

February 2008

Introduced by

1 A BILL for an Act to create and enact six new sections to chapter 4-10.5 of the North Dakota  
2 Century Code, relating to the North Dakota soybean council; to amend and reenact sections  
3 4-10.5-01, 4-10.5-03, 4-10.5-04, 4-10.5-05, 4-10.5-06, 4-10.5-07, 4-10.5-09, 4-10.5-11, and  
4 4-10.5-14 of the North Dakota Century Code, relating to the North Dakota soybean council; to  
5 repeal section 4-10.5-02, 4-10.5-12, and 4-10.5-13 of the North Dakota Century Code, relating  
6 to the membership of the North Dakota Soybean council, the collection of unpaid assessments,  
7 continuing appropriation, and open records; and to provide a continuing appropriation.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 4-10.5-01 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **4-10.5-01. Definitions.** ~~In As used in this chapter, unless the context or subject matter~~  
12 ~~otherwise requires:~~

- 13 1. "Commissioner" means agriculture commissioner or the commissioner's  
14 ~~designated representative designee.~~
- 15 2. "Council" means the North Dakota soybean council.
- 16 3. "Designated handler" means any person who initially places soybeans, ~~whether as~~  
17 ~~an owner, agent, or otherwise,~~ into the channels of trade and commerce, ~~or who is~~  
18 ~~engaged in the processing of~~ and any person who processes soybeans into food  
19 ~~for human consumption in any form.~~ A. The term does not include a grower  
20 selling the grower's unharvested soybeans, or delivering the grower's soybeans  
21 from the farm on which they are produced to storage facilities, packing sheds, or  
22 processing plants, located within the state, ~~is not considered to be a designated~~  
23 ~~handler. For the purposes of assessments and reporting, "designated handler"~~  
24 ~~includes a grower selling the grower's unharvested soybeans out of state, or~~

~~delivering the grower's soybeans from the farm where they were produced to any storage facility, packaging shed, or processing plant located outside the state.~~

4. "Grower" means any person who plants, raises, and harvests soybeans from more than ten acres [4.05 hectares].

5. "Participating grower" means a grower who ~~has not been exempted from the payment of taxes on soybean production under this chapter for a particular year, or a grower who is not~~ is exempt from the payment of taxes or who has paid the assessment on soybean production under this chapter.

**NOTE:** Who would be exempt from having to pay the assessment?

6. ~~"Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.~~

**NOTE:** NDCC Section 1-01-49 already defines a person as a human being, foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, any legal or commercial entity, government, political subdivision, or government agency or instrumentality. For this reason, it is not necessary to include the definition in this chapter.

7. ~~"Processor" means a person who is actively engaged in the processing of soybeans for human consumption.~~

**NOTE:** Because the word "processor" is not used in the chapter, there is not need to define it.

8. "Soybeans" means any and all varieties of soybeans, excluding edible beans, harvested within the state.

**NOTE:** Is there any reason to include the definition of soybeans?

**SECTION 2. AMENDMENT.** Section 4-10.5-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.5-03. Soybean districts - Establishment.** The state consists of the following eight soybean districts ~~are established for the purpose of dividing the state into districts containing as nearly equal soybean acreages as practicable:~~

1. ~~District one consists of~~ Richland County.

2. ~~District two consists of the counties of~~ Ransom, Sargent, Dickey, and LaMoure Counties.

3. ~~District three consists of~~ Cass County.

4. ~~District four consists of the counties of~~ Barnes, Griggs, and Steele Counties.

5. ~~District five consists of~~ Traill County.
6. ~~District six consists of~~ Grand Forks County.
7. ~~District seven consists of the counties of~~ Walsh, Pembina, and Nelson Counties.
8. ~~District eight consists of all remaining~~ All other North Dakota counties ~~where in~~  
which soybeans are grown.

**SECTION 3.** A new section to chapter 4-10.5 of the North Dakota Century Code is created and enacted as follows:

**North Dakota soybean council - Membership.**

1. The North Dakota soybean council is composed of one individual elected from each of the eight districts established in section 4-10.5-03 and the commissioner, who serves as an ex officio member.
2. Each member of the council, except the commissioner:
  - a. Must be a resident of the district that the member represents; and
  - b. Must have paid all assessments on soybean production imposed by this chapter.

**NOTE:** NDCC Section 4-10.5-02 contains multiple concepts. These have been rewritten as new law and presented in sections 3 through 5.

**SECTION 4.** A new section to chapter 4-10.5 of the North Dakota Century Code is created and enacted as follows:

**North Dakota soybean 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. All elections must be conducted no later than April first of each year.

**NOTE:** NDCC Section 4-10.5-02. This is not new language. It has merely been removed from NDCC Section 4-10.5-02 and placed in a separate section. Because the soybean council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to describe the election process in statute, so that anyone can determine what that process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated to one individual - i.e., the commissioner.

**SECTION 5.** A new section to chapter 4-10.5 of the North Dakota Century Code is created and enacted as follows:

**North Dakota soybean council - Terms.**

1       1.   The term of each member is three years, beginning on April first following the  
2           member's election. The terms must be staggered so that no more than three  
3           expire each year. A member may not serve more than two consecutive three-year  
4           terms.

5       2.   If at any time during a member's term the member ceases to possess any of the  
6           qualifications provided for in this section, the member's office is deemed vacant  
7           and the council shall, by majority vote, appoint another qualified individual to serve  
8           for the remainder of the term.

**NOTE:** NDCC Section 4-10.5-02. The rewrite does not include the historical language governing the establishment of terms. It does however require that the terms be staggered.

NDCC Section 4-10.5-02 also provides that the chairman of the council must be a member of the council elected by a majority vote of the council. This language has been moved to NDCC Section 4-10.5-04.

9       **SECTION 6. AMENDMENT.** Section 4-10.5-04 of the North Dakota Century Code is  
10   amended and reenacted as follows:

11       **~~4-10.5-04. Meetings—Quorum—Compensation and expenses of council~~**

12   **Chairman.** All

13       1.   Annually, the council shall elect one member to serve as the chairman.  
14       2.   The chairman shall call all meetings of the council and must be called by the  
15           ~~chairman except call a special meetings which must be called by the chairman on~~  
16           ~~the petition of three council members~~ meeting within seven days of receiving the  
17           ~~petition. The council shall determine the amount of compensation payable to each~~  
18           ~~member of the council, except the commissioner. The amount payable may not~~  
19           ~~exceed seventy five dollars per day plus reimbursement of expenses as provided~~  
20           ~~by law for state officers, while attending meetings or performing duties directed by~~  
21           ~~the council, except that no compensation may be paid to any council member who~~  
22           ~~receives compensation or salary as a regular state employee or official, when~~  
23           petitioned to do so by three council members.

**NOTE:** NDCC Section 4-10.5-02 provides that the "chairman of the council must be a member of the council elected by a majority vote of the council." This provision is now found in subsection 1. Because current law does not indicate the frequency with which a chairmanship is determined, the rewrite provides that this determination be made annually. Is this accurate or is some other timeline used?

1           **SECTION 7.** A new section to chapter 4-10.5 of the North Dakota Century Code is  
2 created and enacted as follows:

3           **Council members - Compensation.** Each member of the council is entitled to receive  
4 compensation in the amount established by the council, but not exceeding seventy-five dollars  
5 per day plus reimbursement for expenses as provided by law for state officers, if the member is  
6 attending meetings or performing other duties as directed by the council. The compensation  
7 provided for in this section may not be paid to any member of the council who receives a salary  
8 or other compensation as an employee or official of this state.

**NOTE:** NDCC Section 4-10.5-04 contains language pertaining to meetings and  
language pertaining to the compensation of council members. The rewrite reflects those  
concepts in two separate sections.

9           **SECTION 8. AMENDMENT.** Section 4-10.5-05 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11           ~~**4-10.5-05. Expenditure of funds**~~ **Expenditures.** The council ~~or its designated agent~~  
12 shall approve ~~every~~ each expenditure ~~of funds~~ made pursuant to this chapter and shall submit  
13 ~~the approved expenditure upon~~ an itemized voucher to the ~~office of the budget for approval.~~  
14 ~~Items are to be paid by warrant check issued by the office of management and budget for~~  
15 payment.

16           **SECTION 9. AMENDMENT.** Section 4-10.5-06 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           ~~**4-10.5-06. Council powers and duties - Duties.**~~ In the administration of this chapter,  
19 ~~the~~ The council may:

- 20           1. ~~Contract and cooperate with any person or with any governmental department or~~  
21           ~~agency for the provision of~~ research, education, publicity, promotion, and  
22           ~~transportation for the purposes of this chapter.;~~
- 23           2. ~~Expend the funds collected pursuant to this chapter and appropriated for its~~  
24           ~~administration.;~~
- 25           3. ~~Appoint, employ~~ Employ, bond, ~~discharge, fix compensation for, and prescribe the~~  
26           ~~duties of such administrative, clerical, technical, and other personnel as it may~~  
27           ~~deem~~ and compensate necessary: personnel;

- 1           4.    Accept gifts, grants, and donations of funds money, property, and services, or  
2                ~~other assistance from public or private sources for the purpose of furthering the~~  
3                ~~objectives of the council.~~ to carry out this chapter;
- 4           5.    ~~Investigate and prosecute in the name of the state any action or suit~~ Sue and be  
5                ~~sued; and~~
- 6           6.    Do all things necessary and proper to enforce the collection or ensure payment of  
7                ~~the taxes authorized by this chapter, and to sue and be sued in the name of the~~  
8                ~~council.~~
- 9           6.    ~~Formulate policies and programs regarding the discovery, promotion, and~~  
10               ~~development of markets and industries for the utilization of soybeans grown within~~  
11               ~~the state and administer this chapter.~~

**NOTE:** The final sentence of this section provides that the council may formulate certain policies and programs. It appears that this should be a duty rather than a power -- i.e. a mandated directive rather than mere authorization. Therefore, the language was placed in section 10 - the newly created "Duties" section.

12           **SECTION 10.** A new section to chapter 4-10.5 of the North Dakota Century Code is  
13 created and enacted as follows:

14           **Council - Duties.** The council shall develop policies and initiate programs to promote  
15 the development of markets for and increase the utilization of soybeans grown in this state.

**NOTE:** Are there other "duties" that should be included?

16           **SECTION 11.** A new section to chapter 4-10.5 of the North Dakota Century Code is  
17 created and enacted as follows:

18           **Designated handler - Certification.**

- 19           1.    Before a designated handler may sell, process, or ship any soybeans, the  
20                designated handler shall obtain certification from the council. The certification is  
21                available upon submission to the council of an application containing the name  
22                under which the designated handler is transacting business within the state, the  
23                designated handler's place of business, and the location of loading and shipping  
24                places of the designated handler's agents.
- 25           2.    a.   If the designated handler is a corporation, the application must include the  
26                corporate name and the names and addresses of the principal officers and  
27                agents within the state.

b. If the designated handler is a partnership, the application must include the names and addresses of the persons constituting the partnership.

c. IF the designated handler is a limited liability company, the application must include the name of the limited liability company and the names and addresses of its principal managers and agents within the state.

3. The designated handler shall notify the council whenever there is a change of information required by this section.

**NOTE:** Despite being underscored, the language is not new. It is taken from NDCC Section 4-10.5-07, which otherwise pertains to the collection of the assessment.

**SECTION 12. AMENDMENT.** Section 4-10.5-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.5-07. Tax levies - Collection - Reports - Soybean fund - Continuing appropriation.** Effective August 1, 1995, an

1. An assessment at the rate of equal to one-half of one percent of the value of the sale must be levied and imposed upon all soybeans sold to a designated handler.

This assessment is due upon any identifiable lot or quantity of soybeans.

A designated handler of soybeans shall file an application with the council on forms prescribed and furnished by the council. The forms must contain the name under which the designated handler is transacting business within the state, the designated handler's places of business, the location of loading and shipping places of agents of the 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. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any soybeans until it has furnished a certificate as required by this section.

2. Every designated handler of soybeans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of one-half of one percent of the value of the sale by deducting the assessment from the purchase price of all soybeans subject to the assessment and purchased by the designated handler.

- 1        3. Every designated handler shall keep as a part of its permanent records a record of  
2        all purchases, sales, and shipments of soybeans, ~~which~~. The records may be  
3        examined by the council ~~at all reasonable times~~ upon request.
- 4        4. Every designated handler shall file a quarterly report ~~to~~ with the council, ~~in a~~  
5        ~~manner and at a time prescribed by the council, stating~~. The report must include  
6        the quantity ~~in individual and total amounts~~ and source of soybeans received, sold,  
7        or shipped by it. ~~The report must state from whom each individual amount was~~  
8        ~~received. The remittance of the assessment as provided in this section must~~  
9        ~~accompany the report. All moneys levied and~~ the designated handler. The report  
10       must be filed at the time and in the manner prescribed by the council.
- 11       5. All assessments collected under this chapter must be ~~paid within~~ submitted to the  
12       council no later than thirty days ~~of the end~~ after the conclusion of each quarterly  
13       period ~~to the~~. The council shall forward all moneys received under this chapter to  
14       the state treasurer for deposit in the ~~state treasury to the credit of an account~~  
15       ~~designated as the soybean fund~~. All money in the soybean fund is appropriated on  
16       a continuing basis to the council to be used exclusively to carry out this chapter.  
17       ~~Quarterly periods end on March thirty first, June thirtieth, September thirtieth, and~~  
18       ~~December thirty first of each year. Regular audits of the council's accounts must~~  
19       ~~be conducted in accordance with chapter 54-10 and submitted to the~~  
20       ~~commissioner.~~
- 21       6. If a grower sells the grower's unharvested soybeans out of state, or if the grower  
22       delivers the grower's soybeans from the farm where they were produced to a  
23       storage facility, packaging shed, or processing plant, located outside the state, the  
24       grower shall remit the assessment required by this section to the council, at the  
25       time and in the manner prescribed by the council.

**NOTE:** Because quarterly periods are standardized throughout state government, it is not necessary to articulate in this chapter that which constitutes a fiscal quarter. Similarly, because NDCC Chapter 54-10 sets forth the state's audit requirements, it is not necessary to repeat the reference in this section.

Subsection 6 is a concept taken from the definition of a designated handler. It provides that the grower is liable for the assessment if the grower engages in certain transactions or activities out of state.



1           **SECTION 13. AMENDMENT.** Section 4-10.5-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **4-10.5-09. Advisory referendum by growers.** ~~Whenever~~

4           1. a. When petitioned to do so by fifteen percent of the participating growers, ~~with~~  
5                   ~~not more than fifty percent of the signatory parties from any one district, as~~  
6                   ~~disclosed by the records of the council for the preceding year, petition the~~  
7                   ~~council,~~ the council shall conduct an advisory referendum among the  
8                   participating growers of the state to determine ~~whether they wish the~~  
9                   ~~legislative assembly to raise or lower the tax~~ the amount by which the growers  
10                  believe the assessment imposed by section 4-10.5-07. ~~The advisory~~  
11                  ~~referendum may be conducted only among participating growers who have~~  
12                  ~~paid all taxes assessed pursuant to this enactment for the preceding year,~~  
13                  ~~and the ballots must be prepared by the council and mailed~~ should be raised  
14                  or lowered.

15           b. To be considered a valid petition, no more than fifty percent of the  
16                  participating growers who signed the petition may reside in one district.

17           2. The council shall prepare the referendum ballot and mail it to each participating  
18                  grower at least thirty days prior to before the last date for filing ballots. ~~In addition,~~  
19                  ~~each~~ Each ballot must ~~be accompanied by a notice to each participating grower:~~

20           4. ~~Of the date of~~ include a statement indicating:

21           a. The date on which the filing of the petition ~~by the growers for the referendum~~  
22                  was filed and the number of signatures contained ~~thereon~~ on the petition.

23           2. ~~Of the date and place where~~

24           b. The date, time, and location at which the council will open and tabulate the  
25                  ballots, ~~which date may not be less than five days after the last date for filing~~  
26                  ~~the ballots.~~

27           3. ~~Of the last date upon which ballots may be filed~~

28           c. The last date by which the ballots must be postmarked or filed with the  
29                  council, or postmarked if delivered to the council by mail; and

30           4. d. That any participating grower may attend the meeting of the council be  
31                  present at the time the ballots are opened and the votes tabulated.

1        3. The date selected by the council for the opening and tabulation of ballots must be  
2        at least five days after the last date by which ballots must be postmarked or filed  
3        with the council.

4        4. If a majority of the participating growers voting upon the question are in favor of the  
5        proposed change, the council shall ~~certify the result to the commissioner with the~~  
6        ~~request that the commissioner prepare a bill to~~ submit a bill to the next legislative  
7        session to ~~modify~~ amend this chapter ~~in conformity therewith.~~

**NOTE:** Current law provides that after a successful referendum, the council is to request that the commissioner prepare and submit a bill to the next legislative session. Because this in essence gives the commissioner veto power, and because the council can introduce its own bill, the rewrite simply directs the council to do so.

8        **SECTION 14. AMENDMENT.** Section 4-10.5-11 of the North Dakota Century Code is  
9        amended and reenacted as follows:

10       **4-10.5-11. Penalty for nonpayment of assessment.** Any designated handler who  
11       fails to pay any assessment levied by this chapter on the date that the assessment becomes  
12       due is delinquent and the council shall levy a penalty on the delinquent payments of a two  
13       percent late payment charge per month for assessments not remitted on time. The penalty and  
14       interest must be collected in the manner prescribed by section 4-10.5-10.

**NOTE:** This section makes the levying of a penalty mandatory. Is this in fact intended?

15       **SECTION 15. REPEAL.** Sections 4-10.5-02, 4-10.5-10, 4-10.5-12, and 4-10.5-13 of  
16       the North Dakota Century Code are repealed.

**NOTE:** NDCC Section 4-10.5-02 contains multiple concepts regarding the soybean council. Those concepts have been separated into several new sections.

NDCC Section 4-10.5-10 authorizes the council to enforce collection of unpaid assessments. That authorization exists in NDCC Section 4-10.5-06.

NDCC Section 4-10.5-12 provides for the continuing appropriation of council funds. That concept is addressed in NDCC Section 4-10.5-07.

NDCC Section 4-10.5-13 provides that all records of the council are open. NDCC Chapter 44-04 addresses public records. Its provisions do not have to be reiterated in this chapter.

NDCC Section 4-10.5-14 provides that any person who willfully violates this chapter is guilty of a class B misdemeanor. Because the section is not being amended, it is not included in this bill draft.