

Introduced by

1 A BILL for an Act to create and enact two new sections to North Dakota Century Code, relating  
2 to barley districts and barley tax refunds; to amend and reenact sections 4-10.1-01, 4-10.1-03,  
3 4-10.1-05, 4-10.1-06, 4-10.1-07, 4-10.1-08, 4-10.1-09, 4-10.1-10, 4-10.1-11, 4-10.1-12, and  
4 4-10.1-13 of the North Dakota Century Code, relating to the barley council, barley taxes, and  
5 refunds; and to repeal sections 4-10.1-02 and 4-10.1-04 of the North Dakota Century Code,  
6 relating to a statement of public policy and barley districts.

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

8 **SECTION 1. AMENDMENT.** Section 4-10.4-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **4-10.4-01. Definitions.** ~~Whenever~~ As used in this chapter:

11 1. "Barley" means ~~any and all~~ varieties of barley harvested ~~within~~ in the state.

12 ~~2.~~ "Commissioner" means the agriculture commissioner or the commissioner's  
13 ~~designated representative~~ designee.

14 ~~3.~~ 2. "Council" means the North Dakota barley council.

15 ~~4.~~ 3. "First purchaser" means any person, ~~public or private corporation, limited liability~~  
16 ~~company, or partnership buying, accepting~~ who accepts for shipment or otherwise  
17 ~~acquiring~~ acquires barley from a grower, and includes a mortgagee, pledgee,  
18 lienor, or other person, ~~public or private,~~ having a claim against the grower, where  
19 the actual or constructive possession of ~~such~~ the barley is taken as part payment  
20 or in satisfaction of the mortgage, pledge, lien, or claim.

21 ~~5.~~ 4. "Grower" means any person who plants, raises, or harvests barley, ~~and includes~~  
22 ~~both the owner and tenant jointly, a person, partnership, association, corporation,~~  
23 ~~limited liability company, cooperative, trust, sharecropper, and any other and all~~  
24 ~~business units, devices, and arrangements.~~

6- ~~"Participating grower" means a grower who has not claimed on that grower's own behalf any refunds for the payment of taxes on barley production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on barley production under this chapter.~~

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

**NOTE:** NDCC Section 1-01-49 defines a person as "an individual, organization, government, political subdivision, or government agency or instrumentality" and further defines an organization as including a "foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity." For this reason, it is recommended that the redundant verbiage in the definition of a "grower" be removed.

The phrase "participating grower" occurs only twice in this chapter. In NDCC Section 4-10.4-03, it is used as a requirement for council eligibility. It is proposed that the rewrite simply list the requirements in that section. In NDCC section 4-10.4-10, referendum---Wait and see!!!!

**SECTION 2.** A new section to chapter 4-10.4 of the North Dakota Century Code is created and enacted as follows:

**Barley Council - districts.** The state consists of the following five barley council districts:

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

**NOTE:** NDCC Section 4-10.4-04. It is recommended that the establishment of the five barley council districts precede other sections pertaining to the election of council members.

**SECTION 3. AMENDMENT.** Section 4-10.4-03 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-03. Council - Membership - Election - Term.**

- 1        1.    The council is composed of one ~~participating grower~~ individual elected from each  
2        of the districts established in section ~~4-10.4-04~~. ~~The chairman of the council must~~  
3        ~~be an elected member of the council elected by a majority vote of the council. The~~  
4        ~~commissioner is an ex officio member of the council and does not have a vote.~~  
5        ~~Every elected council member must be a citizen of the state and a bona fide~~  
6        ~~resident of and participating grower in the district the member represents. The~~  
7        ~~term of each elected member is three years and begins on April first of the year of~~  
8        ~~election, except that initially two members must be elected for a three year term;~~  
9        ~~two members must be elected for a two year term; and one member must be~~  
10       ~~elected for a one year term as designated by the commissioner. Notwithstanding~~  
11       ~~the terms provided for members elected before August 1, 1997, the board, before~~  
12       ~~December 31, 1997, shall determine by lot the order of subsequent elections for its~~  
13       ~~members so that two members are elected for a four year term during 1998, and~~  
14       ~~one member is elected for a four year term during each of the subsequent three~~  
15       ~~years. The term of each member elected after July 31, 1997, 2 of this Act.~~  
16       2.    In order to be a member of the council, an individual:  
17          a.    Must be a resident of and a qualified elector in the district the member  
18          represents;  
19          b.    Must not have requested a refund during the twelve month period before the  
20          date on which the individual's term begins, unless the requested refund  
21          resulted from an overpayment; and  
22          c.    May not request a refund for any barley sold during the member's term,  
23          except if the refund is the result of an overpayment.  
24       3.    If a member ceases to meet the qualifications provided for in this section, the  
25       member's office is deemed vacant and the remaining members of the council shall  
26       appoint another qualified individual to serve for the remainder of the term.  
27       4.    The term of each elected member is four years and begins on April first ~~of the year~~  
28       ~~of following the election. If at any time during a member's term a member ceases~~  
29       ~~to possess any of the qualifications provided for in this chapter, the member's~~  
30       ~~office is vacant and the remaining members of the council shall appoint another~~  
31       ~~qualified participating grower for the remainder of the term of the office vacated.~~

The terms must be staggered so that no more than two terms expire each year. A member may not serve more than three consecutive four-year terms.

5. 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 such elections must be completed prior to expiration of the members' terms. ~~No member serving on the council before August 1, 1997, is eligible to serve more than two consecutive four-year terms. No member elected to the council after July 31, 1997, is eligible to serve more than three consecutive four-year terms.~~

6. The commissioner is an ex-officio member of the council but does not have a vote.

**NOTE:** The rewrite proposes the removal of historical provisions regarding the terms of council members and the insertion of a reference to "staggered" terms.

Under current law, it is provided that 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." It is suggest that these provisions be examined to determine their sufficiency. Unaddressed issues include the qualifications required of electors, the date on which or range of time within which elections must be conducted, voting locations, the acceptability of absentee or mail ballots, ballot counting requirements, the determination of candidate eligibility, and the certification of winners.

Current law contains a sentence providing that the "chairman of the council must be an elected member of the council elected by a majority vote of the council." It is recommended that this concept be placed in some other section. It appears to require additional information regarding the time at which the election of a chairman takes place and the frequency of the election or term of the chairman.

**SECTION 4. AMENDMENT.** Section 4-10.4-05 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-05. Meetings - Quorum - Compensation and expenses of council.** A ~~quorum is necessary for the transaction of all business in carrying out the duties of the council.~~

1. The chairman shall call all meetings of the council ~~except special meetings which the chairman shall call on the petition of~~ and must call a special meeting within seven days, when petitioned to do so by two council members within seven days of receiving such a petition. ~~The council shall determine the amount of compensation payable to each voting member of the council. The amount payable may not exceed~~

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

**NOTE:** It is well established that a majority constitutes a quorum legally competent to act. Therefore, it is recommended that the first sentence be deleted.

In the future draft, it might be considered advisable to place issues of council member compensation in one section and issues regarding the role of the chairman in a separate section.

**SECTION 5. AMENDMENT.** - Section 4-10.4-06 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-06. ~~Expenditure of funds~~Expenditures** The council ~~or its designated agent~~ shall authorize ~~all expenditures of funds~~ each expenditure made pursuant to this chapter ~~which must be submitted upon~~ and shall submit an itemized ~~vouchers~~ voucher to the ~~office of the budget for approval to be paid by warrant check issued by the office of management and budget for payment.~~

**SECTION 6. AMENDMENT.** Section 4-10.4-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-07. 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 the provision of research, education, publicity, promotion, and transportation for the purposes of this chapter.~~
2. ~~Expend the funds~~ moneys collected pursuant to this chapter for its administration.
3. ~~Appoint, employ~~ Employ, bond, discharge, fix compensation for, and prescribe the ~~duties of such administrative, clerical, technical, and other~~ and compensate necessary personnel as it may deem necessary.

- 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 to enforce the~~  
5            ~~collection or ensure payment of taxes authorized by this chapter, and to sue~~ Sue  
6            ~~and be sued in the name of the council.~~
- 7           6.    ~~Formulate the general policies and programs of the state respecting the discovery,~~  
8            ~~promotion, and development of~~ Develop and promote markets and industries for  
9            the utilization of barley grown ~~within~~ in the state.

**NOTE:** Under current law, the council is authorized to contract for "research, education, publicity, promotion, and transportation." It is recommended that this language be reviewed to determine if the intent is still appropriate and if the terminology clearly reflects the intent.

It is also recommended that consideration be given to the insertion of a general provision authorizing the council to engage in all lawful activities or to do all things necessary to carry out the chapter, with the exception of engaging in competitive business enterprises, as referenced in NDCC Section 4-10.4-02. This would also serve to authorize activities that are not clearly articulated - i.e. maintaining an office.

NDCC Section 4-10.4-08(3) authorizes the council to examine the records of first purchasers to ensure compliance with this chapter. This section might constitute a more appropriate placement for that authorization.

10           **SECTION 7. AMENDMENT.** Section 4-10.4-08 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **4-10.4-08. Tax levied.**

- 13           1.    A tax at the rate of ten mills per bushel [35.24 liters] must be levied and imposed  
14            upon all barley grown in the state, delivered into the state, or sold to a first  
15            purchaser in the state. ~~This tax is due upon any identifiable lot or quantity of~~  
16            ~~barley.~~
- 17           2.    Every first purchaser of barley shall ~~collect the tax imposed by this section by~~  
18            ~~charging and collecting from the seller the tax at the rate of ten mills per bushel~~  
19            ~~[35.24 liters] by deducting~~ deduct from the price paid the tax ~~from the purchase~~  
20            ~~price of all barley subject to the tax and purchased by the first purchaser~~  
21            authorized by this section.
- 22           3.    Every first purchaser shall keep ~~as a part of its permanent records~~ a permanent  
23            record of all purchases, sales, and shipments of barley, ~~which may be examined~~

- 1           ~~by the council.~~ The first purchaser shall make these records available to the  
2           council for examination, at all reasonable times.
- 3           4. ~~Every~~ No later than thirty days after the conclusion of each calendar quarter, each  
4           first purchaser shall file a report to ~~with~~ the council by the thirtieth day of each  
5           ~~calendar quarter~~ stating the quantity of barley received, sold, or shipped by it the  
6           first purchaser. The remittance of the tax as provided in this section must  
7           accompany the report.
- 8           5 ~~All~~ The council shall forward all moneys levied and collected ~~received~~ under this  
9           chapter ~~must be paid to the council~~ to the state treasurer for deposit in the state  
10          treasury to the credit of an account or accounts designated "barley fund" to. ~~All~~  
11          moneys in the fund must be used exclusively to carry out the intent and purposes  
12          of this chapter. Regular audits of the council's accounts must be conducted in  
13          accordance with chapter 54-10 and submitted to the commissioner.
- 14          4. ~~6.~~ The tax provided for by this section must be deducted as provided by this  
15          chapter whether the barley is stored or sold in this or any other state, but if  
16          agreements have not been made with dealers and first purchasers outside of the  
17          state for collecting the tax, the grower shall remit the tax to the council on all barley  
18          sold by the grower outside the state.

**NOTE:** Subsection 1 provides that a tax must be levied and imposed upon "all" barley grown in the state and then it provides that the tax is due upon any identifiable lot or quantity of barley. Because the latter concept is redundant, its deletion is recommended.

Subsection 3 direct first purchasers to make certain records available to the council "at all reasonable times." In order to avoid any misperceptions regarding what constitutes "reasonable times," it is recommended that the records be available "upon request" or "during normal business hours."

Subsection 5 provides that regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner. Because NDCC chapter 54-10 sets forth the state's audit requirements, it is not necessary to repeat the provisions in this chapter.

Subsection 1 provides that the tax must be levied upon all "barley grown in the state, delivered into the state, or sold to a first purchaser in the state." Subsection 6 provides that the tax must be deducted regardless of whether the barley is stored or sold in this or any other state. Could the two provisions be combined so that all clarifications are grouped together? If this is done, then subsection 6 could focus solely on the collection of the tax by dealers and first purchasers who are out-of-state.

1           **SECTION 8. AMENDMENT.** Section 4-10.4-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **4-10.4-09. Nonparticipating growers - Refunds.**

- 4           1. ~~Any grower who sells barley to a first purchaser in this state and who is subject to~~  
5 ~~the tax provided in this chapter and who objects to the collection of the tax, within~~  
6 ~~sixty days following the collection, may make application by personal letter to the~~  
7 ~~council for a refund application blank. Upon return of this blank, properly executed~~  
8 ~~by the applicant and accompanied by a true copy of the invoice or invoices~~  
9 ~~delivered by the purchaser to the grower, the council shall refund to the grower In~~  
10 ~~order to receive a refund of any tax paid in accordance with section 4-10.4-08, a~~  
11 ~~person shall submit to the council a written request for a refund application.~~  
12           2. The completed application must be filed with the council no later than sixty days  
13 after the date of the deduction, together with a record of the deduction. The  
14 council must then refund to the person the net amount of the tax that had been  
15 collected.  
16           3. ~~If no request an application for refund is made within sixty days after the collection~~  
17 ~~of the tax, the grower is conclusively not submitted to the council within the~~  
18 ~~prescribed time period, the producer is presumed to have agreed to the deduction.~~  
19 ~~However, a grower, for any reason, having paid the tax more than once on the~~  
20 ~~same barley, upon furnishing proof of this to the council, is entitled to a refund of~~  
21 ~~the overpayment.~~  
22           2- 4. The council shall develop and disseminate information and instructions relating to  
23 the purpose of the barley tax and the manner in which refunds may be claimed and  
24 shall cooperate with state and federal governmental agencies and private  
25 businesses engaged in the purchase of barley.

**NOTE:** Under current law, it appears as if the "request" for the refund application must be made within 60 days of the deduction. Current law is silent regarding the time within which the application must be completed and returned to the council. The rewrite reflects the intent of the section, which is that the request for a "refund", as opposed to the request for a refund "application," must be filed with the council within 60 days of the deduction.

Current law provides that if a grower has paid the tax more than once on the same barley, the grower is entitled to a refund of the overpayment. Because this deals with a different situation than the request for a refund, it has been placed in a separate section.



Current law also provides that the "council shall develop and disseminate information and instruction relating to the purpose of the barley tax and the manner in which refunds may be claimed and shall cooperate with state and federal governmental agencies and private businesses engaged in the purchase of barley." Because there is no certainty regarding the intent of the second part of the quoted sentence, it is recommended that the language be deleted.

1       **SECTION 9.** A new section to chapter 4-10.4 of the North Dakota Century Code is  
2 created and enacted as follows:

3       **Barley tax - Double payment.** If a producer documents to the council that the  
4 producer has paid the tax more than once on the same barley, the council shall refund the  
5 overpayment.

**NOTE:** NDCC section 4-10.4-09(1)

6       **SECTION 10. AMENDMENT.** Section 4-10.4-10 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8       **4-10.4-10. Referendum by growers.** ~~Whenever~~

9       1. a. When petitioned to do so by at least fifteen percent of the participating  
10 growers, with not more than fifty percent of the signatory parties from any one  
11 district, as disclosed by the records of the council for the preceding year  
12 petition the council, the council shall conduct a referendum among the  
13 participating growers of the state to determine whether they wish the  
14 legislative assembly to raise or lower the amount by which they believe the  
15 tax imposed by section 4-10.4-08. should be raised or lowered

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

18       2. ~~The referendum must be conducted only among participating growers who have~~  
19 ~~paid all taxes assessed pursuant to this chapter for the preceding year and the~~ The  
20 council shall prepare the referendum ballot and mail it to each participating grower  
21 at least thirty days prior to the last date for filing ballots. In addition, each Each  
22 ballot must be accompanied by a notice to each participating grower include a  
23 statement indicating:

24       4. ~~Of the date of the filing of the~~

25       a. The date on which the petition by the growers for the referendum was filed  
26 and the number of signatories. signatures it contained;

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

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

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

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

~~4. That~~

~~d. A statement indicating that any participating grower may attend the meeting of the council at be present at the time the ballots are opened and the votes tabulated.~~

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

4. For the purposes of this section, a "participating grower" is a person who has paid all taxes on barley production imposed by this chapter and has not filed a claim for a refund under section 4-10.1-09, during the preceding twelve months.

**NOTE:** NDCC section 4-10.1-10 does not indicate how much time may pass between the filing of a referendum and the date of the vote; how frequently a referendum may be documented; and whether the cost of the referendum is to be borne by the council or the petition signers.

While the rewrite clarifies that the purpose of the referendum is to determine the amount by which the tax may be raised or lowered, it does not address whether the tax could be reduced to \$0.00.

The section is also not clear regarding the effects of the referendum. Is it the intent that the council introduce legislation proposing the change?

**SECTION 11. AMENDMENT.** Section 4-10.4-11 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.4-11. ~~Collection of unpaid~~ Failure to pay taxes - Enforcement.** If a first purchaser fails to pay the tax provided in this chapter, the council may enforce collection in any appropriate court.

**NOTE:** The concept is also found in NDCC section 4-10.4-07(5). It does not need to be in both locations.

1           **SECTION 12. AMENDMENT.** Section 4-10.4-12 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **4-10.4-12. Penalty for nonpayment of tax.** ~~Any~~ A payment is delinquent if it is not  
4 paid by a first purchaser who fails to pay any tax levied by this chapter on the date the tax  
5 becomes due ~~is delinquent~~. The council may levy a penalty on the delinquent payments of ten  
6 percent of the tax due, plus interest at the rate of six percent per annum from the due date. The  
7 council shall collect any penalty and interest in the manner prescribed by section 4-10.4-11.

**NOTE:** This section does not mandate a penalty, it merely authorizes one. If the council determines that a penalty is to be assessed, must that penalty be in the amount of ten percent plus interest at the rate of six percent per annum, or may it be for a lesser amount?

8           **SECTION 13. AMENDMENT.** Section 4-10.4-13 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10          **4-10.4-13. Records of council - Inspection - Retention.** All of the records of the  
11 council, including acreage reports, tax returns, claims of exemption, and any other data,  
12 records, or information retained by the council are public information and are available for the  
13 inspection of any person for any lawful purpose. However, the council may make rules  
14 concerning the inspection of the information or data, and the time or place of inspection or the  
15 manner in which the information is available for inspection. The council shall keep all records at  
16 least three years.

**NOTE:** It is recommended that this section be repealed. NDCC Chapter 44-04 addresses public records. Its provisions are applicable to the barley council and therefore do not need to be reiterated in this chapter. Similarly, because the barley council is an agency of the state, its record retention is covered by the record management program authorized under NDCC Chapter 54-46. It is not therefore necessary to include a reference to record retention in the barley chapter.

17          **SECTION 14. REPEAL.** Sections 4-10.4-02 and 4-10.4-04 of the North Dakota  
18 Century Code are repealed.

**NOTE:** Because NDCC section 4-10.4-02 is a statement of public policy, it is recommended that it be repealed. However, the section also contains a prohibition against the barley commission engaging in competitive business enterprises. That prohibition is addressed in the note following the rewrite of NDCC section 4-10.4-07.

NDCC section 4-10.4-04 establishes the barley council districts. It is recommended that it precede the section pertaining to the council elections. In order to accomplish this, the section must be repealed and rewritten as new law.

NDCC section 4-10.4-11 provides that any "person who willfully violates this chapter is guilty of a class B misdemeanor." The section was not included in this first draft because no change was made to it.