

Introduced by

1 A BILL for an Act to create and enact two new sections to chapter 4-10.1 of the North Dakota
2 Century Code, relating to the North Dakota potato council; to amend and reenact sections
3 4-10.1-02, 4-10.1-03, 4-10.1-04, 4-10.1-05, 4-10.1-06, 4-10.1-07, 4-10.1-08, 4-10.1-09,
4 4-10.1-12, 4-10.1-13, 4-10.1-15, 4-10.1-16, and 4-10.1-17 of the North Dakota Century Code,
5 relating to the North Dakota potato council; to repeal sections 4-10.1-01, 4-10.1-10, and
6 4-10.1-14 of the North Dakota Century Code, relating to the titling of legislation promoting the
7 potato industry, the appropriation of funds, the collection of assessments, and public records; to
8 provide a penalty; and to provide a continuing appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 4-10.1-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-10.1-02. Legislative policy.** It is hereby declared that the production, development,
13 marketing, and promotion of Irish potatoes in North Dakota is important to the general welfare
14 of the people of the state of North Dakota; that it is in the public interest that better methods of
15 production, processing, and marketing of potatoes and the advertising and promoting of
16 potatoes grown in the state of North Dakota be fostered, encouraged, developed, and improved
17 so that the potato industry within the state of North Dakota, the people employed by said
18 industry, directly or indirectly, and the people of the state of North Dakota should be benefited
19 thereby, the accomplishment of which requires and demands the establishment of a North
20 Dakota potato council for the purposes and with the objectives of contributing to the stabilization
21 and improvement of the agricultural economy of this state. The provisions of this chapter ~~must~~
22 ~~not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the~~
23 ~~office of the agriculture commissioner or any other agency of the state, but are supplementary~~
24 ~~thereto and in aid and cooperation therewith; nor may the provisions of this chapter be~~

1 ~~enacted to~~ do not authorize the North Dakota potato council to engage in competitive
2 business enterprises, it being the intended purpose of this chapter that the council through
3 research and advertising, shall promote North Dakota-grown Irish potatoes.

NOTE: In reviewing similar chapters, the interim committee has recommended the repeal of legislative policy sections. However, portions of this section should be reviewed to determine if they allude to duties that the council should be directed to perform. The section also provides that the council may not engage in competitive business enterprises. What is intended by this prohibition is not clearly understood.

4 **SECTION 2. AMENDMENT.** Section 4-10.1-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-10.1-03. Definitions.** ~~Whenever~~ As used in this chapter:

- 7 1. "Commissioner" means the agriculture commissioner or the commissioner's
8 designee.
- 9 2. "Council" means the North Dakota potato council.
- 10 3. "Designated handler" means ~~any a~~ a person who initially places potatoes, ~~whether~~
11 ~~that person is an owner, agent, or otherwise,~~ into the channels of trade and
12 commerce, ~~or a person who is engaged in the processing of~~ processes potatoes
13 into food for human consumption ~~in any form.~~ A. The term does not include a
14 grower selling that grower's unharvested potatoes, or delivering that grower's
15 potatoes from the farm on which they are produced to storage facilities, to a
16 packing shed, or to a processing plant, within the state, ~~is not considered to be a~~
17 ~~designated handler.~~
- 18 4. "Grower" means any person who plants, raises, and harvests ~~Irish~~ potatoes from
19 more than ten acres [4.05 hectares].

NOTE: In similar situations, the interim committees opted to remove the minimum acreage requirement. If the requirement was initially added to avoid payments and refunds involving very small amounts of money that can be addressed by other means.

- 20 5. ~~"Hundredweight" means a one hundred pound [45.36 kilogram] unit or combination~~
21 ~~of packages making a one hundred pound [45.36 kilogram] unit or any shipment of~~
22 ~~potatoes based on invoices or bills of lading records.~~

NOTE: In similar situations, the interim committee opted to remove the definition of a hundredweight because it was deemed to be self-evident.

- 23 6. "Participating grower" means a grower who has not gained exemption from the
24 payment of taxes on potato production under this chapter for a particular year, or a

grower who is not exempt from the payment of taxes on potato production under the terms of this chapter.

7. ~~"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.

8. ~~6. "Potatoes Potato" means any and all varieties variety of Irish potatoes harvested within the this state of North Dakota.~~

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

NOTE: The word processor is not used elsewhere in this chapter.

SECTION 3. AMENDMENT. Section 4-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-04. North Dakota potato council - Membership - Election - Term. ~~There is hereby established a~~

1. ~~The North Dakota potato council. The council is composed of the agriculture commissioner or the commissioner's designated representative, who is chairman of the council, and one~~

a. ~~One participating grower elected from each of the five districts hereinafter established in section 4-10.1-05; and~~

b. ~~The agriculture commissioner, who serves as the chairman.~~

2. Every elected council member must be a United States citizen ~~of the state~~ and a ~~bona fide~~ resident of and participating grower in the district that the member represents.

3. The term of each elected member is three years and begins on July first ~~of the year of following the member's 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. The terms must be staggered so that no more than two expire~~
~~each year.~~

4. If at any time during a member's term that member ceases to possess any of the
qualifications provided for in this chapter, that member's office is deemed vacant
and the council shall appoint another qualified ~~participating~~ grower for the
remainder of the term ~~of the office vacated. The~~

5. Each year, during the month of June, the commissioner shall conduct all elections
~~under this section in each district, in such a manner as the commissioner deems~~
~~fair and reasonable. All such elections must be conducted in the month of June.~~

NOTE: Because the North Dakota Potato 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 the 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.

6. No elected member of the council is eligible to serve more than two consecutive
three-year terms.

SECTION 4. AMENDMENT. Section 4-10.1-05 of the North Dakota Century Code is
amended and reenacted as follows:

4-10.1-05. Potato districts - Establishment. ~~It being the intent of this chapter to~~
~~divide the state into districts containing as nearly equal potato acreage as practicable, The state~~
consists of the following five potato districts are established:

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

~~Morton, Sioux, Towner, Rolette, Bottineau, and Ramsey~~ All remaining counties in the state.

SECTION 5. AMENDMENT. Section 4-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-06. 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 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 and must call a special meeting of the council within seven days, when petitioned to do so by three council members ~~within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each member of the council, except the chairman. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the commissioner.~~

NOTE: NDCC 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.

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

SECTION 6. A new section to chapter 4-10.1 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.

NOTE: NDCC Section 4-10.1-06.

SECTION 7. AMENDMENT. Section 4-10.1-07 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-07. ~~Expenditure of funds~~ Expenditures. ~~Every~~ The council shall approve each expenditure of funds made pursuant to this chapter must be approved by the council,

1 ~~submitted upon and shall submit an~~ itemized voucher to the office of ~~the budget for approval,~~
2 ~~and paid by warrant check issued by the office of~~ management and budget for payment.

3 **SECTION 8. AMENDMENT.** Section 4-10.1-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-10.1-08. Potato council ~~powers and duties~~ - Powers.** ~~In the administration of this~~
6 ~~chapter, the~~ The council has the following powers and duties may:

- 7 1. ~~To contract and cooperate~~ Contract with any person, ~~firm, corporation, limited~~
8 ~~liability company, or association, or with any local, state, or federal department or~~
9 ~~agency for any purpose related to this chapter, including~~ research, education,
10 publicity, promotion, and transportation ~~for the purposes of this chapter.~~

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

- 11 2. ~~To expend the funds~~ Expend money collected pursuant to ~~the provisions of this~~
12 ~~chapter and appropriated~~ for its administration.
- 13 3. ~~To appoint, employ~~ Employ, bond, ~~discharge, fix compensation for, and prescribe~~
14 ~~the duties of such administrative, clerical, technical, and other~~ and compensate
15 necessary personnel ~~as it may deem necessary.~~
- 16 4. ~~To accept~~ Accept gifts, grants, and donations of funds money, property, and
17 ~~services, or other assistance from public or private sources for the purpose of~~
18 ~~furthering the objectives of the council~~ to carry out this chapter.
- 19 5. ~~To investigate and prosecute in the name of the state of North Dakota any action~~
20 ~~or suit~~ Sue and be sued.
- 21 6. Do all things necessary and proper to enforce ~~the collection or ensure payment of~~
22 ~~the taxes authorized by the provisions of~~ and administer this chapter, ~~and to sue~~
23 ~~and be sued in the name of the council.~~

NOTE: A grant of power is the authority to act. A duty is a mandate to act. This
section appears to reference only powers of the council.

24 **SECTION 9.** A new section to chapter 4-10.1 of the North Dakota Century Code is
25 created and enacted as follows:

26 **Designated handler - Certification.**

1. Before a designated handler may sell, process, or ship potatoes, the designated handler shall obtain certification from the council. The certification is available upon submission to the council of an application containing the name under which the handler is transacting business within the state, the designated handler's place of business, and the location of loading and shipping places of the designated handler's agents.
2.
 - a. If the designated handler is a corporation, the application must include the corporate name and the names and addresses of its principal officers and 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 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: NDCC Section 4-10.1-09. Because the certification of designated handlers is not germane to the imposition of the assessment, the two topics were placed in separate sections. Under current law, once a designated handler files the required application, the handler is under no obligation to do anything else, even if there is a material change in the information. Therefore, in the rewrite, subsection 3 directs a designated handler to notify the council whenever there is a change in the information required for the certification.

SECTION 10. AMENDMENT. Section 4-10.1-09 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-09. ~~Tax levied~~ Assessment - Continuing appropriation. ~~Am~~

1.
 - a. Except as otherwise provided, an assessment at the rate of two cents per hundredweight [45.36 kilograms] ~~must be levied and~~ is imposed upon all potatoes grown in the state or sold to a designated handler.
 - b. The council, ~~in its discretion,~~ may increase the assessment by not more than one-half cent per hundredweight [45.36 kilograms] per year until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached.

1 c. This assessment ~~must~~ is not be imposed upon on any potatoes retained by
2 growers ~~to be used~~ for seed ~~purposes~~ or for consumption by the grower. This
3 ~~assessment is due upon any identifiable lot or quantity of potatoes.~~

NOTE: Because this section already articulates that the assessment is imposed upon all potatoes grown in the state, it is not necessary to provide that the assessment is due upon any identifiable lot or quantity.

4 ~~A designated handler of potatoes shall file an application with the council on forms~~
5 ~~prescribed and furnished by the council which must contain the name under which the handler~~
6 ~~is transacting business within the state, place or places of business, and location of loading and~~
7 ~~shipping places of agents of the first handler, the names and addresses of the several persons~~
8 ~~constituting the firm partnership, if a corporation, the corporate name and the names and~~
9 ~~addresses of its principal officers and agents within the state, and, if a limited liability company,~~
10 ~~the limited liability company name and the names and addresses of its principal managers and~~
11 ~~agents within the state. The council shall issue a certificate to the designated handler. A~~
12 ~~designated handler may not sell, process, or ship any potatoes until it has furnished a certificate~~
13 ~~as required by this section.~~

14 2. ~~Every~~ Each designated handler ~~of potatoes~~ shall collect the assessment imposed
15 ~~under this section by charging and collecting from the seller the assessment per~~
16 ~~hundredweight [45.36 kilograms] by deducting the assessment from the purchase~~
17 ~~total price of all the potatoes subject to the assessment and purchased by the~~
18 ~~designated handler.~~

19 3. ~~Every~~ Each designated handler shall keep as a part of its permanent records a
20 record documentation of all purchases, sales, and shipments of raw potatoes;
21 ~~which. The records~~ may be examined by the commissioner, ~~or the commissioner's~~
22 ~~designee, at all reasonable times upon request. Every~~

NOTE: Is it necessary to keep these records forever? Since the council has authority to enforce this chapter, it would seem that the council should have the ability to examine the records.

23 4. At the time and in the manner prescribed by the council, each designated handler
24 shall file a report to the council stating the quantity of potatoes that the designated
25 handler received, sold, or shipped by it. ~~The report must be made at the times and~~
26 ~~in the manner prescribed by the council. The remittance of the assessment as~~
27 ~~provided in this section must accompany the report. All.~~

5. At the time and in the manner prescribed by the council, each designated handler shall forward to the council all assessments collected by the handler.

6. The council shall forward all moneys levied and collected received under this chapter must be paid to the council for deposit in to the state treasury to the credit of a special revolving fund designated as treasurer for deposit in the spud fund. All money in the spud fund is appropriated on a continuing basis to the council for carrying out the 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.

NOTE: 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 11. AMENDMENT. Section 4-10.1-12 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-12. Nonparticipating growers - Refunds. ~~Growers may become nonparticipating growers and claim exemption from the provisions of this chapter. To claim exemption, a nonparticipating grower shall notify the council, in writing, on or before July fifteenth of each year, of the grower's intention not to participate under the program and to claim a refund of the assessment herein levied on potatoes grown by the grower during that current year. Such grower, if the grower has notified the council of the grower's intention not to participate, as herein provided, is eligible between June first and June fifteenth of the following year, to claim a refund of the assessments paid on such crop pursuant to this chapter. The claim for refund must be made in the manner and form prescribed by the council. Upon receipt of a claim for refund from an eligible, nonparticipating grower, the council shall refund the assessments paid on the crop grown during the year of the claimed exemption.~~

1. To receive a refund of any assessments paid in accordance with this chapter, a grower shall:

- a. Between January first and July fifteenth, submit a letter to the council indicating that the grower intends to request a refund of assessments paid on potatoes grown during that calendar year; and
- b. Between June first and June fifteenth of the calendar year following the date of the letter required by subdivision a, the grower shall submit a letter to the

council requesting the refund of assessments paid by the grower on potatoes during the previous calendar year.

2. Upon verification that the requirements of this section have been met, the council shall provide the requested refund to the grower.

SECTION 12. AMENDMENT. Section 4-10.1-13 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-13. Referendum by growers. ~~Whenever~~

1. a. When petitioned to do so by fifteen percent of the participating growers, but 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 a 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 4-10.1-09. Such referendum must be conducted only among participating growers who have paid all taxes assessed pursuant to this enactment 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 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:
4. ~~Of the~~
- a. 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. ~~Of the~~

b. ~~The date and place where, time, and location at which~~ the council will open and tabulate the ballots, ~~which date must be not less than five days after the last date for filing the ballots;~~

~~3. Of the last date upon which ballots must be~~

c. 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 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 department prepare a bill to submit a bill to the legislative assembly at the next legislative session to modify this chapter in conformity therewith. The results of such referendum are advisory only and the legislative assembly is in no way obligated to adopt legislation enacting the proposals contained in any referendum to amend this chapter.~~

SECTION 13. AMENDMENT. Section 4-10.1-15 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-15. Misdemeanor to violate provisions of this chapter Penalty. Any person who willfully violates ~~the provisions of~~ this chapter is guilty of a class B misdemeanor.

SECTION 14. AMENDMENT. Section 4-10.1-16 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-16. Penalty for nonpayment of assessment. Any ~~designated handler who fails to pay any~~ assessment levied by this chapter ~~on and unpaid by~~ the date that the ~~same~~ assessment becomes due is delinquent and the council may levy a penalty ~~on the delinquent payments of equal to~~ ten percent of the assessment amount due, plus interest at the rate of six percent per annum from the due date, ~~which penalty and interest must be collected in the manner as prescribed by section 4-10.1-14.~~

1 **SECTION 15. AMENDMENT.** Section 4-10.1-17 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-10.1-17. Records of council - Inspection.** All of the records of the council, including
4 acreage reports, tax returns, claims of exemption, and any other data, records, or information
5 retained by the council are public information and must be available for the inspection of any
6 person for any lawful purpose; provided, however, that the council is empowered to make rules
7 and regulations concerning the inspection of such information or data, and the time or place of
8 such inspection or the manner in which the information shall be made available.

NOTE: NDCC Chapter 44-04 addresses public records. Its provisions are applicable to the North Dakota Potato Council and therefore do not need to be reiterated in this chapter. The second part of this section, however, empowers the council to make rules concerning the inspection of the "information or data" It is not clear what is contemplated by this authorization and how it would affect or be affected by Chapter 44-04.

9 **SECTION 16. REPEAL.** Sections 4-10.1-01, 4-10.1-10, and 4-10.1-14 of the North
10 Dakota Century Code are repealed.

NOTE: NDCC Section 4-10.1-01 entitles the chapter the "Potato Industry Promotion Act of North Dakota."

NDCC Section 4-10.1-10 provides that Section 54-27-10 does not apply to appropriations from the spud fund. Section 54-27-10 would not apply under any circumstances because the spud fund is a revolving fund.

NDCC Section 4-10.1-14 duplicates language already in Section 4-10.1-08.