



## Legislative Summary

***Bill C-27:  
An Act to amend the Canadian  
Wheat Board Act***

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## **Legislative Summary of Bill C-27**

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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# LEGISLATIVE SUMMARY OF BILL C-27: AN ACT TO AMEND THE CANADIAN WHEAT BOARD ACT

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## 1 INTRODUCTION

On 14 May 2010, Bill C-27, An Act to amend the Canadian Wheat Board Act, was introduced in the House of Commons by the Minister of Agriculture and Agri-Food and Minister for the Canadian Wheat Board, the Honourable Gerry Ritz. Bill C-27 is similar to the previous Bill C-57, which was introduced in, but not passed by, the House of Commons during the 2<sup>nd</sup> Session of the 39<sup>th</sup> Parliament. Like Bill C-57, Bill C-27 changes the election process for directors of the Canadian Wheat Board (CWB) to require farmer-elected directors of the Board to be elected by “actual producers” of grain.<sup>1</sup> Bill C-27 proposes additional changes to the *Canadian Wheat Board Act* (CWBA)<sup>2</sup> to grant the Minister for the Canadian Wheat Board – with the approval of the Minister of Finance – the power to establish amounts to be paid to farmers, and to authorize and direct that certain payments or transactions be made by the CWB.

## 2 BACKGROUND

### 2.1 PURPOSE OF THE CANADIAN WHEAT BOARD

The CWB is a unique shared-governance corporation created by the CWBA<sup>3</sup> that operates a national monopoly (also known as a “single desk”) in the interprovincial and export marketing of wheat and barley produced in designated areas of western Canada.<sup>4</sup> The Canadian Wheat Board’s single desk authority for wheat and barley arguably allows farmers to have greater control over the marketing and price of their grain.<sup>5</sup>

Other activities of the Canadian Wheat Board include price pooling and government guarantees.<sup>6</sup> Price pooling spreads market risks among all farmers by depositing all sales revenue in the year into one account for later redistribution to each farmer. Government guarantees allow the CWB to provide initial payments to farmers at the time of delivery to the CWB, rather than later, at the time of sale of the grain.<sup>7</sup> This creates a price floor on grains based on their market value. The CWB also provides credit at a rate similar to that available to other multinational corporate grain producers. In some instances, farmers are not bound to the CWB and may also participate in niche and premium marketing opportunities while retaining their initial payment privileges.<sup>8</sup>

## 2.2 GOVERNANCE

The CWB is a special entity, since it is neither a Crown corporation, nor an entity with shareholders. Instead, the activities of the CWB are controlled by a group of government-appointed and farmer-elected individuals, collectively called the board of directors (Board). The activities of the Board are regulated by legislation, internal policies and by the Governor in Council and include the following instruments:

- a) the CWBA and its associated regulations;<sup>9</sup>
- b) the by-laws of the CWB; and
- c) directions given by the Governor in Council.<sup>10</sup>

The Board is comprised of 15 individuals, and its composition is governed by the CWBA, which stipulates that 10 members must be elected by farmers; 4 members must be appointed by the Governor in Council; and the last individual, the president, must be recommended by the Board and then appointed by the Governor in Council.<sup>11</sup> Each director, other than the president, holds office for a term of up to 4 years and for a maximum of 3 terms.<sup>12</sup> The president is a particular case and serves a term specified by the Governor in Council. The president may also be terminated by the Governor in Council after consultation with the Board.<sup>13</sup>

Bill C-27 grants the Minister for the Canadian Wheat Board the power to authorize certain payments that were previously authorized by the Governor in Council directly or through amendments to the regulations.

## 2.3 ELECTORAL PROCESS

The electoral process for farmer-elected members of the Board is governed by both the CWBA<sup>14</sup> and the *Regulations respecting the Election of Directors of the Canadian Wheat Board* (RRED).<sup>15</sup> The voting and candidate nomination processes are restricted to 10 districts, with one candidate (Director) being elected to the Board from each district. Geographically, the districts contain grain-growing regions from various western provinces and are designated by number.<sup>16</sup> Certain districts contain regions that encompass more than one province.

During the candidate nomination process, any person who is an “actual producer” of “grain”<sup>17</sup> in a district, or is part of an entity that is an actual producer of grain in a district, may run as a Director candidate for that district.<sup>18</sup> Later, during the voting process, producers and interested parties in a district may vote once and only for a candidate in their district.<sup>19</sup> In practice, voting and directorship eligibility are based on an individual’s permit book.<sup>20</sup> Terms of elected directors are staggered, with 5 directors from 5 different districts being elected in a single election; the 5 directors from the remaining districts are elected 2 years later. In 2008, elections involving candidates hailing from districts 2, 4, 6, 8, and 10 were held.

Changes to the electoral process can be achieved through amendments to the RRED, but only after the Minister has consulted with the CWB.<sup>21</sup> This occurred in 2000,<sup>22</sup> when the voting process was modified to ensure that eligible voters included

interested parties, such as landlords who rent their land to farmers, in addition to actual producers, and in 2002<sup>23</sup> to allow the CWB to monitor third-party campaigning activities. In a more recent example, in July 2008, the Minister consulted with the CWB before the release of proposed regulations to remove the \$10,000 cap on third-party intervenor spending.<sup>24</sup>

Bill C-27 changes the electoral process by modifying voter eligibility requirements for the election of Directors. The next round of elections is scheduled for September of this year and will involve elections for directors from districts 1, 3, 5, 7, and 9.

### 3 DESCRIPTION AND ANALYSIS

#### 3.1 VOTER ELIGIBILITY (CLAUSE 2)

Clause 2 of the bill amends subsection 3.02(1) of the Act to change the voter-eligibility requirements for farmer-elected Directors to ensure that they are elected by actual producers who produced – or were entitled to – at least 40 tonnes<sup>25</sup> of grain<sup>26</sup> in the crop year in which an election occurs or in either of the two previous completed crop years. Previously, Board members could be elected by a group consisting of actual producers and individuals with a connection to an actual producer, such as a landlord of farmland.

#### 3.2 AUTHORIZATION OF PAYMENTS (CLAUSES 3 TO 5)

Clauses 3 and 4 of the bill grant the Minister for the Canadian Wheat Board – with the concurrence of the Minister of Finance – the power to make payments at the time of delivery or any time thereafter to wheat producers in the designated regions who sell and deliver wheat to the CWB,<sup>27</sup> and to authorize other payments<sup>28</sup> to producers related to the sale and delivery of wheat. Thus, payments to producers will not be authorized through regulation but instead will be directly authorized by the Minister for the Canadian Wheat Board with the concurrence of the Minister of Finance.

Clause 5 grants the Minister for the Canadian Wheat Board – with the concurrence of the Minister of Finance – the power to authorize payments based on the grade of wheat.

Clauses 3 to 5 remove the requirement for Governor in Council approval before payments can be made to wheat and barley producers and instead transfer this approval power to the Minister for the Canadian Wheat Board, with the concurrence of the Minister of Finance.

#### 3.3 AUTHORIZATION OF TRANSFERS (CLAUSES 6 AND 7)

Clause 6 of the bill grants the Minister for the Canadian Wheat Board – with the concurrence of the Minister of Finance – the power to authorize the transfer of wheat at a determined price from one pool period to a subsequent pool period in order to change the reporting of sales and deliveries made by producers.

Clause 7 grants the Minister for the Canadian Wheat Board – with the concurrence of the Minister of Finance – the power to authorize the CWB to adjust any balance in a pool account through the transfer of the balance to a producer who is entitled to it and to specify how any remaining balance may be used for the benefit of all producers.

Both clauses remove the requirement for Governor in Council approval before transfers can be made and instead transfer this approval power to the Minister for the Canadian Wheat Board, with the concurrence of the Minister of Finance.

### 3.4 COORDINATING AMENDMENT (CLAUSE 8)

Clause 8 of the bill is a coordinating amendment that prevents a potential conflict that could arise regarding the power to authorize payments to producers. Specifically, if the bill is passed and a previous amendment to paragraph 32(1)(b) of the CWBA, which changes the time for determining payments to producers through regulation by the Governor in Council, comes into force, paragraph 32(1)(b) will be amended by clause 8 to ensure that payments will instead be authorized by the Minister for the Canadian Wheat Board with the concurrence of the Minister of Finance.

### 3.5 COMING INTO FORCE (CLAUSE 9)

Clauses 2 to 7 come into force on a day or days to be fixed by order of the Governor in Council.

## 4 COMMENTARY

### 4.1 VOTER ELIGIBILITY

This bill ensures that directors of the Board are only elected by farmers who directly or indirectly produce 40 tonnes of grain. This is a change from the current situation, where any interested party can vote if they file a statutory declaration with the elections co-ordinator stating that they are a landlord, vendor, or mortgagee to a share in wheat, oats, barley, rye, flaxseed, canola, or rapeseed grown in a CWB area by a farmer with a CWB permit book.<sup>29</sup> Thus the bill will exclude landowners from voting if they are entitled to less than 40 tonnes of grain. In addition, retired wheat and barley farmers, who are currently eligible to vote, may also be excluded due to the 40-tonne requirement.

Concerns expressed in the media during the introduction of the previous Bill C-57 focussed on the amount of grain people were required to produce in order to be eligible to vote.<sup>30</sup> The amount of 120 tonnes in the previous Bill C-57 was thought to remove “hobby” and retired farmers from the election rolls.<sup>31</sup> In 2005, the Canadian Wheat Board Election Review Panel recommended that a 40-tonne threshold be used.<sup>32</sup> However, the Western Barley Growers Association is supportive of the 120-tonne requirement.<sup>33</sup> Current Bill C-27 contains the lower 40-tonne threshold.

## 4.2 ELECTION PROCESS

It is uncertain how Bill C-27 will affect the election process. In 1998, when the current governance structure of the CWB was created, confusion surrounded the election process, due to inadequate procedures to obtain voter eligibility information.<sup>34</sup> As a consequence, permit book information was used as a basis for determining voter eligibility and the eventual voters list. This bill will place greater importance on information found in a voter's permit book in determining grain production for voter eligibility. As this method can lead to votes being culled after voting is complete, transparency in the election process may be hindered. The 2005 Canadian Wheat Board Election Review Panel report recommended that an Independent Election Commissioner be used to ensure autonomy, transparency and integrity of the electoral system, that communication between candidates and eligible voters be improved and that the statutory declaration process remain in place for the addition of eligible voters to the voters list.

## 4.3 ADDITIONAL POWERS FOR THE MINISTER

Agriculture and Agri-Food Canada has indicated support for the bill, saying that the removal of approval by the Governor in Council for payments to wheat and barley producers will shorten the payment approval process, resulting in faster payments from the government.<sup>35</sup>

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## NOTES

1. [Bill C-57, An Act to amend the Canadian Wheat Board Act](#), 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament (first reading version, 27 May 2008). Bill C-57 required eligible voters to produce at least 120 tonnes of grain in either of the two previous crop years in which an election occurred and did not grant the Minister for the Canadian Wheat Board the power to establish amounts to be paid to farmers, and to authorize and direct that certain payments or transactions be made by the Canadian Wheat Board.
2. *Canadian Wheat Board Act*, R.S.C. 1985, c. C-24 [CWBA].
3. CWBA, ss. 3.01–3.13. See also Canadian Wheat Board, [Annual Report 2008–09](#), p. 20. The report states that:

The CWB operates as a shared governance corporation under *The Canadian Wheat Board Act*. The board consists of 15 members: 10 elected farmers and five individuals appointed by the Government of Canada, including the president and chief executive officer. The CWB makes a recommendation to the government on the CEO appointment. In 1998, this unique board structure was created to reflect the CWB's accountability to farmers and to ensure that farmers are in control of their grain marketing organization.

Until 1998, the CWB was a Crown corporation controlled by appointed commissioners.



4. See the definition of a “designated area” in section 2 of the *Canadian Wheat Board Act*, which states that designated area means “that area comprised by the Provinces of Manitoba, Saskatchewan and Alberta, and that part of the Province of British Columbia known as the Peace River District, and any other areas that the Corporation may designate under subsection (3).” The Canadian Wheat Board’s authority over trade in barley can be found in *Regulations Respecting the Canadian Wheat Board*, C.R.C., c. 397, s. 9.
5. The price of wheat is also determined by the price on commodity exchanges. For an overview of the factors involved in determining the price of grain, see Sinclair Stewart and Paul Waldie, “[Who is responsible for the global food crisis?](#)” *Globe and Mail* [Toronto], 31 May 2008. The Canadian Wheat Board is the largest producer-controlled wheat and barley marketer in the world. For a summary of Canada’s market share of global wheat and barley production and trade see Canadian Wheat Board, *Annual Report 2008–09*, pp. 33–34.
6. See Canadian Wheat Board, *Annual Report 2008–09*, p. 35.
7. CWBA, ss. 32, 48, and 53. According to s. 33 of the Act, the CWB may also make additional and interim payments to producers and is obliged to distribute any balance at the end of the pool period to producers.
8. Canadian Wheat Board, *Annual Report 2008–09*, p. 35. Farmers have the ability to sell directly to buyers through the Producer Direct Sale program.
9. The Governor in Council establishes, upon the recommendation of the CWB and after consultation with the Department of Finance, the initial payments to be made to farmers under the government guarantees program. This is done through yearly amendments to s. 26 of the *Canadian Wheat Board Regulations*, C.R.C., c. 397.
10. CWBA, ss. 3.12(2), 18 and 28.
11. CWBA, ss. 3.01–3.11.
12. CWBA, s. 3.02(2).
13. See P.C. 2006-1671, 19 December 2006, and “[Strahl fires president of Canadian Wheat Board](#),” *CTV NEWS*, 19 December 2006. For a critique of the Minister’s decision to terminate the president of the CWB see Ken Eshpeter, “[Farmers oppose Tories’ Wheat Board policy and strong-arm tactics](#),” *Vue Weekly* [Edmonton], No. 588, 23 January 2007.
14. See CWBA, ss. 3.06–3.08.
15. *Regulations respecting the Election of Directors of The Canadian Wheat Board*, SOR/98-414, 25 August 1998 [RRED].
16. *Ibid.*, schedule 1.
17. CWBA, s. 2. According to the definition, “grain” includes wheat, oats, barley, rye, flaxseed, rapeseed and canola.
18. RRED, s. 10.
19. RRED, ss. 5–8.
20. RRED, ss. 7 and 10. A permit book contains a record of the amount of wheat and barley grown and delivered to the CWB. See CWBA, s. 2, “permit book,” and s. 26.
21. See CWBA s. 3.06(2), which states:
 

After the date referred to in section 3.08, the Minister shall not make the recommendation referred to in subsection (1) unless he or she has consulted with the board, including consulting with respect to geographical representation on the board and the staggering of the terms of office of directors.

22. See [Regulations Amending the Regulations respecting the Election of Directors of The Canadian Wheat Board](#), SOR/2000-302, 27 July 2000.
23. See [Regulations Amending the Regulations Respecting the Election of Directors of the Canadian Wheat Board](#), SOR/2002-323, 27 August 2002.
24. See Canadian Wheat Board, "[CWB supports keeping limits on third-party spending in director elections](#)," News release, Winnipeg, 5 August 2008. For the proposed regulations, see [Regulations Amending the Regulations respecting the Election of Directors of The Canadian Wheat Board](#), SOR/2008-255, 4 September 2008.
25. For the 2009 crop season, one hectare yielded approximately 2.8 tonnes of spring wheat or 2.4 tonnes of amber durum wheat. (Canadian Wheat Board, *Farmers: Crop issues report*, "[Western Canada Growing Season in Review – 2009](#).")
26. The CWB is responsible for four classes of grain: wheat, amber durum wheat, barley and designated barley. The definition of grain in the CWBA includes wheat, oats, barley, rye, flaxseed, rapeseed and canola.
27. Payments in respect of wheat of a base grade are determined by the Minister for the Canadian Wheat Board with the concurrence of the Minister of Finance, while payments in respect of other grades of wheat are determined by the CWB with the approval of the Minister for the Canadian Wheat Board and the concurrence of the Minister of Finance.
28. Other payments to producers include payments to account for freight charges, additional payments and interim payments.
29. See Meyers Norris Penny LLP, "[MNP Provides Details on Voter Eligibility for CWB Director Elections](#)," News release, Winnipeg, 8 September 2008.
30. See "[‘Hobby’ grain farmers to lose CWB vote](#)," *Farm Business Communications*, 27 May 2008.
31. See Mia Rabson, "[Ritz moves to cut small producers from Wheat Board vote](#)," *Winnipeg Free Press*, 27 May 2008.
32. Canadian Wheat Board Election Review Panel [CWB Election Review Panel], [Report Respecting the Review of the Electoral Process for Election of Directors of the Canadian Wheat Board](#), 30 November 2005, p. 8.
33. Western Barley Growers Association, "[WBGA Supports Move to Ensure True Prairie Producers’ Right to Choose Their CWB Director](#)," News release, Airdrie, Alta., 28 May 2008.
34. CWB Election Review Panel (30 November 2005), p. 6.
35. Agriculture and Agri-Food Canada, "[Government of Canada Takes Action to Improve the Canadian Wheat Board Act](#)," News release, Ottawa, 14 May 2010.