

1996 BILL Pr1

Fourth Session, 23rd Legislature, 45 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL Pr1

ALBERTA WHEAT POOL
AMENDMENT ACT, 1996

MR. McFARLAND

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill Pr1
Mr. McFarland

BILL Pr1

1996

ALBERTA WHEAT POOL AMENDMENT ACT, 1996

(Assented to , 1996)

WHEREAS Alberta Wheat Pool is incorporated by chapter 117 of the Statutes of Alberta, 1970, which was amended by chapter 104 of the Statutes of Alberta, 1973, chapter 90 of the Statutes of Alberta, 1975(2), chapter 101 of the Statutes of Alberta, 1977, chapter 75 of the Statutes of Alberta, 1978, chapter 99 of the Statutes of Alberta, 1980, chapter 51 Statutes of Alberta, 1983, chapter 43 of the Statutes of Alberta, 1987, and chapter 40 of the Statutes of Alberta, 1990; and

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

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

- 1 The Alberta Wheat Pool Act, 1970 is amended by this Act.*
- 2 Section 2 is amended*
 - (a) by renumbering clause (a) as clause (a.2) and by adding the following before clause (a.2):*
 - (a) "associate member" means a person admitted as an associate member of the Pool in accordance with the Bylaws;*

Explanatory Notes

1 Amends chapter 117, Statutes of Alberta, 1970

2 Section 2 presently reads:

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*

(a.1) "Bylaws" means the Pool's bylaws as in effect from time to time in accordance with this Act;

(b) *by repealing clause (b) and substituting the following:*

(b) "member" means a person admitted as a member of the Pool in accordance with the Bylaws, but does not include

(i) a person whose membership in the Pool is cancelled,

(ii) a person who is an associate member, or

(iii) a shareholder, unless the shareholder has been admitted as a member of the Pool and the shareholder's membership has not been cancelled;

(c) *by adding the following after clause (d):*

(e) "shareholder" means a person recorded in the Pool's share register as the registered owner of shares issued by the Pool.

3 *Section 5 is repealed and the following is substituted:*

5(1) A person may be admitted as a member or as an associate member in accordance with the Bylaws.

(2) The membership of a member or an associate member may be cancelled in accordance with the Bylaws.

(3) A person who is a member or an associate member of the Pool when this section comes into force continues as a member or associate member, as the case may be, until the person's membership is cancelled in accordance with the Bylaws.

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 the 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;*
- (e) *repealed 1990 c40 s2;*

3 Section 5 presently reads:

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 shall 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, 10 tonnes of grain or such other mount of grain as may be determined from time to time, by a resolution passed by the*

4 Section 6 is amended by striking out "has been declared by the Board of Directors to be a member under section 5 hereof" and substituting "is a member".

5 Sections 8 and 8.1 are repealed.

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, cleaned cereal seed to the value of \$1,500 or more, or any other cleaned seed to the value of \$1,500 or more,*

and

- (c) he has paid the membership fee prescribed pursuant to the By-Laws.*

4 Section 6 presently reads:

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 pursuant to section 7.1.*

5 Sections 8 and 8.1 presently read:

8 The membership of any member may be cancelled in accordance with the By-Laws.

8.1(1) Any member whose membership has been cancelled in accordance with the By-Laws of the Pool may any time thereafter make an application to the Board of Directors, in writing and in such form and upon such conditions as may be from time to time prescribed by the Board of Directors, for associate membership in the Pool.

(2) Any applicant for associate membership in the Pool may, in the complete discretion of the Board of Directors, be declared by the Board of Directors to be an associate member of the Pool.

(3) An associate member shall have the right to receive all printed material and information as is sent or made available to members of the Pool, excluding only nomination papers and related documentation, but except only as aforesaid such associate member shall not for any purpose have status as a member of the Pool or any of the rights, privileges, restrictions or liabilities of a member of the Pool.

6 *Section 18 is repealed and the following is substituted:*

18(1) The delegates may, by resolution passed by at least 3/5 of the delegates, make, amend, repeal or replace Bylaws not contrary to this Act regulating the Pool's business or affairs, including without limitation Bylaws

- (a) dealing with matters stated elsewhere in this Act to be governed by the Bylaws;
- (b) governing the Pool's financial affairs, including without limitation the accumulation, retention, application, allocation, distribution, pooling, payment, transfer and handling of the Pool's earnings and funds loaned, paid or contributed to or invested in the Pool;
- (c) creating a share capital structure for the Pool, consisting of shares of such classes as the Bylaws specify;
- (d) specifying the characteristics, rights, privileges, restrictions and conditions respectively attaching to each class of shares, and any maximum number of shares that may be issued in any class;
- (e) dealing with other matters necessary for or incidental to the creation and issuance of shares or concerning any other matter or thing related to shares, including without limitation
 - (i) the payment for or conversion to shares,
 - (ii) the transfer, purchase, retraction and redemption of shares, and
 - (iii) the addition, change or removal of characteristics, rights, privileges, restrictions and conditions attaching to outstanding and unissued shares of any class;
- (f) providing for transitional and consequential matters arising in connection with the making, amendment,

(4) The Board of Directors may at any time, in its complete discretion, by resolution cancel the associate membership of an associate member.

6 Section 18 presently reads:

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.

repeal or replacement of Bylaws.

(2) The Bylaws bind the members and the shareholders to the same extent as if each member and shareholder had signed, sealed and delivered the Bylaws for valuable consideration and the Bylaws had contained a covenant on the part of each member and shareholder and their respective executors, administrators, successors and permitted assigns, to observe and be bound by the Bylaws as they may be made, amended, repealed or replaced from time to time, in accordance with this Act.

(3) Without limitation, the making, amendment, repeal or replacement of Bylaws in accordance with this Act binds all members and shareholders as set forth in subsection (2), regardless of whether the making, amendment, repeal or replacement of Bylaws affects either directly or indirectly

- (a) the characteristics, rights, privileges, restrictions or conditions attaching to any outstanding shares issued by the Pool, or
- (b) any other rights of a member or shareholder under the Bylaws.

7 Section 19 is amended by striking out "The members of the Pool shall not" and substituting "No member or shareholder shall".

8 Section 20 is repealed.

7 Section 19 presently reads:

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.

8 Section 20 presently reads:

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.

9 *Section 21 is repealed and the following is substituted:*

21 A petition to the Legislative Assembly of the Province of Alberta for amendment of this Act may be made by the Pool only on compliance with all provisions in the Bylaws or this Act for making, amending, repealing or replacing Bylaws.

10 *Section 24 is repealed.*

11 *Section 25 is amended by striking out "members" and substituting "members or shareholders".*

12 *Section 33 is repealed and the following is substituted:*

33(1) If any question arises between the Pool and any member or shareholder 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 or the Bylaws, then, unless this Act otherwise expressly provides, the question shall be determined by arbitration in the manner provided by the *Arbitration Act*.

(2) Notwithstanding subsection (1), the Pool is not precluded from bringing an action against a member in any court on any cause of action which the Pool may have against the member.

13 *Section 34(1) is amended by striking out "of any grain, seed or commodities marketed by the Pool" and substituting "provided for in the Bylaws".*

9 Section 21 presently reads:

21 A petition to the Legislative Assembly of the Province of Alberta for amendment to this Act may be made by Alberta Wheat Pool only 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.

10 Section 24 presently reads:

24 The delegate may from time to time make, amend or repeal by-laws governing the financial affairs of the Pool, including without limitation the accumulation, application, allocation, distribution, payment, transfer and handling of earnings of the Pool and funds loaned or otherwise paid or contributed to or invested in the Pool.

11 Section 25 presently reads:

25 The delegates may at any properly constituted meeting ratify and validate any acts, resolutions, payments, distribution of money among members and any other matters previously done or dealt with by the delegates, directors, officers, agents or employees of the Pool or Alberta Pool Elevators Limited, and upon such ratification and validation they shall be deemed to have been as lawfully and validly done as if they had been expressly authorized.

12 Section 33 presently reads:

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.

13 Section 34(1) presently reads:

34(1) The report of the directors on the winding up or closing of any pool or pools of any grain, seed or commodities marketed by the Pool shall, after the expiration of 12 months after the adoption of such report

14 Section 36 is amended by striking out "grain or seed" and substituting "grain, seed or other product".

15 Section 38 is repealed and the following is substituted:

38 The Court of Queen's Bench 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 3/4 of their number requiring the Pool to be dissolved and wound up.

16 Section 38.1(5) is amended by striking out "member of the Pool" and substituting "member and shareholder".

by a meeting of the delegates, be final, conclusive and binding on all persons claiming an interest in the pool or pools.

14 Section 36 presently reads:

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.*

15 Section 38 presently reads:

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.

16 Section 38.1(5) presently reads:

38.1(5) The Board of Directors shall, on or before February 1 of each year, issue to each member of the Pool a copy of the annual consolidated statement for this last fiscal year, certified by the auditor of the Pool.

17 Section 39 is repealed and the following is substituted:

39(1) In this section,

- (a) "affiliate" means an affiliate as defined in the *Business Corporations Act*;
 - (b) "associate" means an associate as defined in the *Securities Act*;
 - (c) "exempt person" means
 - (i) a member,
 - (ii) a former member,
 - (iii) a shareholder,
 - (iv) an employee of the Pool,
 - (v) an associate of a person described in subclause (i), (ii), (iii) or (iv),
 - (vi) an affiliate of a person described in subclause (i), (ii), (iii) or (v), or
 - (vii) any other person designated as an exempt person under this Act by the Alberta Securities Commission.
- (2) The *Co-operative Associations Act* does not apply to the Pool.
- (3) The *Securities Act* does not apply to
- (a) the accumulation, retention, application, allocation, distribution, pooling, payment, transfer or handling of the Pool's earnings, or funds loaned, paid or contributed to or invested in the Pool by exempt persons;
 - (b) the issuance of shares or other securities by the Pool to exempt persons;
 - (c) the transfer to exempt persons of shares or other

17 Section 39 presently reads:

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

securities issued by the Pool;

- (d) the purchase, redemption or other acquisition by the Pool of shares or other securities issued by the Pool, or the disposition of shares or other securities in consequence of the purchase, redemption or other acquisition.

(4) The Pool shall not be a reporting issuer under the *Securities Act* by reason of transacting, carrying out or otherwise giving effect to anything described in subsection (3).

18 The following provisions are amended by striking out "member of the Pool" wherever it occurs and substituting "member":

*section 2(a.2);
section 36(c).*

19 The following provisions are amended by striking out "members of the Pool" wherever it occurs and substituting "members":

section 4(a) and (r).

20 The following provisions are amended by striking out "by-laws of the Pool" wherever it occurs and substituting "Bylaws":

*section 10;
section 11;
section 13;
section 14(1).*

21 The following provisions are amended by striking out "by-law" wherever it occurs and substituting "Bylaws":

*section 9;
section 12.*

