

**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**

SENATE BILL NO. 2124
(Senator Andrist)

AN ACT to provide for the creation of the dry pea and lentil council; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Commissioner" means the commissioner of agriculture or the commissioner's designee.
2. "Council" means the North Dakota dry pea and lentil council.
3. "Dry peas and lentils" means the range of pulse crops including lentils, dry peas, chickpeas, and lupins.
4. "First purchaser" means any person, firm, corporation, association, partnership, agent, or broker buying, accepting for sale, or otherwise acquiring dry peas and lentils after harvest from a grower. The term includes a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, when the actual or constructive possession of lentils and dry peas is taken as part of payment of or in satisfaction of the mortgage, pledge, lien, or claim.
5. "Grower" means any person who plants, raises, or harvests dry peas and lentils, and includes both the owner and the tenant jointly, a person, partnership, association, corporation, limited liability company, cooperative, trust, sharecropper, and any other, and all business units, devices, and arrangements.
6. "Participating grower" means a grower who has not claimed any refunds for the payment of taxes on dry peas and lentils produced under this Act for the previous or current year.

SECTION 2. Dry pea and lentil council - Membership - Term. There is a North Dakota dry pea and lentil council. The council is composed of one participating grower elected from each of the districts established in section 4 of this Act. 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 member of the council 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 Act, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified grower from the affected district for the remainder of the term of the office vacated. No elected member of the council is eligible to serve more than three consecutive three-year terms.

SECTION 3. Dry pea and lentil council - Election. 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 must be held within forty-five days after the effective date of this Act, and all elections thereafter must be conducted prior to April first. Prospective candidates for the council must have planted dry peas or lentils in the previous year or intend to plant dry peas or lentils in the coming year. County election meetings are to be announced in the official newspaper of the county not less than five days nor more than thirteen days prior to the meeting. Any current or prospective participating dry pea

and lentil grower is eligible to vote. Elected county representatives shall then meet in district caucus to elect one person from that group to act as the district representative.

SECTION 4. Dry pea and lentil districts - Establishment. The following dry pea and lentil districts are established for the purpose of dividing the state into districts containing as nearly equal dry pea and lentil acreage as practicable:

1. District one consists of the counties of Burke, Divide, McKenzie, Mountrail, and Williams.
2. District two consists of the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, Mercer, Morton, Oliver, Sioux, and Slope.
3. District three consists of the counties of Benson, Bottineau, McHenry, Pierce, Renville, Rolette, Towner, and Ward.
4. District four consists of the counties of Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Sheridan, and Wells.
5. District five consists of all remaining North Dakota counties where dry peas and lentils are grown.

SECTION 5. Meetings - Quorum - Compensation of council members. A majority of the voting members of the council constitute a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. Each member of the council 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, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 6. Expenditure of funds. The council or its designated agent shall maintain an account of all receipts as authorized by this Act. Expenditures of funds made pursuant to this Act must be recorded on itemized vouchers and records maintained in accordance with standards adopted by the state auditor. The accounts and records of the council are open to inspection by the designated state auditors without notice.

SECTION 7. Council powers and duties. In the administration of this Act, the council may:

1. Contract and cooperate with any person or with any governmental department or agency for research, education, publicity, promotion, and transportation for purposes of this Act.
2. Expend funds collected pursuant to this Act for its administration.
3. Appoint, employ, bond, discharge, fix the compensation for, and prescribe the duties of such administrative, clerical, technical, and other personnel as it deems necessary.
4. Accept donations of funds, property, services, or other assistance from public or private sources for the purpose of furthering the objectives of the council.
5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of the taxes authorized by this Act, and to sue and be sued in the name of the council.
6. Formulate the general policies and programs of markets and industries for the utilization of dry peas and lentils grown within the state.

SECTION 8. Certification of first purchasers. A first purchaser of dry peas and lentils shall file an application with the council on forms prescribed and furnished by the council. The forms must contain the name under which the first purchaser is transacting business within the state, the first purchaser's places of business, the location of loading and shipping places of agents of the first

purchaser, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any dry peas or lentils until the first purchaser has furnished a certificate as required by this section.

SECTION 9. Assessment. Effective on the effective date of this Act, an assessment at the rate of one percent of the net value of dry peas and lentils must be levied and imposed upon all dry peas and lentils grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of dry peas or lentils.

SECTION 10. Collection of assessment. Every first purchaser of dry peas or lentils shall collect the assessment from the seller by deducting the assessment from the net purchase price of all dry peas and lentils subject to the assessment and purchased by the first purchaser.

Each first purchaser shall keep as part of the first purchaser's permanent records a record of all purchases, sales, and shipments of dry peas and lentils, which may be examined by the council at any and all reasonable times. Each first purchaser shall report to the council, in a manner and at a time prescribed by the council, the quantity in individual and total amounts of dry peas and lentils received, sold, or shipped by the first purchaser. The report must state from whom each individual amount was received. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this Act must be paid within thirty days of the end of each calendar quarter. Regular audits of the council's accounts may be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 11. Nonparticipating growers - Refunds. Any grower subject to the assessment provided by this Act, within sixty days following the assessment or final settlement, may apply to the council for a refund application. Upon the return of the properly executed refund application and within sixty days of the date it was mailed to the grower, and accompanied by a record of the assessment collected the council shall issue a refund to the grower. If no request for refund is made within sixty days of sale, then the grower is presumed to have agreed to the assessment. However, a grower, having paid the tax more than once on the same dry peas or lentils, is entitled to a refund of the overpayment upon furnishing proof to the council.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the dry pea and lentil tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies and private businesses engaged in the purchase of dry peas and lentils.

SECTION 12. Advisory referendum by growers. Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct an advisory referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 9 of this Act. The advisory referendum may be conducted only among participating growers who have paid all taxes assessed pursuant to this Act for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which may not be less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots may be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If the majority of the participating growers voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to implement the change and to submit it to the next legislative assembly.

SECTION 13. Collection of unpaid assessments. If a first purchaser fails to pay the assessment as provided in this Act, the council may enforce collection in any appropriate court within the state.

SECTION 14. Penalty for nonpayment of assessments. A first purchaser who fails to pay any assessment levied by this Act on the date that the assessment becomes due is delinquent and the council may levy a penalty on the delinquent payments of ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date. The penalty and interest must be collected in the manner prescribed by this Act.

SECTION 15. Continuing appropriation. All funds received by the council pursuant to this Act are hereby appropriated as a standing and continuing appropriation for the purposes of this Act.

SECTION 16. Records of the council - Inspection. All records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and must be made available within a reasonable amount of time for the inspection of any person for any lawful purpose during regular business hours at the office of the council.

SECTION 17. Penalty. Any person who willfully violates this Act is guilty of a class B misdemeanor.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2124.

Senate Vote: Yeas 46 Nays 0 Absent 3

House Vote: Yeas 91 Nays 4 Absent 2

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