

January 2008

Introduced by

1 A BILL for an Act to create and enact one new section to chapter 4-10.2 of the North Dakota
2 Century Code, relating to a refund of double assessments; to amend and reenact sections
3 4-10.2-02, 4-10.2-03, 4-10.2-04, 4-10.2-04.1, 4-10.2-05, 4-10.2-06, 4-10.2-07, 4-10.2-08,
4 4-10.2-09, 4-10.2-10, and 4-10.2-11 of the North Dakota Century Code, relating to the oilseed
5 council and assessments; to repeal sections 4-10.2-01 and 4-10.2-13 of the North Dakota
6 Century Code, relating to legislative policy and open records; to provide a penalty; and to
7 provide a continuing appropriation.

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

9 **SECTION 1. AMENDMENT.** Section 4-10.2-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-10.2-02. Definitions.** ~~Whenever~~ As used in this chapter:

- 12 1. "Commissioner" means agriculture commissioner or the commissioner's
13 ~~designated representative~~ designee.
- 14 2. "Council" means the North Dakota oilseed council.
- 15 3. "First purchaser" means any person buying, accepting for shipment, or otherwise
16 acquiring ~~sunflower, safflower, rapeseed or canola, crambe, or flax,~~ oilseeds from
17 a grower. The term includes a mortgagee, pledgee, lienor, or any other person;
18 ~~public or private,~~ having a claim against the grower ~~when~~ if the actual or
19 constructive possession of the oilseed is taken as part payment or in satisfaction of
20 the mortgage, pledge, lien, or claim. ~~For the purposes of assessments and~~
21 ~~reporting, the term includes a grower selling the grower's unharvested sunflower,~~
22 ~~safflower, rapeseed or canola, crambe, or flax out of state, or delivering the~~
23 ~~grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm~~

- 1 ~~where they were produced to any storage facilities, packaging sheds, or~~
2 ~~processing plants located outside the state.~~
- 3 4. ~~"Grower" means any person who plants, raises, and harvests sunflower, safflower,~~
4 ~~rapeseed or canola, crambe, or flax oilseeds~~ from more than ten acres [4.05
5 hectares].
- 6 5. "Hundredweight" means a one hundred pound [45.36 kilogram] unit or a
7 combination of packages making a one hundred pound [45.36 kilogram] unit or any
8 shipment of ~~sunflower, safflower, rapeseed or canola, or crambe~~ oilseeds based
9 on ~~invoices~~ assembly sheets or bills of lading records.
- 10 6. ~~"Participating grower" means a grower who has not gained exemption from the~~
11 ~~payment of assessments on sunflower, safflower, rapeseed or canola, crambe, or~~
12 ~~flax production under this chapter for a particular year, or a grower who is not~~
13 ~~exempt from the payment of assessments on sunflower, safflower, rapeseed or~~
14 ~~canola, crambe, or flax production under this chapter.~~
- 15 7. ~~"Person" means an individual, partnership, corporation, limited liability company,~~
16 ~~association, grower, cooperative, or any other business unit. "Oilseeds" include~~
17 ~~canola, crambe, flax, rapeseed, safflowers, and sunflowers.~~
- 18 &. 7. "Sunflower" means every variety of sunflower harvested within the state.

NOTE: Subsection 3 defines a first purchaser for purposes of the chapter and then adds additional criteria applicable to assessments and reporting. This additional criteria should be reconciled with the respective sections.

Subsection 4 defines grower. In the interest of consistency throughout the commodity chapters, it is recommended that a decision be made to use either the word "grower" or the word "producer." The definition of grower contains confusing elements. Does a landlord in a crop share arrangement qualify as a grower? Does a grower have to be actively involved in the activities of planting, raising, and harvesting oilseeds? Is there an inconsistency between requiring that a person plant, raise, and harvest oilseeds from more than ten acres in order to be considered a grower and the requirement that the assessment be levied on all oilseeds grown in the state?

In order to avoid listing all oilseeds throughout the chapter, the rewrite defines "oilseeds." Are there other oilseeds that should be listed?

The rewrite removes the definition of a "participating grower." The definition is used in only two sections and has been included within their content.

The rewrite removes the definition of "person." NDCC Section 1-01-49 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.

1 **SECTION 2. AMENDMENT.** Section 4-10.2-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-10.2-03. North Dakota oilseed council - Membership - Election - Term.**

- 4 1. The North Dakota oilseed council is composed of:
- 5 a. ~~One participating~~ Seven sunflower ~~grower~~ growers, with one elected from
6 each of the districts established in section 4-10.2-04;
- 7 b. ~~One participating~~ Three canola ~~grower~~ growers, with one elected from each
8 of the three districts established in section 4-10.2-04.1;
- 9 c. One ~~participating~~ safflower grower appointed by the governor;
- 10 d. One ~~participating~~ ~~crambe~~ flax grower appointed by the governor;
- 11 e. One ~~participating~~ ~~flax~~ grower of any oilseed other than sunflowers, canola,
12 safflower, or flax appointed by the governor; and
- 13 f. One ~~member~~ individual appointed by the director of the agricultural
14 experiment station.
- 15 2. The chairman of the council must be a member of the council elected by a majority
16 vote of the council. The commissioner is an ex officio member of the council.
- 17 3. a. ~~Every elected and appointed council member must be a citizen of the state.~~
18 b. ~~The elected member who is a sunflower grower must be a bona fide resident~~
19 ~~of and participating sunflower grower in the district the member represents.~~
20 e. ~~The elected member who is a canola grower must be a bona fide resident of~~
21 ~~and participating canola grower in the district the member represents. Each~~
22 member of the council must be a resident of the state.
- 23 b. Each member of the council who represents a growing district established in
24 this chapter must be a resident of that district.
- 25 c. Each member of the council, except the individual appointed by the director of
26 the agricultural experiment station, must have paid all assessments on oilseed
27 production imposed by this chapter and may not have filed a claim for a
28 refund under section 4-10.2-09 during the preceding twelve months.
- 29 4. a. The term of each ~~elected~~ member who ~~is~~ represents a sunflower ~~grower~~
30 district is three years and begins on April first ~~of the year of~~ following the

- 1 ~~member's~~ election, ~~except that initially two members must be elected for a~~
2 ~~three year term; two members must be elected for a two year term; and two~~
3 ~~members must be elected for a one year term as designated by the~~
4 ~~commissioner. The terms of members representing sunflower districts must~~
5 ~~be staggered so that:~~
- 6 (1) No more than three terms expire in any one year; and
7 (2) The term of the member who represents Divide, Burke, Renville,
8 Williams, Mountrail, Ward, McLean, Bottineau, and McHenry counties is
9 identical to that of the member who represents Golden Valley, Billings,
10 Stark, Morton, Slope, Hettinger, Grant, Bowman, Adams, Sioux, Dunn,
11 McKenzie, Mercer, and Oliver counties.
- 12 b. The term of each ~~elected~~ member who ~~is~~ represents a canola ~~grower~~ district
13 is three years and begins on April first ~~of the year of~~ following the member's
14 ~~election, except that initially one member must be elected for a three year~~
15 ~~term; one member must be elected for a two year term; and one member~~
16 ~~must be elected for a one year term as designated by the commissioner~~
- 17 e. ~~The term of the elected member who is a sunflower grower from district seven~~
18 ~~must coincide with the term of the elected member who is a sunflower grower~~
19 ~~from district six. . The terms of members representing canola districts must~~
20 ~~be staggered so that no more than one term expires in any one year.~~
- 21 e. c. The term of each appointed member who is appointed is three years and
22 begins on April first of the year of following the member's appointment.
23 ~~Initially, the term of the member who is a flax grower must be for three years,~~
24 ~~the term of the member appointed by the director of the agricultural~~
25 ~~experiment station must be for two years, and the term of the member who is~~
26 ~~a safflower grower must be for two years~~ The terms of members who are
27 appointed must be staggered so that no more than two expire in any one
28 year.
- 29 5. If at any time ~~during a member's term the~~ a member of the council ceases to
30 possess any of the qualifications ~~provided for in~~ required by this chapter, the
31 member's office is deemed vacant ~~and~~. If the office had been held by an elected

- 1 individual, the remaining members of the council shall appoint another qualified
2 ~~participating grower~~ individual to serve for the remainder of the vacated term. If
3 the office had been held by a gubernatorial appointee, the governor shall appoint
4 another qualified individual. If the office had been held by an appointee of the
5 director of the agricultural experiment station, the director shall appoint another
6 qualified individual.
- 7 6. The commissioner, or a county agent designated by the commissioner, in
8 cooperation with the North Dakota state university extension service, shall conduct
9 elections under this section in each district in the manner the commissioner
10 determines fair and reasonable. All elections must be conducted before April first
11 of each year.
- 12 7. No elected or appointed member of the council ~~is eligible to~~ may serve more than
13 four consecutive three-year terms.

NOTE: Subsection 1. Under current law, one member of the oilseed council must be a "crambe grower appointed by the governor." Because this crop is grown in only a very limited fashion and in some years, it is not grown at all, it is suggested that the seat on the council be held by an individual who grows an oilseed other than sunflowers, canola, safflowers, or flax.

Subsection 2. Under current law, the chairman of the council must be a member of the council elected by a majority vote of the council. It would be appropriate to indicate when the election is to take place and the length of the chairman's term.

Subsection 3. As rewritten, the section articulates the assumption that members of the oilseed council must be participating growers.

Subsection 5. Under current law, if an office becomes vacant, it is filled by the remaining members of the council, regardless of whether the member was initially elected or appointed by either the Governor or the director of the Agricultural Experiment Station. The rewrite reflects the intent that if an appointee vacates office, the appointing entity must be asked to make another appointment.

Subsection 6. Because the oilseed 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 this 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.

- 14 **SECTION 3. AMENDMENT.** Section 4-10.2-04 of the North Dakota Century Code is
15 amended and reenacted as follows:

1 **4-10.2-04. Sunflower districts - Establishment.** The state consists of the following
2 seven sunflower districts ~~are established for the purpose of dividing the state into districts~~
3 ~~containing as nearly equal sunflower acreages as practicable:~~

- 4 1. ~~District one consists of the counties of Cavalier, Pembina, Ramsey, Walsh, Nelson,~~
5 and Grand Forks Counties.
- 6 2. ~~District two consists of the counties of Griggs, Steele, Traill, Barnes, and Cass~~
7 Counties.
- 8 3. ~~District three consists of the counties of LaMoure, Ransom, Richland, Dickey, and~~
9 Sargent Counties.
- 10 4. ~~District four consists of the counties of Burleigh, Kidder, Stutsman, Emmons,~~
11 Logan, and McIntosh Counties.
- 12 5. ~~District five consists of the counties of Rolette, Towner, Pierce, Benson, Sheridan,~~
13 Wells, Eddy, and Foster Counties.
- 14 6. ~~District six consists of the counties of Divide, Burke, Renville, Williams, Mountrail,~~
15 Ward, McLean, Bottineau, and McHenry Counties.
- 16 7. ~~District seven consists of the counties of Golden Valley, Billings, Stark, Morton,~~
17 Slope, Hettinger, Grant, Bowman, Adams, Sioux, Dunn, McKenzie, Mercer, and
18 Oliver Counties.

NOTE: It would be preferable to relocate this section so that the sunflower districts are established before the chapter sets forth the provisions for member elections.

19 **SECTION 4. AMENDMENT.** Section 4-10.2-04.1 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-10.2-04.1. Canola districts.** The state consists of the following three canola districts
22 ~~are established:~~

- 23 1. ~~District one consists of the counties of Golden Valley, Billings, Stark, Morton,~~
24 Slope, Hettinger, Grant, Bowman, Adams, Sioux, Dunn, McKenzie, Mercer, Oliver,
25 Divide, Burke, Williams, Mountrail, Renville, Ward, and McLean Counties.
- 26 2. ~~District two consists of the counties of Bottineau, Rolette, Pierce, Sheridan, Wells,~~
27 Eddy, Foster, Burleigh, Kidder, Benson, Stutsman, McIntosh, Emmons, Logan,
28 McHenry, LaMoure, and Dickey Counties.

1 3. ~~District three consists of the counties of Cavalier, Pembina, Ramsey, Towner,~~
2 Walsh, Nelson, Grand Forks, Griggs, Steele, Traill, Barnes, Cass, Ransom,
3 Richland, and Sargent Counties.

NOTE: It would be preferable to relocate this section so that the canola districts are established before the chapter sets forth the provisions for member elections.

4 **SECTION 5. AMENDMENT.** Section 4-10.2-05 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **4-10.2-05. Meetings - ~~Quorum~~ Compensation and expenses of council.** A
7 majority of the voting members of the council constitutes a quorum for the transaction of all
8 business in carrying out the duties of the council. ~~All~~

9 1. The chairman shall call all meetings of the council ~~must be called by the chairman~~
10 ~~except special meetings which must be called by the chairman on the petition of~~
11 and must call a special meeting within seven days of being petitioned to do so by
12 two council members ~~within seven days of receiving such a petition.~~ The council
13 ~~shall determine the amount of compensation payable to each member of the~~
14 ~~council. The amount payable may not exceed~~

15 2. Each member of the council is entitled to receive compensation in an amount
16 established by the council, but not exceeding seventy-five dollars per day plus
17 reimbursement ~~of~~ for expenses as provided by law for state officers, ~~while if the~~
18 member is attending council meetings or performing other duties as directed by
19 the council. No compensation may be paid under this section to any member who
20 receives compensation or salary as a regular state employee or official.

NOTE: It is suggested that the provisions regarding regular and special meetings and those regarding the compensation of council members be placed in separate sections.

21 **SECTION 6. AMENDMENT.** Section 4-10.2-06 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **4-10.2-06. Expenditure of funds.** ~~Every~~ The council shall approve each expenditure
24 ~~of funds~~ made pursuant to this chapter ~~must be approved by the council or its designated~~
25 ~~agent, submitted upon~~ and shall submit an itemized voucher to the office of ~~the~~ management
26 and budget for approval, ~~and paid by warrant check issued by the office of management and~~
27 budget payment.

1 **SECTION 7. AMENDMENT.** Section 4-10.2-07 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-10.2-07. Council powers ~~and duties.~~** ~~In the administration of this chapter, the~~ The
4 council ~~has the power and duty to~~ may:

- 5 1. ~~Contract and cooperate with any person or with any governmental department or~~
6 ~~agency for the provision of~~ research, education, publicity, promotion, and
7 ~~transportation for the purposes of this chapter.~~
- 8 2. ~~Expend the funds~~ moneys collected pursuant to this chapter and appropriated for
9 its administration.
- 10 3. ~~Appoint, employ~~ Employ, bond, ~~discharge, fix compensation for, and prescribe the~~
11 ~~duties of such administrative, clerical, technical, and other~~ and compensate
12 ~~necessary personnel as it may deem necessary.~~
- 13 4. ~~Accept gifts, grants, and donations of funds~~ money, property, and services, ~~or~~
14 ~~other assistance from public or private sources for the purpose of furthering the~~
15 ~~objectives of the council~~ to carry out this chapter.
- 16 5. ~~Investigate and prosecute in the name of the state any action or suit to enforce the~~
17 ~~collection or ensure payment of the taxes authorized by this chapter, and to sue~~
18 Sue and be sued ~~in the name of the council.~~

NOTE: Subsection 3 was amended to reflect the concept that the right to employ an individual carries with it the right to discharge that individual.

One may wish to consider adding authorization for the council to do all things necessary and proper to enforce the chapter and to engage in all lawful activities. This would also serve to include activities such as maintaining an office.

NDCC Section 4-10.2-07 sets forth the powers of the council, i.e., those activities that the council is authorized to do. Consideration should be given to adding another section setting forth the council's duties. The section could follow the legislative policy statement found in Section 4-10.2-01 and require that the council promote the increased sale, utilization, and development of oilseeds, provide information regarding the value of oilseeds, research and promote new uses for oilseeds, operate a council office, forward all moneys received to the State Treasurer for deposit in the oilseed fund, etc.

19 **SECTION 8. AMENDMENT.** Section 4-10.2-08 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-10.2-08. Assessments levied - Continuing appropriation.**

- 22 1. a. An assessment at the rate of three cents per hundredweight [45.36 kilograms]
23 ~~must be~~ is levied and imposed upon all ~~sunflower, safflower, rapeseed or~~

1 ~~canola, and crambe~~ oilseeds, other than flax, grown in the state or sold to a
2 first purchaser,~~and an~~. This assessment is due upon any identifiable lot or
3 quantity of oilseeds other than flax.

4 b. An assessment at the rate of two cents per bushel [35.24 liters] ~~must be~~ is
5 levied and imposed upon all flax grown in the state or sold to a first purchaser.
6 This assessment is due upon any identifiable lot or quantity of ~~sunflower,~~
7 ~~safflower, rapeseed or canola, crambe, or flax.~~ A

8 2. a. Before a first purchaser may sell, process, or ship any oilseeds, the first
9 purchaser shall obtain certification from the council. The ~~first purchaser of~~
10 ~~sunflower, safflower, rapeseed or canola, crambe, or flax shall file~~ certification
11 is available upon submission to the council of an application ~~with the council~~
12 ~~on forms prescribed and furnished by the council which must contain~~
13 containing the name under which the first purchaser is transacting business
14 within the state, the ~~place or~~ first purchaser's places of business, and the
15 location of loading and shipping places of ~~agents of the first purchaser,~~
16 purchaser's agents.

17 b. (1) If the first purchaser is a corporation, the application must include the
18 corporate name and the names and addresses of the principal officers
19 and the agents within the state.

20 (2) If the first purchaser is a partnership, the application must include the
21 names and addresses of the ~~several~~ persons constituting the ~~firm~~
22 partnership,~~if a corporation, the corporate name and the names and~~
23 ~~addresses of its principal officers and agents within the state, and, if,~~

24 (3) If the first purchaser is a limited liability company, the application must
25 include the name of the limited liability company ~~name~~ and the names
26 and addresses of its principal managers and agents within this state.

27 ~~The council shall issue a certificate to the first purchaser. A first~~
28 ~~purchaser may not sell, process, or ship any sunflower, safflower,~~
29 ~~rapeseed or canola, crambe, or flax until it has secured a certificate as~~
30 ~~required by this section.~~

- 1 c. The first purchaser shall notify the council whenever there is a change in the
2 information required by this subsection.
- 3 3. The first purchaser of ~~sunflower, safflower, rapeseed or canola, crambe, or flax~~
4 ~~shall collect the assessment imposed by this section by charging and collecting~~
5 any oilseeds shall charge and collect from the seller the assessment at the rate
6 specified in this section by deducting the assessment from the purchase price of all
7 ~~sunflower, safflower, rapeseed or canola, crambe, or flax~~ oilseeds subject to the
8 assessment and purchased by the first purchaser.
- 9 4. Every first purchaser shall keep as a part of its permanent records a record of all
10 purchases, sales, and shipments of raw ~~sunflower, safflower, rapeseed or canola,~~
11 ~~crambe, or flax, which~~ oilseeds. The records may be examined by the council ~~at~~
12 ~~all reasonable times~~ upon request. Every first purchaser shall file a quarterly
13 ~~report to~~ with the council stating. The report must include the quantity of
14 ~~sunflower, safflower, rapeseed or canola, crambe, or flax~~ oilseeds received, sold,
15 or shipped by it the first purchaser. The report must be ~~made~~ filed at the times and
16 in the manner prescribed by the council. The remittance of the assessment ~~as~~
17 ~~provided in~~ levied by this section must accompany the report.
- 18 5. All ~~moneys~~ assessments levied and collected under this chapter must be paid to
19 the council. The council shall forward all moneys received under this chapter to
20 the state treasurer for deposit in the ~~state treasury to the credit of a special~~
21 ~~revolving account or accounts designated as the~~ oilseed fund. All money in the
22 oilseed fund is appropriated on a continuing basis to the council to be used
23 exclusively to carry out ~~the intent and purposes of~~ this chapter. ~~Assessments~~
24 ~~collected from each crop must be used, for the purposes of this chapter, on each~~
25 ~~respective crop. However, for flax, emphasis should be given to utilize the~~
26 ~~assessment, except for that portion of the assessment necessary to administer the~~
27 ~~flax assessment, for nutritional and therapeutic research.~~ The council shall keep a
28 separate record of the assessments attributable to each of the oilseeds and shall
29 use those amounts to carry out this chapter with respect to each of the oilseeds.
- 30 6. Regular audits of the council's accounts must be conducted in accordance with
31 chapter 54-10 and submitted to the commissioner.

NOTE: Subsection 1. A number of the commodity groups reference the levying of an "assessment." Others, like wheat and barley, reference the levying of a "tax." It would be preferable to reconcile the terminology among the commodity chapters.

Subsection 1 also provides that the assessment is due upon any identifiable lot or quantity of oilseed. This provision is unnecessary when combined with the prior directive that the assessment be levied on all oilseeds.

Subsection 2 pertains to a certificate that must be obtained by a first purchaser before the first purchaser sells, processes, or ships any oilseeds. The rewrite clarifies that the first purchaser must notify the council whenever there is a change in the information required by the subsection. It is recommended that the content of this subsection be moved to a separate section, rather than maintained within the assessment section.

Subsection 4 provides that the required records may be examined by the council at "all reasonable times." This has been changed to "upon request" so that there is no contention regarding what constitutes a "reasonable time."

Subsection 5 provides that the assessments collected from the individual oilseeds must be used to further the interests of the respective crops. With respect to flax, it suggests that the expenditures should emphasize nutritional and therapeutic research. This limitation has been removed at the direction of representatives from the Oilseed Council.

Provisions regarding how the assessments are to be used do not fit well with provisions regarding the actual levying of the assessment and should be in a separate section. In fact, it is recommended that consideration be given to crafting a separate section setting forth the duties of the council. Some are found in current NDCC Section 4-10.1-07 and some in the statement of legislative policy.

Subsection 6 provides that regular audits must be conducted in accordance with NDCC Chapter 54-10. Because that chapter sets forth the state's audit requirements, it is recommended that this subsection be deleted.

1 **SECTION 9. AMENDMENT.** Section 4-10.2-09 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-10.2-09. Nonparticipating growers - Refunds.** ~~Any grower subject to the~~
4 ~~assessment provided in this chapter may, within~~

- 5 1. To receive a refund of any tax paid in accordance with section 4-10.2-08.2, a
6 grower shall submit to the council a written request for a refund application. The
7 grower shall submit the request no later than sixty days following such assessment
8 after the date of the tax payment or final settlement, make application by personal
9 letter to the council for a refund application blank. Upon the return of said blank,
10 properly executed by the grower, accompanied by a
11 2. The grower shall file the completed application, together with a record of the
12 assessment tax payment by the first purchaser, the grower must be refunded with

- 1 the council. The council then shall refund to the person the net amount of the
2 assessment tax collected.
- 3 3. ~~If no a grower does not submit to the council a request for a refund has been made~~
4 ~~application within the prescribed time period ~~prescribed above, then,~~ the grower is~~
5 ~~presumed to have agreed to such the assessment. ~~However, a grower, for any~~~~
6 ~~reason, having paid the assessment more than once on the same sunflower,~~
7 ~~safflower, rapeseed or canola, crambe, or flax, upon furnishing proof of this to the~~
8 ~~council, is entitled to a refund of the overpayment.~~
- 9 4. ~~The council, to inform the grower,~~ shall develop and disseminate information and
10 ~~instructions relating to the purpose of the sunflower, safflower, rapeseed or canola,~~
11 ~~crambe, and flax oilseeds assessment and the manner in which refunds may be~~
12 ~~claimed, and to this extent shall cooperate with governmental agencies, state and~~
13 ~~federal, and private businesses engaged in the purchase of sunflower, safflower,~~
14 ~~rapeseed or canola, crambe, and flax.~~

NOTE: Under current law, a grower has 60 days after final settlement within which to request a refund application and then an unlimited time within which to submit the application. If the intent was to limit the time period within which refunds could be requested, this section needs to be clarified.

Subsection 3 contains a reference to overpayments. Because the return of an overpayment is not the same as a request for a refund, it is suggested that this sentence be placed in its own section (See next section).

Subsection 4 sets forth the directive that the council disseminate information regarding the purpose of the assessment and the manner in which refunds may be obtained. This would be an appropriate addition to a "Duties" section. It also provides that the council shall "cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of sunflower, safflower, rapeseed or canola, crambe, and flax." Because it is not clear what is required by this verbiage, it is recommended that it be deleted.

15 **SECTION 10.** A new section to chapter 4-10.2 of the North Dakota Century Code is
16 created and enacted as follows:

17 **Oilseed assessment - Double payment - Refund.** If a grower documents to the
18 council that the grower has paid the assessment more than once on the same oilseeds, the
19 council shall refund the overpayment.

20 **SECTION 11. AMENDMENT.** Section 4-10.2-10 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **4-10.2-10. Referendum by growers.** ~~Whenever~~

- 1 1. a. When petitioned to do so by fifteen percent of the participating growers in an
2 industry, ~~with not more than fifty percent of the signatory parties from any one~~
3 ~~district, if applicable, as disclosed by the records of the council for the~~
4 ~~preceding year, petition the council~~; the council shall conduct a referendum
5 among the participating growers of the state in that industry to determine
6 ~~whether they wish the legislative assembly to raise or lower the amount by~~
7 ~~which the growers believe the assessment imposed by section 4-10.2-08~~
8 ~~should be raised or lowered for that industry. Such referendum must be~~
9 ~~conducted only among participating growers for such industry who have paid~~
10 ~~all assessments pursuant to this enactment for the preceding year, and the~~
11 ~~ballots must be prepared by the council and mailed~~
- 12 b. To be considered a valid petition, no more than fifty percent of the
13 ~~participating growers who signed the petition may reside in one district.~~
- 14 2. The council shall prepare the referendum ballot and mail it to each participating
15 grower at least thirty days ~~prior to~~ before the last date for filing ballots. ~~In addition,~~
16 ~~each~~ Each ballot must be accompanied by a notice to each participating grower:
- 17 1. ~~Of the date of the filing of the~~ include a statement indicating:
- 18 a. The date on which the petition by the growers for the referendum was filed
19 and the number of signatures contained ~~thereon~~; on the petition;
- 20 2. ~~Of the date and place where~~
- 21 b. The date, time, and location at which the council will open and tabulate the
22 ballots, ~~which date must be not less than five days after the last date for filing~~
23 ~~the ballots;~~
- 24 3. ~~Of the last date upon which ballots must be filed~~
- 25 c. The last date by which the ballots must be postmarked or filed with the
26 council, ~~or postmarked if delivered to the council by mail;~~ and
- 27 4. d. That any participating grower may attend the meeting of the council be
28 present at the time the ballots are opened and ~~the votes~~ tabulated.
- 29 3. The date selected by the council for the opening and tabulation of ballots must be
30 at least five days after the last date by which ballots must be postmarked or filed
31 with the council.

- 1 4. If a majority of the participating growers in an industry voting upon the question are
2 in favor of the proposed change, the council shall ~~certify the result to the~~
3 ~~commissioner with the request that the commissioner prepare~~ submit a bill to
4 ~~submit to the next legislative session to modify~~ amend this chapter ~~in conformity~~
5 ~~therewith. The results of the referendum are advisory only and the legislative~~
6 ~~assembly is not obligated to adopt legislation enacting the proposals contained in~~
7 ~~any referendum.~~
8 5. For purposes of this section, a "participating grower" is a person who has paid all
9 assessments on oilseed production levied by this chapter and has not filed a claim
10 for a refund under section 4-10.2-09 during the preceding twelve months.

NOTE: Current law requires that the referendum ask whether the growers wish the Legislative Assembly to raise or lower the assessment. It appears that the intent was to ask growers whether or not they wish to have the assessment raised or lowered by a stated amount. The rewrite makes this clarification. The rewrite does not address whether the stated amount could be \$0.00.

Under current law, if a majority of the growers favor the proposed change, the council is to certify the result to the commissioner and request that the commissioner submit a bill to the next Legislative Assembly. This in essence allows the commissioner veto power in that he can choose to reject the request for a bill. Representatives of the Oilseed Council suggested that it should be their responsibility to introduce a bill. The rewrite reflects this desire.

11 **SECTION 12. AMENDMENT.** Section 4-10.2-11 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **4-10.2-11. Penalty.**

- 14 1. Any person who violates ~~any provision of~~ this chapter is guilty of a class B
15 misdemeanor.
16 2. Any assessment levied by this chapter and not paid by the date that the
17 assessment becomes due is delinquent and the council may levy a penalty ~~on~~
18 ~~such delinquent payments of~~ equal to ten percent of the ~~assessment~~ amount due,
19 plus interest at the rate of six percent per annum from the due date. The collection
20 of any assessment or penalty must be made in an appropriate court within this
21 state.

NOTE: This section authorizes the council to levy a penalty. It does not require that the council do so. However, if the council determines that a penalty is appropriate, it has no latitude in the amount. The penalty is ten percent. If the penalty is to be discretionary, should the amount be discretionary as well?

- 1 **SECTION 13. REPEAL.** Sections 4-10.2-01 and 4-10.2-13 of the North Dakota
- 2 Century Code are repealed.

NOTE: Because NDCC Section 4-10.2-01 sets forth legislative policy, it is recommended that the section be repealed.

NDCC Section 4-10.2-13 provides that all the records of the council are public information and must be available for inspection. Because Chapter 44-04 addresses public records, and because its provisions are applicable to the Oilseed Council, there is no need to reiterate the open record requirements in this chapter.