

Fifty-fifth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Monday, the sixth day of January, one thousand nine hundred and ninety-seven

HOUSE BILL NO. 1339
(Representatives Lloyd, Aarsvold)
(Senators G. Nelson, Wogsland)

AN ACT to amend and reenact sections 4-09-08, 4-09-10, 4-09-14.3, 4-10.3-01, 4-10.3-02, 4-10.3-03, 4-10.3-04, 4-10.3-05, 4-10.3-08, 4-10.3-09, 4-24-09, and 4-24-10 of the North Dakota Century Code, relating to the North Dakota dry bean council and the assessment on dry beans; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-08. Public laboratory service - Free tests - Fees for additional tests. Any resident of this state may send samples of cereals, flax, sunflower, alfalfa, soybean, and ~~edible~~ dry bean seed to the commissioner for germination tests. No more than three samples per year per person may be examined and reported on free of charge. The commissioner, with the approval of the seed commission, shall prescribe the time of year when seed samples will be accepted for free tests, the fees which will apply to samples submitted by any resident of the state in excess of three, and the fees which will be charged for all other laboratory tests and services.

SECTION 2. AMENDMENT. Section 4-09-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-10. Labeling requirements for agricultural seed. Each container of agricultural seed which is sold, offered for sale, exposed for sale, transported for sale, or held in storage with the intent to sell for planting purposes within this state must bear thereon or have attached thereto in a conspicuous place, or there must be properly delivered with bulk sales or movements of said seed, a plainly written or printed label or tag in the English language giving the following information, which statement may not be modified or denied in the labeling or on another label attached to the container:

1. a. In seeds of wheat, durum, barley, oats, rye, soybeans, ~~edible~~ dry beans, and flax the commonly accepted name of the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage by weight of each. Variety identification is not required for seeds labeled "for vegetative cover only".
 - b. In all other seeds not named in subdivision a the commonly accepted name of the kind or the kind and variety of each agricultural seed component in excess of five percent of the whole and the percentage of weight of each.
 - c. When more than ten percent of the whole consists of an aggregate of agricultural seed components, each present in an amount not exceeding five percent of the whole, each component in excess of one percent of the whole must be named together with the percentage by weight of each. All components must be listed in the order of their predominance. Where more than one component is named, the word "mixture", or the word "mixed", must be shown conspicuously on the label.
2. Lot number or other lot identification.
 3. Origin, state or foreign country where grown. If the origin is unknown, that fact must be stated.

4. Percentage by weight of all weed seeds.
5. The name and rate of occurrence per pound [453.59 grams] of each kind of restricted noxious weed seeds present, if the restricted noxious weed seeds are present singly or collectively in amounts:
 - a. In seeds of grasses and small seeded legumes, in excess of thirteen seeds per pound [453.59 grams]; and
 - b. In other agricultural seeds including the cereals, oil seed crops, millets, and seeds of similar size, in excess of five seeds per pound [453.59 grams].
6. Percentage by weight of agricultural seed which may be designated as crop seed, other than those required to be named on the label.
7. Percentage by weight of inert matter.
8. For each agricultural seed:
 - a. Percentage of germination, exclusive of hard seed. Total germination and hard seed may be stated as such, if desired.
 - b. Percentage of hard seed, if present. Total germination and hard seed may be stated as such, if desired.
 - c. The calendar month and year the test was completed to determine such percentages.
9. The full name and address of the person who labeled said seed, or who sells, offers for sale or exposes said seed for sale within this state.
10. For treated seeds as defined in this chapter, for which a separate label may be used:
 - a. A word or statement indicating that the seed has been treated;
 - b. The commonly accepted, coined, chemical or abbreviated chemical (generic) name of the applied seed protectant pesticide; and
 - c. If the substance in the amount present with the seed is harmful to human or other vertebrate animals, a caution statement such as "Do not use for food or feed or oil purposes". The caution for mercurials and similar toxic substances must be a poison statement or symbol.
11. That the seed container itself is a hermetically sealed container as defined by rules adopted by the commissioner.
12. A disease test result for seedborne diseases. For the purpose of this subsection, the words "disease test result" have the meaning ascribed to them by rules adopted by the commissioner.

SECTION 3. AMENDMENT. Section 4-09-14.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.3. Fees. The fees required by section 4-09-14.1 shall be pursuant to the following fee schedule:

- | | |
|----------------------------|-------------|
| 1. A container containing: | |
| 100 to 160 lbs. of seed | eight cents |
| 60 to 99 lbs. of seed | seven cents |
| 30 to 59 lbs. of seed | six cents |
| 15 to 29 lbs. of seed | five cents |
| 1/2 to 14 lbs. of seed | four cents |

2. Cereal grains, per 100 pounds [45.36 kilograms], two cents. Flax, soybeans, ~~edible~~ dry beans, per 100 pounds [45.36 kilograms], four cents.
3. Seeds sold in bulk, and not specified in subsection 2, per 100 pounds, [45.36 kilograms], six cents.
4. Whenever seed is sold at wholesale or on consignment or commission in packets of eight ounces [226.80 grams] or less, the fee shall be fifty cents per twenty-five dollars of wholesale value, or fraction thereof, of the packets in the lot container.

SECTION 4. AMENDMENT. Section 4-10.3-01 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-01. Legislative policy. ~~It is hereby declared that the~~ The production, development, marketing, and promotion of ~~edible dry~~ beans in ~~North Dakota this state~~ is important to the general welfare of the people of North Dakota; ~~that it.~~ It is in the public interest that better methods of production, processing, and marketing of ~~edible dry~~ beans and that advertising and promoting of ~~edible dry~~ beans grown in ~~North Dakota this state~~ be fostered, encouraged, developed, and improved so the ~~edible dry~~ bean industry within the state, the people directly or indirectly employed by said industry and the people of North Dakota should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota ~~edible dry~~ bean council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. This chapter ~~must does not be construed to~~ abrogate or limit in any way the rights, powers, duties, and functions of the office of the commissioner of agriculture or any other agency of the state, but is supplementary thereto and in aid and cooperation therewith; ~~nor may this.~~ This chapter be construed to does not authorize the North Dakota ~~edible dry~~ bean council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote North Dakota-grown ~~edible dry~~ beans.

SECTION 5. AMENDMENT. Section 4-10.3-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.3-02. Definitions. Whenever used in this chapter:

1. "Commissioner" means commissioner of agriculture or the commissioner's designated representative.
2. "Council" means the North Dakota ~~edible dry~~ bean council.
3. "Designated handler" means any person who initially places ~~edible dry~~ beans, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or any person who is engaged in the processing of beans into food for human consumption in any form. A grower selling the grower's unharvested ~~edible dry~~ beans, or delivering the grower's ~~edible dry~~ beans from the farm on which they are produced to storage facilities, packing sheds, or processing plants within the state is not considered to be a designated handler. For the purposes of assessments and reporting, "designated handler", includes a grower selling the grower's unharvested ~~edible dry~~ beans out of state, or delivering the grower's ~~edible dry~~ beans from the farm where they were produced to any storage facilities, packing sheds, or processing plants located outside the state.
4. "~~Edible Dry~~ beans" means any and all varieties of ~~edible dry~~ beans, excluding soybeans, harvested within the state.
5. "Grower" means any person who plants, raises, and harvests ~~edible dry~~ beans from more than ten acres [4.05 hectares].
6. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or a combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of ~~edible dry~~ beans based on invoices or bills of lading records.

7. "Participating grower" means a grower who has not exempted himself from the payment of taxes on ~~edible dry~~ bean production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on ~~edible dry~~ bean production under this chapter.
8. "Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.
9. "Processor" means a person who is actively engaged in the processing of ~~edible dry~~ beans for human consumption.

SECTION 6. AMENDMENT. Section 4-10.3-03 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-03. North Dakota state ~~edible dry~~ bean council - Membership - Election - Term. ~~There is hereby established a~~ The North Dakota ~~edible dry~~ bean council. ~~The council~~ is composed of one participating grower elected from each of the districts established in section 4-10.3-04. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner of agriculture is an ex officio member of the council. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council shall, by majority vote, appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. ~~The first election~~ Elections must be held ~~within forty five days after April 20, 1977, and all elections thereafter must be conducted within seventy five days prior to~~ before April first of each year. No elected member of the council is eligible to serve more than two consecutive three-year terms.

SECTION 7. AMENDMENT. Section 4-10.3-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-04. ~~Edible Dry~~ bean districts - Establishment. The following ~~edible dry~~ bean districts are established for the purpose of dividing the state into districts containing as nearly equal ~~edible dry~~ bean acreages as practicable:

1. District one consists of the counties of Benson, Bottineau, Burke, Cavalier, Divide, McHenry, Mountrail, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams.
2. District two consists of Grand Forks County.
3. District three consists of the counties of Barnes, Billings, Burleigh, Dunn, Eddy, Foster, Golden Valley, Griggs, Kidder, McKenzie, McLean, Mercer, Nelson, Oliver, Sheridan, Steele, Stutsman, and Wells.
4. District four consists of Traill County.
5. District five consists of the counties of Adams, Bowman, Cass, Dickey, Emmons, Grant, Hettinger, LaMoure, Logan, McIntosh, Morton, Ransom, Richland, Sargent, Sioux, Slope, and Stark.

SECTION 8. AMENDMENT. Section 4-10.3-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-05. Meetings - Quorum - Compensation and expenses of council. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out

the duties of the council. ~~All The chairman shall call meetings of the council must be called by the chairman except. The chairman shall call all special meetings which must be called by the chairman on the petition of three council members within seven days of receiving such a the petition. Each member of the council, except the commissioner of agriculture, shall receive the sum of twenty five dollars per day for each day spent in performance of the business of the council and must be reimbursed for expenses incurred in the performance of official duties in the amounts provided by law for state officials is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.~~

SECTION 9. AMENDMENT. Section 4-10.3-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.3-08. Tax levies - Collection - Reports - Continuing appropriation. ~~Effective July 1, 1977, an~~

1. ~~An~~ assessment at the rate of ~~five ten~~ cents per hundredweight [45.36 kilograms] must be levied and imposed upon all ~~edible dry~~ beans grown in ~~the this~~ state, ~~delivered into this state,~~ or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of ~~edible dry~~ beans.
2. A designated handler of ~~edible dry~~ beans shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first designated handler, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state, and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within this state.
3. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any ~~edible dry~~ beans until it has furnished a certificate as required by this section.
4. The first designated handler in North Dakota of ~~edible dry~~ beans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of ~~five ten~~ cents per hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all ~~edible dry~~ beans subject to the assessment and purchased by the designated handler.
5. Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw ~~edible dry~~ beans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity in individual and total amounts of ~~edible dry~~ beans received, sold, or shipped by it. The report must state from whom each individual amount was received. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving account ~~or accounts~~ designated ~~"edible the"~~ "dry bean fund". All money in the ~~edible dry~~ bean fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 10. AMENDMENT. Section 4-10.3-09 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-09. Nonparticipating growers - Refunds. Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the ~~edible dry~~ bean council for a refund application blank. Upon the return of ~~said the~~ blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above then the grower is presumed to have agreed to such assessment. However, a grower, for any reason, having paid the tax more than once on the same ~~edible dry~~ beans, upon furnishing proof of this to the council, is entitled to a refund of the overpayment. The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the ~~edible dry~~ bean tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of ~~edible dry~~ beans.

SECTION 11. AMENDMENT. Section 4-24-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, ~~edible dry~~ bean fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund.

SECTION 12. AMENDMENT. Section 4-24-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-10. Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota ~~edible dry~~ bean council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk stabilization board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a uniform report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. Each report must contain a summary of the activities of the commodity group during the current biennium, a single-page uniform statement of revenues and expenditures for the next biennium. Each report, except the reports of the North Dakota beekeepers association and the North Dakota turkey federation, must also include a state auditor's report on the commodity group's single-page uniform statement of revenues and expenditures for the previous two fiscal years.

SECTION 13. EFFECTIVE DATE. This Act becomes effective on July 1, 1997.

SECTION 14. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1339 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 94 Nays 1 Absent 2

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 4

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State