

February 2008

Introduced by

1 A BILL for an Act to create and enact four new sections to chapter 4-10.7 of the North Dakota
2 Century Code, relating to the dry pea and lentil council and assessments; to amend and
3 reenact sections 4-10.7-01, 4-10.7-02, 4-10.7-03, 4-10.7-05, 4-10.7-06, 4-10.7-07, 4-10.7-08,
4 4-10.7-09, 4-10.7-10, 4-10.7-11, 4-10.7-12, 4-10.7-14, 4-10.7-15, and 4-10.7-17 of the North
5 Dakota Century Code, relating to the dry pea and lentil council and assessment; to repeal
6 sections 4-10.7-04, 4-10.7-13, and 4-10.7-16 of the North Dakota Century Code, relating to the
7 dry pea and lentil districts, council records, and assessments; to provide a penalty; and to
8 provide a continuing appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 4-10.7-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-10.7-01. Definitions.** ~~In As used in this chapter, unless the context otherwise~~
13 ~~requires:~~

- 14 1. "Commissioner" means the agriculture commissioner or the commissioner's
15 designee.
- 16 2. "Council" means the North Dakota dry pea and lentil council.
- 17 3. "Dry peas and lentils" means ~~the range of~~ all pulse crops including lentils, dry
18 peas, chickpeas, and lupins.
- 19 4. "First purchaser" means any person, ~~firm, corporation, association, partnership,~~
20 ~~agent, or broker buying,~~ accepting for sale, or otherwise acquiring dry peas and
21 lentils, after harvest, from a grower. The term includes a mortgagee, pledgee,
22 lienor, ~~or other claimant~~ and any person having a claim against the producer, when
23 the actual or constructive possession of ~~lentils and~~ dry peas and lentils is taken as

~~part of partial~~ payment of or in satisfaction of ~~the a~~ 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.~~

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.

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 chapter for the previous or current year.

SECTION 2. A new section to chapter 4-10.7 of the North Dakota Century Code is created and enacted as follows:

Dry pea and lentil districts - Establishment. The state consists of the following five dry pea and lentil districts:

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

SECTION 3. AMENDMENT. Section 4-10.7-02 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-02. Dry pea and lentil council - Membership - Term. ~~There is a~~

- 1 1. ~~The~~ North Dakota dry pea and lentil council.~~The council~~ is composed of one
2 participating grower elected from each of the districts established in section
3 ~~4-10.7-04. The chairman of the council must be a member of the council elected~~
4 ~~by a majority vote of the council. The 2 of this Act and the~~ agriculture
5 commissioner, who is an ex officio member of the council. ~~Every elected~~

NOTE: The language governing the election of the chairman is included in the proposed amendment of NDCC Section 4-10.7-05.

- 6 2. Each member of the council, except the commissioner, must be a United States
7 citizen ~~of the state~~ and a ~~bona fide~~ resident of and participating grower in the
8 district that the member represents.

- 9 3. The term of each elected member is three years and begins on April first ~~of the~~
10 year ~~of following the member's election, except that initially one member must be~~
11 ~~elected for a three-year term; two members must be elected for two-year terms;~~
12 ~~and two members must be elected for one-year terms as designated by the~~
13 ~~commissioner. The terms must be staggered so that no more than two expire~~
14 each year.

- 15 4. If at any time during a member's term the member ceases to possess any of the
16 qualifications provided for in this chapter, the member's office is deemed vacant
17 and the council, by majority vote, shall appoint another qualified grower ~~from the~~
18 ~~affected district~~ for the remainder of the term ~~of the office vacated.~~

NOTE: Because the statute requires that the council appoint another "qualified" grower, it is not necessary to reiterate that the grower must be from the affected district. That requirement is stated in subsection 2.

- 19 5. ~~No~~ an elected member of the council is not eligible to serve more than three
20 consecutive three-year terms.

21 **SECTION 4. AMENDMENT.** Section 4-10.7-03 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **4-10.7-03. Dry pea and lentil council - Election.** The commissioner, or a county
24 agent designated by the commissioner, in cooperation with the cooperative extension service
25 shall conduct all elections under this section in each district in the manner the commissioner
26 deems fair and reasonable. ~~The first election must be held within forty-five days after July 1,~~
27 ~~1997, and all elections thereafter~~ Elections under this section must be conducted prior to

1 April first of each year. Prospective candidates for the council must have planted dry peas or
2 lentils in the previous year or intend to plant dry peas or lentils in the ~~coming year~~ growing
3 season following the election. County election meetings are to be announced in the official
4 newspaper of the county not less than five days nor more than thirteen days prior to the
5 meeting. Any current or prospective participating dry pea and lentil grower is eligible to vote.
6 Elected county representatives shall then meet in district caucus to elect one person from that
7 group to act as the district representative.

NOTE: Because the dry pea and lentil council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to fully 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.

8 **SECTION 5. AMENDMENT.** Section 4-10.7-05 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **4-10.7-05. Election of chairman - Meetings ~~—Quorum—Compensation of council~~**
11 **~~members.~~** A majority of the voting members of the council constitutes a quorum for the
12 ~~transaction of all business in carrying out the duties of the council. All~~

NOTE: North Dakota Century Code Section 1-01-10 provides that a "majority of any board or commission" constitutes a quorum. This language is applicable to the entire Code. Therefore, unless the commissioner is a nonvoting member, and that does not appear to be the case, there is no need to include this verbiage.

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

NOTE: 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? The language governing the compensation of council members was placed in a separate section.

SECTION 6. A new section to chapter 4-10.7 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 7. AMENDMENT. Section 4-10.7-06 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-06. Expenditure of funds. ~~The council or its designated agent shall maintain an account of all receipts as authorized by this chapter. Expenditures of funds made pursuant shall approve all expenditures made pursuant to this chapter. The expenditures must be recorded on itemized vouchers and the records must be maintained in accordance with standards adopted, as directed by the state auditor. The accounts and records of the council are open to inspection by the designated state auditors without notice.~~

NOTE: NDCC Chapter 54-10 grants the state auditor access to all state offices and access to all relevant information. Therefore, the final sentence was removed.

SECTION 8. AMENDMENT. Section 4-10.7-07 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-07. Council powers and duties - Powers. ~~In the administration of this chapter, the~~ The council may:

1. ~~Contract and cooperate with any person or with any governmental department or agency for any purpose related to this chapter, including research, education, publicity, promotion, and transportation for purposes of this chapter.~~

NOTE: In other situations, the committee opted to allow contracting for any reason related to the chapter, but elected to specifically mention some of the familiar purposes.

2. ~~Expend funds~~ moneys collected pursuant to this chapter for its administration.

- 1 3. ~~Appoint, employ~~ Employ, bond, ~~discharge, fix the compensation for, and prescribe~~
2 ~~the duties of such administrative, clerical, technical, and other~~ and compensate
3 ~~necessary personnel as it deems necessary.~~
- 4 4. Accept gifts, grants, and donations of ~~funds~~ money, property, and services, ~~or~~
5 ~~other assistance from public or private sources for the purpose of furthering the~~
6 ~~objectives of the council to carry out this chapter.~~
- 7 5. ~~Investigate and prosecute in the name of the state any action or suit to enforce the~~
8 ~~collection or ensure payment of the taxes authorized by this chapter, and to sue~~
9 ~~Sue and be sued in the name of the council.~~
- 10 6. ~~Formulate the general policies and programs of markets and industries for the~~
11 ~~utilization of dry peas and lentils grown within the state. Do all things necessary~~
12 ~~and proper to enforce and administer this chapter.~~

NOTE: It appears that the directive to formulate the general policies and programs of markets and industries for the utilization of dry peas and lentils grown within the state should be a duty of the council. Therefore, it was placed in a separate "duties" section.

The directive to do all things necessary and proper to enforce and administer this chapter includes the authority set forth in current subsection 5 as well as authorities that are not clearly articulated, such as the establishment and maintenance of an office.

- 13 7. ~~Enter a reciprocal agreement~~ Contract with the governmental entity that is
14 responsible for administration of the dry pea and lentil assessment in another state
15 or province and provide for:
16 a. The return by that governmental entity of any assessment charged on dry
17 peas and lentils grown in this state; and
18 b. The return by the council of any assessment charged on dry peas and lentils
19 grown in another state or province.

NOTE: Should this be a power or a duty?

Although the caption of this section currently references both powers and duties, the items listed are not mandatory, but simply grants of authority, i.e., "powers." The ensuing section contains the statutory mandates.

20 **SECTION 9.** A new section to chapter 4-10.7 of the North Dakota Century Code is
21 created and enacted as follows:

22 **Council - Duties.**

- 23 1. The council shall formulate the general policies and programs of markets and
24 industries for the utilization of dry peas and lentils grown within the state.

- 1 2. The council shall develop and disseminate information and instructions relating to
2 the purpose of the dry pea and lentil assessment and the manner in which refunds
3 may be claimed.

NOTE: NDCC Sections 4-10.7-07 and 4-10.7-07.1. Subsection 1 is current law. What is intended by the verbiage?

4 **SECTION 10. AMENDMENT.** Section 4-10.7-08 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-10.7-08. First purchaser - Certification of first purchasers. A**

- 7 1. Before a first purchaser of dry peas and lentils shall file may sell, process, or ship
8 any dry peas or lentils, the first purchaser shall obtain certification from the council.
9 The certification is available upon submission to the council of an application with
10 ~~the council on forms prescribed and furnished by the council. The forms must~~
11 ~~contain~~ containing the name under which the first purchaser is transacting
12 business within the state, the first purchaser's ~~places~~ place of business, and the
13 location of loading and shipping places of the first purchaser's agents ~~of the first~~
14 purchaser.
- 15 2. a. If the first purchaser is a corporation, the application must include the
16 corporate name and the names and addresses of the principal officers and
17 agents within the state.
- 18 b. If the first purchaser is a partnership, the application must include the name of
19 the partnership and the names and addresses of the several persons
20 constituting the firm partnership, and if a corporation, the corporate name and
21 ~~the names and addresses of its principal officers and agents within the state.~~
22 ~~The council shall issue a certificate to the first purchaser. A first purchaser~~
23 ~~may not sell, process, or ship any dry peas or lentils until the first purchaser~~
24 ~~has furnished a certificate as required by this section.~~
- 25 c. If the first purchaser is a limited liability company, the application must include
26 the name of the limited liability company and the names and addresses of its
27 principal managers and agents within the state.
- 28 d. The first purchaser shall notify the council whenever there is a change of
29 information required by this section.

NOTE: Other commodity groups having similar sections provided for the possibility that a limited liability company might be a first purchaser. Therefore, that concept was included in subdivision c. Although this section currently makes no requirement on the first purchaser, beyond the original filing of the application, the rewrite requires that the first purchaser notify the council whenever there is a change of information required by this section. Without such a provision, the information on file could be inaccurate.

SECTION 11. AMENDMENT. Section 4-10.7-09 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-09. Assessment. ~~Effective July 1, 1997, an~~ 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.~~

NOTE: The second sentence was removed because the first sentence requires that the assessment must be imposed upon "all" dry peas and lentils

SECTION 12. AMENDMENT. Section 4-10.7-10 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-10. Collection of assessment. ~~Every~~

1. ~~A 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 the dry peas and lentils subject to the assessment and being purchased by the first purchaser.~~
2. ~~Each first purchaser shall keep, as part of the first purchaser's permanent records a permanent record, documentation of all purchases, sales, and shipments of dry peas and lentils, which. The records may be examined by the council at any and all reasonable times upon request. Each~~

NOTE: Is it necessary to keep these records forever?

3. ~~At the time and in the manner prescribed by the council, each first purchaser shall file a report to with the council, in a manner and at a time prescribed by the council, the quantity stating in individual and total amounts, the quantity of dry peas and lentils received, sold, or shipped by the first purchaser. The report must state from whom the source of 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 chapter 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.

4. Each first purchaser shall forward to the council all assessments collected by the first purchaser, at the time and in the manner prescribed by the council.

NOTE: The proposed wording is one option for clarifying an oddity in the current law, i.e.:

- Each first purchaser is to file a report with the council at the time and in the manner prescribed by the council;
- The assessments must be remitted with the above report; and
- All moneys collected under this chapter (assessments?) must be paid (to the council?) within 30 days of the end of each calendar quarter.

In effect, the report must be filed not necessarily at the time prescribed by the council, but rather, within 30 days of the end of each calendar quarter.

Because the requirements for regular audits are already addressed in NDCC Chapter 54-10, it is not necessary to reiterate them in this chapter.

SECTION 13. AMENDMENT. Section 4-10.7-11 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-11. Nonparticipating growers - Refunds. ~~Any~~

1. To receive a refund of any assessment paid in accordance with this chapter, a grower subject to the assessment provided by this chapter, within sixty days following the assessment or final settlement, may apply shall submit to the council a written request for a refund application. Upon the return of the properly executed, no later than sixty days after the date of the assessment or final settlement.
2. The grower must complete the refund application and within sixty days of the date it was mailed to the grower, and accompanied by return the application to the council, together with a record of the assessment collected the, no later than ninety days after the date of the assessment or final settlement. The council shall issue a then refund the net amount of the assessment that had been collected to the grower.

NOTE: In accordance with the committee's directive for consistency, growers are being given 60 days from the date of the assessment or final settlement within which to request a refund application and 90 days from the date of the assessment or final settlement within which to file the application.

1 3. If ~~no a~~ request for refund is ~~made within sixty days of sale, then not submitted to~~
2 ~~the council within the prescribed time period,~~ the grower is presumed to have
3 agreed to the assessment. ~~However, a grower, having paid the tax more than~~
4 ~~once on the same dry peas or lentils, is entitled to a refund of the overpayment~~
5 ~~upon furnishing proof to the council.~~

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

NOTE: The provision governing overpayments has been placed in a separate section.

The provision directing the council to develop and disseminate information and instructions relating to the purpose of the dry pea and lentil assessment and the manner in which refunds may be claimed has been placed in a separate "duties" section.

The provision directing the council to cooperate with governmental agencies, state and federal, and with private businesses engaged in the purchase of dry peas and lentils has been removed. This follows the committee's directive regarding similar verbiage in other commodity chapters.

10 **SECTION 14.** A new section to chapter 4-10.7 of the North Dakota Century Code is
11 created and enacted as follows:

12 **Reimbursement for double payments.** If a grower documents to the council that the
13 grower has paid the assessment more than once on the same dry peas or lentils, the council
14 shall reimburse the grower for the double payment.

15 **SECTION 15. AMENDMENT.** Section 4-10.7-12 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **4-10.7-12. Advisory referendum by growers.** ~~Whenever~~

18 1. a. When petitioned to do so by fifteen percent of the participating growers, ~~with~~
19 ~~not more than fifty percent of the signatory parties from any one district, as~~
20 ~~disclosed by the records of the council for the preceding year, petition the~~
21 ~~council,~~ the council shall conduct ~~an advisory~~ a referendum among the
22 participating growers of the state to determine ~~whether they wish the~~
23 ~~legislative assembly to raise or lower the tax imposed by section 4-10.7-09.~~
24 ~~The advisory referendum may be conducted only among participating growers~~
25 ~~who have paid all taxes assessed pursuant to this chapter for the preceding~~

~~year, and the amount by which the assessment imposed by this chapter~~
~~should be raised or lowered.~~

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

~~2. The council shall prepare the the ballots must be prepared by the council and~~
~~mailed and mail the ballots to each participating grower at least thirty days prior to~~
~~before the last date for filing ballots. In addition, each~~

~~3. Each ballot must be accompanied by a notice to each participating grower include~~
~~a statement indicating:~~

~~1. a. Of the The date of the filing of on which the petition by the growers for the~~
~~referendum was filed and the number of signatures contained thereon. on the~~
~~petition;~~

~~2. b. Of the The date and place where time, and location at which 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. c. Of the last date upon which ballots may be filed The last date by which the~~
~~ballots must be postmarked or filed with the council, or postmarked if~~
~~delivered to the council by mail; and~~

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

~~4. The date selected by the council for the opening and tabulation of ballots must be~~
~~at least five days after the date by which ballots must be postmarked or filed with~~
~~the council.~~

~~5. If a 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 a bill to the next legislative assembly to amend this chapter.~~

SECTION 16. AMENDMENT. Section 4-10.7-14 of the North Dakota Century Code is
amended and reenacted as follows:

4-10.7-14. Penalty for nonpayment of assessments. ~~A first purchaser who fails to~~
~~pay any~~ Any assessment ~~levied~~ imposed by this chapter ~~on~~ and not submitted to the council by

1 the date ~~that the assessment becomes~~ it is due is delinquent and the council may levy a
2 penalty ~~on the delinquent payments of equal to~~ ten percent of the assessment due, plus interest
3 at the rate of twelve percent per annum from the due date. The penalty and interest must be
4 collected in the manner prescribed by this chapter.

5 **SECTION 17. AMENDMENT.** Section 4-10.7-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **4-10.7-15. Continuing appropriation.** All ~~funds~~ moneys received by the council
8 ~~pursuant to~~ under this chapter are ~~hereby appropriated as a standing and to the council on a~~
9 ~~continuing appropriation for the~~ basis, to be used to carry out the intent and purposes of this
10 chapter.

11 **SECTION 18. AMENDMENT.** Section 4-10.7-17 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **4-10.7-17. Penalty.** Any person who willfully violates this chapter is guilty of a class B
14 misdemeanor.

15 **SECTION 19. REPEAL.** Sections 4-10.7-04, 4-10.7-13, and 4-10.7-16 of the North
16 Dakota Century Code are repealed.

NOTE: North Dakota Century Code Section 4-10.7-04, which established the dry pea and lentil districts, was repealed in order that its content could be moved to a more logical placement in the chapter.

North Dakota Century Code Section 4-10.7-13, which provides that if If a first purchaser fails to pay the assessment, the council may enforce collection in any appropriate court within the state, was repealed because the provisions of this section are already set forth in NDCC Section 4-10.7-07.

North Dakota Century Code Section 4-10.7-16 provides that all records of the council are public information and must be made available for inspection. These provisions are addressed in NDCC Chapter 44-04 and do not need to be reiterated in this chapter.