

January 2008

Introduced by

1 A BILL for an Act to create and enact three new sections to chapter 4-10.6 of the North Dakota
2 Century Code, relating to the duties and compensation of the corn utilization council members
3 and to refunds for the double payment of assessments; to amend and reenact sections
4 4-10.6-01, 4-10.6-02, 4-10.6-04, 4-10.6-05, 4-10.6-06, 4-10.6-07, 4-10.6-08, 4-10.6-09,
5 4-10.6-10, 4-10.6-11, 4-10.6-12, 4-10.6-13, and 4-10.6-14 of the North Dakota Century Code,
6 relating to the corn utilization council; to repeal sections 4-10.6-03 and 4-10.6-15 of the North
7 Dakota Century Code, relating to corn utilization council districts and records; to provide a
8 penalty; and to provide a continuing appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 4-10.6-01 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **4-10.6-01. Definitions.** In this chapter, unless the context otherwise requires:

- 13 1. "Commissioner" means the agriculture commissioner or the commissioner's
14 ~~designated representative~~ designee.
- 15 2. "Corn" means all varieties of corn marketed in the state except sweet corn or
16 popcorn.
- 17 3. "Council" means the North Dakota corn utilization council.
- 18 4. "Designated handler" means any grain warehouse, licensed grain buyer,
19 processing plant, or ethanol plant which purchases corn from a grower and any
20 person having a claim against the grower, when the actual or constructive
21 possession of the corn is taken as security, part payment, or in satisfaction of a
22 mortgage, pledge, lien, or claim.
- 23 5. "Grower" means a person who plants, raises, and harvests corn.

6. "Marketed in this state" means the sale of corn to a designated handler residing in or doing business in this state and actual delivery of the corn in this state.

~~7. "Participating grower" means a grower who has paid the assessment on corn production under this chapter and who has not applied for a refund of the assessment.~~

~~8. "Voting grower" means a grower who has paid the assessment under this chapter, whether or not the grower has applied for a refund.~~

NOTE: Subsection 4 defines a designated handler. By using the word "means" rather than "includes," it limits designated handlers to those entities listed. Are there other entities that could conceivably be "designated handlers"?

Subsection 5 defines a grower. Is this a word that needs definition? Secondly, is the definition creating confusion? Is a gentleman farmer or an elderly widow who enters into a crop share arrangement a "grower"?

The phrase "participating grower" is removed because the only section in which it is used is NDCC Section 4-10.6-02. The concept can be included in that section.

The phrase "voting grower" is removed because the only section in which it is used is NDCC Section 4-10.6-12. The concept can be included in that section.

SECTION 2. AMENDMENT. Section 4-10.6-02 of the North Dakota Century Code is amended and reenacted as follows:

4-10.6-02. North Dakota corn utilization council - Members - Election - Term.

1. The North Dakota corn utilization council ~~must be~~ is composed of one member elected from each ~~district established by section 4-10.6-03~~ of the following seven districts:

a. Richland County.

b. Cass, Traill, and Steele Counties.

c. Benson, Burke, Bottineau, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams Counties.

d. Barnes, Eddy, Foster, Griggs, and Stutsman Counties.

e. Sargent and Ransom Counties.

f. Dickey and LaMoure Counties.

g. All remaining counties in this state where corn is grown.

2. The chairman of the council must be a member of the council elected by a majority vote of the council.

- 1 3. Each member ~~must~~ of the council:
- 2 a. Must be a resident of ~~and participating grower~~ in the district the member
- 3 represents;
- 4 b. Must plant, raise, and harvest corn in the district that the member represents;
- 5 and
- 6 c. May not have requested a refund under section 4-10.6-11 during the
- 7 preceding twenty-four months.
- 8 4. The term of each member is four years, beginning on April first ~~of the year of~~
- 9 following the election; except that initially three members must be elected for
- 10 four-year terms; two members must be elected for three-year terms; and two
- 11 members must be elected for two-year terms as designated by the commissioner.
- 12 The terms must be staggered so that no more than two terms expire each year.
- 13 5. If at any time during a member's term the member ceases to possess any of the
- 14 qualifications required by this chapter, the member's office is deemed vacant and
- 15 the council shall appoint a qualified ~~participating~~ grower from any district to
- 16 complete the term of office.
- 17 6. The council shall administer all elections and may request the assistance of the
- 18 commissioner. Elections must be conducted no later than April first of each year.
- 19 Before the expiration of a member's term, the council shall appoint a nominating
- 20 committee made up of ~~participating~~ at least two growers who reside in the
- 21 member's district. ~~The~~ and who have not requested a refund under section
- 22 4-10.6-11 during the preceding twenty-four months. At least thirty days before the
- 23 date of the election, the committee shall nominate a ~~resident participating~~ qualified
- 24 grower as a candidate for the office. ~~Additional~~ The names of other candidates
- 25 may be ~~nominated by a written~~ put forth if a petition of is signed by five growers
- 26 from the district and submitted to the council at least thirty days before the date of
- 27 the election. No
- 28 7. A council member may not serve more than two consecutive four-year terms.
- 29 ~~When~~
- 30 8. If a member's office is vacant, the council, before beginning the nominating
- 31 process, shall notify growers of the vacancy and pending election by letter or by

- 1 publishing a ~~conspicuous~~ notice of the vacancy, in the official newspaper of every
2 county in the district.

NOTE: NDCC Section 4-10.6-02 contains a variety of topics which should be placed in separate sections.

Subsection 1 identifies the council and the council districts. The language was moved to precede the details regarding elections and terms.

Subsection 2 addresses the election of the council chairman. How long is the chairman's term? May the chairman serve multiple consecutive terms?

Subsection 3 clarifies the intent that members of the council must be participating growers. Under current law, if an individual ever requested a refund, that individual would be ineligible to be a council member. The rewrite provides that the request may not have been made within the preceding two years.

Subsection 6 addresses the role of the nominating committee. The rewrite clarifies that this nominating committee is made up of at least two people and sets forth their qualifications. It clarifies tat the nominating committee must submit the name of its candidate at least thirty days before the date of the election. It also provides that additional candidates may be included by the submission of a signal petition and requires that the petition must also be filed at least thirty days before the date of the elections.

- 3 **SECTION 3. AMENDMENT.** Section 4-10.6-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **4-10.6-04. Meetings ~~–Compensation and expenses of council.~~**

- 6 1. The chairman shall call all regular meetings of the council.
7 2. The chairman shall call a special meetings on the petition of three council
8 members meeting of the council, within seven days ~~of receiving the petition.~~ The
9 ~~council shall determine the amount of compensation payable to each council~~
10 ~~member. The amount payable may not exceed seventy five dollars per day plus~~
11 ~~reimbursement of expenses as provided by law for state officers, while attending~~
12 ~~meetings or performing duties directed by the council, except that no compensation~~
13 ~~under this section may be paid to any member who receives compensation or~~
14 ~~salary as a regular state employee or official, if petitioned to do so by three council~~
15 members.

NOTE: The verbiage dealing with the compensation and reimbursement of council members was placed in its own section. (See next section.)

- 16 **SECTION 4.** A new section to chapter 4-10.6 of the North Dakota Century Code is
17 created and enacted as follows:

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

7 **SECTION 5. AMENDMENT.** Section 4-10.6-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **4-10.6-05. Expenditure of funds.** ~~The council or its designated agent shall approve~~
10 ~~every expenditure of funds made pursuant to this chapter and shall submit the approved~~
11 ~~expenditure upon an itemized voucher to the office of management and budget for approval~~
12 ~~payment.~~

NOTE: The council effectively approves all expenditures through its approval of the budget and through its authorization of the executive director's role and function.

13 **SECTION 6. AMENDMENT.** Section 4-10.6-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-10.6-06. Council authority - Powers.** ~~In the administration of this chapter, the The~~
16 ~~council may:~~

- 17 1. ~~Contract and cooperate with any person for market maintenance and, expansion,~~
18 ~~utilization~~ research, transportation, and education.
- 19 2. ~~Expend the funds~~ moneys collected pursuant to this chapter and appropriated for
20 its administration.
- 21 3. ~~Appoint, employ~~ Employ, bond, ~~discharge, fix compensation for, and prescribe the~~
22 ~~duties of~~ and compensate necessary personnel.
- 23 4. Accept gifts, grants, and donations of funds money, property, and services, or
24 ~~other assistance from any source for the purpose of furthering the objectives of the~~
25 ~~council to carry out this chapter.~~
- 26 5. ~~Investigate and prosecute in the name of the state any action or suit to enforce the~~
27 ~~collection or ensure payment of the assessments authorized by this chapter, and to~~
28 ~~sue and be sued in the name of the council.~~
- 29 6. Do all things necessary and proper to enforce and administer t his chapter.
- 30 7. Provide educational and informational materials.

NOTE: Subsection 1 authorizes contracts for several limited purposes, including "utilization research." Because it might be appropriate to support research in areas other than just "utilization," it is recommended that the contracting authority be broadened.

Subsection 3 clarifies the concept that the authority to employ includes the authority to discharge.

Subsection 5, as rewritten, authorizes the council to sue and be sued.

Subsection 6, as proposed would authorize the council to do all things necessary and proper to enforce and administer the chapter. This, or phraseology allowing the council to engage in all other lawful activities would include activities not specifically mentioned - like maintaining an office.

1 **SECTION 7.** A new section to chapter 4-10.6 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Council - Duties.** The council shall develop and disseminate information and
4 instructions relating to the purpose of the corn assessment and manner in which refunds may
5 be claimed.

NOTE: NDCC Section 4-10.6-11.

6 **SECTION 8. AMENDMENT.** Section 4-10.6-07 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-10.6-07. Certification of designated handlers. A**

- 9 1. Before a designated handler ~~shall file with~~ may sell, process, or ship any corn, the
10 designated handler must obtain certification from the council ~~a form~~. The
11 certification is available upon submission to the council of an application containing
12 the name under which the designated handler is transacting business within the
13 state, the designated handler's places of business, and the location of loading and
14 shipping places of the designated handler's agents, ~~if.~~
- 15 2. a. If the designated handler is a partnership, the application must contain the
16 names and addresses of the persons constituting the firm partnership, ~~if.~~
- 17 b. If the designated handler is a corporation, the application must contain the
18 corporate name and the names and addresses of the principal officers and
19 agents in this state, ~~and, if.~~
- 20 c. If the designated handler is a limited liability company, the application must
21 contain the limited liability company name and the names and addresses of
22 the principal managers and agents within this state. ~~The~~

1 3. Upon receiving a completed application, the council shall issue a certificate to the
2 designated handler. ~~A designated handler may not sell, process, or ship any corn~~
3 ~~until it has a certificate as required by this section.~~

4 4. The designated handler shall notify the council whenever there is a change in the
5 information required by this section.

NOTE: The rewrite places on the designated handler the obligation to notify the council whenever there is a change in the information required by the application.

6 **SECTION 9. AMENDMENT.** Section 4-10.6-08 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-10.6-08. Assessment.** ~~Effective July 1, 1991, an~~ An assessment at the rate of
9 one-quarter of one percent of the value of a bushel must be levied and imposed upon all corn
10 marketed in this state, until the commissioner certifies that a national corn checkoff is
11 implemented in effect. ~~This assessment is due upon any identifiable lot or quantity of corn.~~

NOTE: Given that the assessment must be levied and imposed upon "all" corn, the last sentence indicating that the assessment is due upon any identifiable lot or quantity of corn is unnecessary.

12 **SECTION 10. AMENDMENT.** Section 4-10.6-09 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **4-10.6-09. Collection of assessment.**

15 1. Every designated handler shall collect the assessment from the seller by deducting
16 the assessment from the purchase price of all corn ~~subject to the assessment~~ and
17 purchased by the designated handler.

18 2. If a grower sells corn to a person who is not a designated handler, the grower shall
19 forward the assessment to the council at the time and in the manner prescribed by
20 the council.

NOTE: Subsection 1 provides that the assessment is to be deducted from all corn "subject to the assessment." The quoted phrase is not necessary because the definition in NDCC Section 4-10.6-01(2) defines corn as "all corn marketed in the state except sweet corn or popcorn" and all corn, as defined in NDCC Section 4-10.6-01(2), is subject to the assessment.

21 **SECTION 11. AMENDMENT.** Section 4-10.6-10 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **4-10.6-10. Records by designated handlers - Continuing appropriation.**

- 1 1. Every designated handler shall keep ~~as a part of its permanent records~~ a record of
2 all purchases, sales, and shipments of corn ~~which~~. The record required by this
3 section is a permanent record and may be examined by the council at all
4 ~~reasonable times upon request.~~
- 5 2. Every designated handler shall file a quarterly report to ~~with~~ the council, in ~~a~~ the
6 manner and at a time prescribed by the council. The assessments collected by the
7 designated handler must accompany the report.
- 8 3. All moneys levied and collected under this chapter must be paid ~~within~~, not later
9 than thirty days ~~of~~ after the end of each quarterly period, to the council. The
10 council shall forward all moneys received under this chapter to the state treasurer
11 for deposit in ~~the state treasury to the credit of a special revolving account~~
12 ~~designated as~~ the corn fund. All money in the corn fund is appropriated on a
13 continuing basis to the council to be used exclusively to carry out this chapter.
14 ~~Quarterly periods end on March thirty first, June thirtieth, September thirtieth, and~~
15 ~~December thirty first of each year. Regular audits of the council's accounts must~~
16 ~~be conducted in accordance with chapter 54-10 and submitted to the~~
17 ~~commissioner.~~

NOTE: Subsection 1 provides that certain records of designated handlers may be examined by the council at all reasonable times. The rewrite changes this to examination "upon request." This eliminates confusion over what constitutes a "reasonable time."

Subsection 2 specifies that the intended report is to be filed on a quarterly basis.

Subsection 3 specifies what constitutes quarterly periods. State government reporting periods are standardized and therefore this sentence is not necessary. The rewrite also removes the reference to regular audits. NDCC Chapter 54-10 sets forth the state's audit requirements and therefore is no reason to maintain this reference.

18 **SECTION 12. AMENDMENT.** Section 4-10.6-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-10.6-11. Nonparticipating growers - Refunds.** ~~The council shall develop and~~
21 ~~disseminate information and instructions relating to the purpose of the corn assessment and~~
22 ~~manner in which refunds may be claimed, and shall cooperate with governmental agencies and~~
23 ~~private businesses engaged in the purchase of corn. Any grower subject to the assessment~~
24 ~~provided by~~

- 1 1. In order to receive a refund of any assessment paid in accordance with this
2 chapter, ~~within~~ a grower shall submit to the council a written request for a refund
3 application.
- 4 2. The request for a refund application must be filed with the council no later than
5 ninety days ~~following an~~ after the date of the assessment or final settlement, ~~may~~
6 ~~apply to the council for a refund application. If~~
- 7 3. The grower must complete the refund application ~~is properly executed by the~~
8 ~~grower~~ and return it to the council, together with a record of the assessment by the
9 designated handler, returned within no later than ninety days ~~of the date it was~~
10 ~~mailed~~ after the date on which the council mailed the application to the grower, ~~and~~
11 ~~accompanied by a record of the assessment by the designated handler, the grower~~
12 ~~must be refunded.~~
- 13 4. The council must then refund the net amount of the assessment That had been
14 collected.
- 15 5. ~~If no~~ a request for refund is made not submitted to the council within the period
16 prescribed ~~above~~ time period, the grower is presumed to have agreed to the
17 assessment. ~~However, if a grower pays the assessment on the same corn more~~
18 ~~than once, the grower is entitled to a refund upon furnishing the council with proof~~
19 ~~of the overpayment.~~

NOTE: Subsection 1. The rewrite places the first phrase of subsection 1 in a new "duties" section (following NDCC Section 4-10.1-06). The second part of this sentence appears in several other commodity chapters. It is unclear what was intended by the language and therefore, it is proposed that the language be deleted.

20 **SECTION 13.** A new section to chapter 4-10.6 of the North Dakota Century Code is
21 created and enacted as follows:

22 **Assessment - Double payment.** If a grower documents to the council that the grower
23 has paid the tax more than once on the same corn, the council shall refund the overpayment.

NOTE: Section 4-10.6-11.

24 **SECTION 14. AMENDMENT.** Section 4-10.6-12 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **4-10.6-12. Advisory referendum by voting growers.** ~~Whenever~~

- 1 1. If fifteen percent of the voting growers petition the council, the council shall conduct
- 2 an advisory referendum to determine ~~whether~~ the amount by which the
- 3 assessment imposed by this chapter should be changed.
- 4 2. The referendum may be conducted only among voting growers ~~who have paid all~~
- 5 ~~assessments pursuant to this chapter for the preceding year.~~
- 6 3. The ballots must be prepared by the council and be made available at each county
- 7 extension office for a vote on a date set by the council.
- 8 4. Each ballot must be accompanied by a ~~notice stating~~ statement indicating the date,
- 9 ~~time, and place where~~ location at which the council will open and tabulate the
- 10 ballots and ~~stating indicating~~ that any voting grower may be present. ~~Voting at the~~
- 11 time the ballots are opened and tabulated.
- 12 5. Upon request, the council shall provide absentee ballots to voting growers who
- 13 ~~reside outside the state or~~ and to voting growers within the state who expect to be
- 14 absent from their county of residence on the day of the vote ~~may request an~~
- 15 ~~absentee ballot.~~ The council ~~shall~~ may not provide ~~to any voting grower an~~
- 16 ~~absentee ballot upon request beginning~~ ballots earlier than thirty days prior to
- 17 before the vote. A voting grower requesting an absentee ballot shall file a
- 18 statement with the council affirming the grower's eligibility to vote. The council
- 19 shall provide a statement form upon request.
- 20 6. All absentee ballots and statements must be received by the council at least two
- 21 working days ~~prior to~~ before the date of the scheduled a vote.
- 22 7. If a majority of the voting growers vote for the proposed change, the council shall
- 23 certify the result to the commissioner and request that the commissioner prepare
- 24 appropriate proposed legislation for submission to the next legislative assembly.

NOTE: Subsection 1 references "voting" growers. Since these are defined as growers who have paid the assessment, regardless of whether or not they requested a refund, it would appear that the adjective "voting" is not necessary. The rewrite proposes that the referendum be used to determine the amount by which the assessment should be changed, and not just whether or not the assessment should be changed. It is not clear whether the referendum could address changing the assessment to be \$0.00?

Subsection 2 defines voting growers in a manner similar to that of the definition section. This duplication is not necessary.

Subsection 3 does not indicate how much time may elapse between the filing of a petition requesting the referendum and the actual vote. It also does not address how frequently a referendum may be conducted.

Subsection 5 provides that a "voting grower requesting an absentee ballot shall file a statement with the council affirming the grower's eligibility to vote. The council shall provide a statement form upon request." Is this to be filed at the time the ballot is requested or at the time the ballot is submitted to the council?

Subsection 7 is unclear with respect to its intent. Is the Commissioner to submit a bill reflecting the intent of the referendum or just have it prepared and given to the council? Can the Commissioner refuse the request to "prepare appropriate legislation"?

1 **SECTION 15. AMENDMENT.** Section 4-10.6-13 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-10.6-13. Collection of unpaid assessment.** If a designated handler fails to pay the
4 assessment ~~provided~~ required by this chapter, the council may enforce collection in any
5 appropriate court within this state.

6 **SECTION 16. AMENDMENT.** Section 4-10.6-14 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-10.6-14. Penalty for nonpayment of assessment.** ~~A If a~~ designated handler who
9 fails to pay the assessment ~~provided, as required~~ by this chapter ~~on the date the assessment~~
10 ~~becomes due, the designated handler is deemed to be delinquent.~~ The council may levy a
11 penalty on that designated handler in the amount of ten percent of the assessment due, plus
12 interest at the rate of twelve percent per annum from the due date. The penalty and interest
13 must be collected in the manner prescribed by this chapter.

NOTE: According to current law, the imposition of a penalty is optional. The council "may" assess it. If the council decided to assess a penalty, does it have to equal ten percent plus interest or can the council levy "up to" that amount?

14 **SECTION 17. REPEAL.** Sections 4-10.6-03 and 4-10.6-15 of the North Dakota
15 Century Code are repealed.

NOTE: NDCC Section 4-10.6-03 establishes the corn districts. The content of this section was moved into 4-10.6-02.

NDCC Section 4-10.6-15 provides that records of the council must be available for inspection at the council office during regular business hours. NDCC Chapter 44-04 addresses public records. Its provisions are applicable to the corn council and therefore do not need to be reiterated in this chapter.

Chapter 4-10.6-16 also includes a section providing that any person who willfully violates this chapter is guilty of a class B misdemeanor. Because the section was not amended, it is not included in this bill draft.