous year.

Lien on
reserves

37. The Pool without prejudice to its right to sue shall have a lien upon the interest of each member in the commercial and elevator reserves for any claim of the Pool against that member, and shall have the right to set off its claims against the interest of that member in the said reserves.

Dissolution
of Pool

38. The Supreme Court of Alberta may, on the application of a member, order that the Pool be dissolved and wound up where the delegates have passed a resolution by a majority of three-fourths of their number requiring the Pool to be dissolved and wound up.

The Co-op
erative
Associations
Act

39. The provisions of *The Co-operative Associations Act*, being chapter 59 of the Revised Statutes of Alberta, 1955, shall not apply to the Pool.

Repeal

40. *The Alberta Wheat Pool Act* being chapter 73 of the Statutes of Alberta, 1929, is hereby repealed.

Coming
into force

41. This Act comes into force on the day upon which it is assented to.