

March 2008

Introduced by

1 A BILL for an Act to create and enact six new sections to chapter 4-10.3 of the North Dakota
2 Century Code, relating to the North Dakota dry bean council; to amend and reenact sections
3 4-10.3-02, 4-10.3-03, 4-10.3-05, 4-10.3-06, 4-10.3-07, 4-10.3-08, 4-10.3-09, 4-10.3-10, and
4 4-10.3-11 of the North Dakota Century Code, relating to the North Dakota dry bean council; to
5 repeal sections 4-10.3-01, 4-10.3-04, and 4-10.3-13 of the North Dakota Century Code, relating
6 to the purpose of the chapter, the records of the council, and the establishment of dry bean
7 districts; to provide a penalty; and to provide a continuing appropriation.

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

9 **SECTION 1. AMENDMENT.** Section 4-10.3-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **4-10.3-02. Definitions.** Whenever 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 dry bean council.
- 15 3. "Designated handler" means any person who initially places dry beans, ~~whether as~~
16 ~~an owner, agent, or otherwise,~~ into the channels of trade and commerce; or any
17 person who is engaged in the processing of beans into food for human
18 consumption ~~in any form.~~ A. The term does not include a grower selling the
19 grower's unharvested dry beans; or delivering the grower's dry beans from the
20 farm on which they are produced to storage facilities, packing sheds, or processing
21 plants within the state is not considered to be a designated handler. For the
22 purposes of assessments and reporting, "designated handler" includes a grower
23 selling the grower's unharvested dry beans out of state, or delivering the grower's

1 ~~dry beans from the farm where they were produced to any storage facilities,~~
2 ~~packing sheds, or processing plants located outside the state.~~

NOTE: Because the last sentence defines a grower for purposes of assessments and reporting, that provision should be included in the assessment and reporting section.

- 3 4. ~~"Dry beans" means any and all varieties of dry beans, excluding soybeans,~~
4 ~~harvested within the state. The term does not include soybeans.~~
- 5 5. ~~"Grower" means any person who plants, raises, and harvests dry beans from more~~
6 ~~than ten acres [4.05 hectares].~~

NOTE: In similar situations, the interim committee 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.

- 7 6. ~~"Hundredweight" means a one hundred pound [45.36 kilogram] unit or a~~
8 ~~combination of packages making a one hundred pound [45.36 kilogram] unit or any~~
9 ~~shipment of dry beans based on invoices or bills of lading records.~~

NOTE: In similar situations, the interim committee opted to remove the definition of a hundredweight. The term was deemed to be self-explanatory.

- 10 7. ~~"Participating grower" means a grower who has not gained exemption from the~~
11 ~~payment of taxes on dry bean production under this chapter for a particular year, or~~
12 ~~a grower who is not exempt from the payment of taxes on dry bean production~~
13 ~~under this chapter.~~
- 14 8. ~~"Person" means an individual, partnership, corporation, limited liability company,~~
15 ~~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.

- 16 9. ~~"Processor" means a person who is actively engaged in the processing of dry~~
17 ~~beans for human consumption.~~

NOTE: The definition of a processor was removed because the word is not used in this chapter.

18 **SECTION 2.** A new section to chapter 4-10.3 of the North Dakota Century Code is
19 created and enacted as follows:

- 1 **Dry bean districts - Establishment.** The state consists of the following six dry bean
2 districts:
- 3 1. Cavalier, Pembina, and Towner Counties.
 - 4 2. Ramsey and Walsh Counties.
 - 5 3. Grand Forks and Nelson Counties.
 - 6 4. Griggs, Steele, and Traill Counties.
 - 7 5. Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland,
8 Sargent, and Stutsman Counties.
 - 9 6. Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Eddy,
10 Emmons, Foster, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean,
11 Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux,
12 Slope, Stark, Ward, Wells, and Williams Counties.

NOTE: Current law indicates that the districts were created to contain, as far as practicable, nearly equal dry bean acreages. The provision has been removed because it is legislative history. It explains why a statute was created and therefore does not need to be included in the code.

13 **SECTION 3. AMENDMENT.** Section 4-10.3-03 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **4-10.3-03. North Dakota dry bean council - Membership - Election - Term.**

- 16 1. The North Dakota dry bean council is composed of one participating grower
17 elected from each of the districts established in section ~~4-10.3-04.~~ ~~The chairman~~
18 ~~of the council must be a member of the council elected by a majority vote of the~~
19 ~~council. The agriculture 2 of this Act and the commissioner, who is an ex officio~~
20 ~~member of the council.~~
- 21 2. ~~Every elected~~ Each member of the council member except the commissioner must
22 be a United States citizen of the state and a bona fide resident of and a
23 participating grower in the district that the member represents.
- 24 3. The term of each elected member is three years and begins on April first ~~of the~~
25 year of following the member's election, except that initially one member must be
26 elected for a three year term; two members must be elected for two year terms;
27 ~~and two members must be elected for one year terms as designated by the~~
28 ~~commissioner. The terms must be staggered so that no more than two expire~~
29 each year.

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

5 5. ~~The commissioner, or a county agent designated by the commissioner, in~~
6 ~~cooperation with the cooperative extension service, shall conduct all elections~~
7 ~~under this section in each district in the manner the commissioner deems fair and~~
8 ~~reasonable. Elections must be held before April first of each year.~~

9 6. ~~No~~ An elected member of the council is not eligible to serve more than three
10 consecutive three-year terms.

NOTE: The election language currently in subsection 5 was moved to a separate section.

11 **SECTION 4.** A new section to chapter 4-10.3 of the North Dakota Century Code is
12 created and enacted as follows:

13 **Election of council members.** The commissioner or a county agent designated by the
14 commissioner, in cooperation with the cooperative extension service, shall conduct all elections
15 under this section in each district in the manner the commissioner deems fair and reasonable.
16 Elections must be held before April first of each year.

NOTE: NDCC Section 4-10.3-03(5). This is not new language. It was merely removed from Section 4-10.3-03 and placed in a separate section. Because the North Dakota Dry Bean 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 that process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated to one individual, i.e., the commissioner.

17 **SECTION 5. AMENDMENT.** Section 4-10.3-05 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 ~~**4-10.3-05. Meetings - Quorum - Compensation and expenses of council Election**~~
20 ~~**of chairman.** A majority of the voting members of the council constitutes a quorum for the~~
21 ~~transaction of all business in carrying out the duties of the council.~~

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.

22 1. Annually, the council shall elect one member to serve as the chairman.

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

NOTE: Because current law does not indicate the frequency with which a chairmanship is determined, the rewrite provides that this determination be made annually. Is this accurate? The language governing the compensation of council members was placed in a separate section.

11 **SECTION 6.** A new section to chapter 4-10.3 of the North Dakota Century Code is
12 created and enacted as follows:

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

19 **SECTION 7. AMENDMENT.** Section 4-10.3-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **4-10.3-06. Expenditure of funds.** ~~Every~~ The council shall approve each expenditure
22 of funds made pursuant to this chapter ~~must be approved by the council or its designated~~
23 ~~agent, submitted upon~~ and shall submit an itemized voucher to the office of ~~the budget for~~
24 ~~approval, and paid by warrant check issued by the office of management and budget for~~
25 payment.

26 **SECTION 8. AMENDMENT.** Section 4-10.3-07 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **4-10.3-07. Council powers and duties - Powers.** ~~In the administration of this~~
29 ~~chapter, the council has the power and duty to:~~

- 1 1. ~~Contract and cooperate~~ The council may:
2 a. ~~Contract~~ with any person ~~or with any governmental department or agency~~ for
3 any purpose related to this chapter, including research, education, publicity,
4 promotion, and transportation ~~for the purposes of this chapter.~~

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

- 5 2. ~~b.~~ Expend the funds ~~money~~ collected pursuant to this chapter ~~and appropriated~~
6 for its administration.
7 3. ~~c.~~ Appoint, employ ~~Employ, bond, discharge, fix compensation for, and~~
8 prescribe the duties of such administrative, clerical, technical, and other and
9 compensate necessary personnel as it may deem necessary.
10 4. ~~d.~~ Accept gifts, grants, and donations of funds ~~money, property, and~~ services, ~~or~~
11 other assistance from public or private sources for the purpose of furthering
12 the objectives of the council to carry out this chapter.
13 5. ~~Investigate and prosecute in the name of the state any action or suit to enforce the~~
14 ~~collection or ensure payment of the taxes authorized by this chapter, and to sue~~
15 e. Sue and be sued in the name of the council.
16 f. Do all things necessary and proper to enforce and administer this chapter.
17 2. Nothing in this section authorizes the council to engage in competitive business
18 enterprises.

NOTE: Although the caption of this section currently references both powers and duties, the items listed are not mandatory, but simply grants of authority, i.e., "powers."

It is recommended that NDCC Section 4-10.3-01 be reviewed to determine if any of the references highlighted below should be included in either a "powers" or a "duties" section.

4-10.3-01. Legislative policy. The production, development, marketing, and promotion of dry beans in this state is important to the general welfare of the people of North Dakota. It is in the public interest that better methods of production, processing, and marketing of dry beans and that advertising and promoting of dry beans grown in this state be fostered, encouraged, developed, and improved so the dry bean industry within the state, the people directly or indirectly employed by said industry and the people of North Dakota should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota dry bean council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. This chapter does not abrogate or limit in any way the rights, powers, duties, and functions of the office of the agriculture commissioner or any other agency of the state, but is supplementary thereto and in aid and cooperation therewith. This chapter does not authorize the North Dakota dry bean

council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote North Dakota-grown dry beans.

Subsection 2 prohibits the council from engaging in competitive business enterprises. This language is currently found in NDCC Section 4-10.3-01. When the committee examined similar language pertaining to other commodity groups, it determined that the language was nebulous and should be reworked.

1 **SECTION 9.** A new section to chapter 4-10.3 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 dry bean assessment and manner in which refunds
5 may be claimed.

NOTE: NDCC Section 4-30.3-09.

6 **SECTION 10.** A new section to chapter 4-10.3 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Designated handler - Certification.**

- 9 1. Before a designated handler may sell, process, or ship dry beans, the designated
10 handler shall obtain certification from the council. The certification is available
11 upon submission to the council of an application containing the name under which
12 the designated handler is transacting business within the state, the designated
13 handler's place of business, and the location of loading and shipping places of the
14 designated handler's agents.
- 15 2. a. If the designated handler is a corporation, the application must include the
16 corporate name and the names and addresses of the principal officers and
17 agents within the state.
- 18 b. If the designated handler is a partnership, the application must include the
19 names and addresses of the persons constituting the partnership.
- 20 c. If the designated handler is a limited liability company, the application must
21 include the name of the limited liability company and the names and
22 addresses of its principal managers and agents within this state.
- 23 3. The designated handler shall notify the council whenever there is a change of
24 information required by this section.

NOTE: NDCC Section 4-10.3-08. 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 subsection 3 of the rewrite, language was added directing a designated handler to notify the council whenever there is a change in the information required for the certification.

1 **SECTION 11. AMENDMENT.** Section 4-10.3-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-10.3-08. Tax levies Assessments - Collection - Reports - Continuing**
4 **appropriation.**

- 5 1. An assessment at the rate of ten cents per hundredweight [45.36 kilograms] ~~must~~
6 ~~be levied and~~ is imposed upon all dry beans grown in this state, delivered into this
7 state, or sold to a designated handler. ~~This assessment is due upon any~~
8 ~~identifiable lot or quantity of dry beans.~~
- 9 2. ~~A designated handler of dry beans shall file an application with the council on~~
10 ~~forms prescribed and furnished by the council which must contain the name under~~
11 ~~which the handler is transacting business within the state, the place or places of~~
12 ~~business, the location of loading and shipping places of agents of the first~~
13 ~~designated handler, the names and addresses of the several persons constituting~~
14 ~~the firm partnership, if a corporation, the corporate name and the names and~~
15 ~~addresses of its principal officers and agents within the state, and, if a limited~~
16 ~~liability company, the limited liability company name and the names and addresses~~
17 ~~of its principal managers and agents within this state.~~
- 18 3. ~~The council shall issue a certificate to the designated handler. A designated~~
19 ~~handler may not sell, process, or ship any dry beans until it has furnished a~~
20 ~~certificate as required by this section.~~
- 21 4. ~~The first designated handler in North Dakota of dry beans shall collect the~~
22 ~~assessment imposed by this section by charging and collecting from the seller the~~
23 ~~assessment at the rate of ten cents per hundredweight [45.36 kilograms] by~~
24 ~~deducting the assessment from the purchase total price of all the dry beans~~
25 ~~subject to the assessment and being purchased by the designated handler.~~

NOTE: The designated handler is defined as the person who initially places dry beans into the channels of trade. Therefore, the word "first" is removed.

1 3. If a grower sells the grower's unharvested dry beans to a purchaser located
2 outside of this state or delivers the grower's dry beans from the farm where they
3 were produced to any storage facility, packing shed, or processing plant located
4 outside of this state, the grower shall:

5 a. Forward the assessment required by subsection 1 to the council, at the time
6 and in the manner prescribed by the council; and

7 b. Abide by all record retention and reporting requirements established for
8 designated handlers under this section.

9 5- 4. ~~Every designated handler shall keep as a part of its permanent records a record of~~
10 documentation of all purchases, sales, and shipments of raw dry beans, which,
11 The records may be examined by the council at all reasonable times. Every upon
12 request.

NOTE: Is it necessary to keep these records forever?

13 5. At the time and in the manner prescribed by the council, each designated handler
14 shall file a report to the council stating the quantity, in individual and total amounts,
15 the quantity of dry beans that the handler received, sold, or shipped by it. The
16 report must state from whom the source of each individual amount was received.
17 ~~The report must be made at the times and in the manner prescribed by the council.~~
18 ~~The remittance of the assessment as provided in this section must accompany the~~
19 ~~report. All.~~

20 6. Each designated handler shall forward to the council all assessments collected by
21 the handler, at the time and in the manner prescribed by the council.

22 7. The council shall forward all moneys levied and collected under this chapter must
23 ~~be paid to the council~~ received under this chapter to the state treasurer for deposit
24 ~~in the state treasury to the credit of a special revolving account designated the "dry~~
25 bean fund". All money in the dry bean fund is appropriated on a continuing basis
26 to the council to be used exclusively to carry out the intent and purposes of this
27 ~~chapter. Regular audits of the council's accounts must be conducted in~~
28 ~~accordance with chapter 54-10 and submitted to the agriculture 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.

1 **SECTION 12. AMENDMENT.** Section 4-10.3-09 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **4-10.3-09. Nonparticipating growers - Refunds.** ~~Any~~

- 4 1. ~~To receive a refund of any assessment paid in accordance with this chapter, a~~
5 grower ~~subject to the assessment provided in this chapter may, within sixty days~~
6 ~~following such assessment or final settlement, make application by personal letter~~
7 ~~to the dry bean~~ shall submit to the council a written request for a refund application
8 ~~blank. Upon the return of the blank, properly executed by the~~ no later than sixty
9 days after the date of the assessment or final settlement.
- 10 2. ~~The grower, accompanied by~~ must complete the refund application and return the
11 application to the council, with a record of the assessment by the designated
12 handler, ~~the grower must be refunded~~ no later than ninety days after the date of
13 the assessment or final settlement.
- 14 3. The council shall then refund the net amount of the assessment that had been
15 collected.
- 16 4. ~~If neither the request for a refund has been made application or the completed~~
17 application is not submitted to the council within the ~~period~~ period prescribed ~~above, then~~
18 time period, the grower is presumed to have agreed to ~~such~~ the assessment.
19 ~~However, a grower, for any reason, having paid the tax more than once on the~~
20 ~~same dry beans, upon furnishing proof of this to the council, is entitled to a refund~~
21 ~~of the overpayment. The council, to inform the grower, shall develop and~~
22 ~~disseminate information and instructions relating to the purpose of the dry bean tax~~
23 ~~and manner in which refunds may be claimed, and to this extent shall cooperate~~
24 ~~with governmental agencies, state and federal, and private businesses engaged in~~
25 ~~the purchase of dry beans.~~

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

The provision directing the council to develop and disseminate information and instructions relating to the purpose of the dry bean tax and manner in which refunds may be claimed has been placed in a separate section. The provision directing the council to cooperate with governmental agencies, state and federal, and with private businesses engaged in the purchase of dry beans has been removed. This follows the committee's directive regarding similar verbiage in other commodity chapters.

1 **SECTION 13.** A new section to chapter 4-10.3 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Reimbursement for excess payments.** If a grower documents to the council that the
4 grower has paid the assessment more than once on the same dry beans, the council shall
5 reimburse the grower for the excess payment.

NOTE: NDCC Section 4-10.3-09.

6 **SECTION 14. AMENDMENT.** Section 4-10.3-10 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **4-10.3-10. Referendum by growers.** ~~Whenever~~

- 9 1. a. When petitioned to do so by fifteen percent of the participating growers, with
10 not more than fifty percent of the signatory parties from any one district, as
11 disclosed by the records of the council for the preceding year, petition the
12 council, the council shall conduct a referendum among the participating
13 growers of the state to determine whether they wish the legislative assembly
14 to raise or lower the tax imposed by section 4-10.3-08. Such referendum
15 must be conducted only among participating growers who have paid all taxes
16 assessed pursuant to this enactment for the preceding year, and the amount
17 by which the assessment imposed by this chapter should be raised or
18 lowered.
- 19 b. To be considered a valid petition, no more than fifty percent of the
20 participating growers who signed the petition may reside in one district.
- 21 2. The council shall prepare the ballots must be prepared by the council and mailed
22 and mail the ballots to each participating grower at least thirty days prior to before
23 the last date for filing ballots. In addition, each
- 24 3. Each ballot must be accompanied by a notice to each participating grower include
25 a statement indicating:
- 26 4. a. Of the The date of the filing of on which the petition by the growers for the
27 referendum was filed and the number of signatures contained thereon. on the
28 petition;

- 1 2. ~~b.~~ ~~Of the~~ The date and place where, time, and location at which the council will
2 open and tabulate the ballots, ~~which date must be not less than five days after~~
3 ~~the last date for filing the ballots.;~~
4 3. ~~Of the last date upon which ballots must be~~
5 c. The last date by which the ballots must be postmarked or filed with the
6 council, ~~or postmarked if delivered to the council by mail.;~~ and
7 4. d. That any participating grower may ~~attend the meeting of the council be~~
8 present at the time the ballots are opened and ~~the votes~~ tabulated.
9 4. The date selected by the council for the opening and tabulation of ballots must be
10 at least five days after the date by which ballots must be postmarked or filed with
11 the council.
12 5. If a majority of the participating growers voting upon the question are in favor of the
13 proposed change, the council shall ~~certify the result to the commissioner with the~~
14 ~~request that the commissioner prepare a bill to~~ submit a bill to the next legislative
15 session to ~~modify~~ amend this chapter in conformity therewith. ~~The results of the~~
16 ~~referendum are advisory only and the legislative assembly is not obligated to adopt~~
17 ~~legislation enacting the proposals contained in any referendum.~~

18 **SECTION 15. AMENDMENT.** Section 4-10.3-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **4-10.3-11. Penalties.**

- 21 1. Any person who violates the provisions of this chapter is guilty of a class B
22 misdemeanor.
23 2. Any assessment levied by this chapter and unpaid by the date that the assessment
24 becomes due is delinquent and the council may levy a penalty ~~against the~~
25 ~~designated handler on such delinquent payments of~~ equal to ten percent of the
26 assessment amount due, plus interest at the rate of six percent per annum from
27 the due date. The collection of any assessment or penalty must be made in an
28 appropriate court within this state.

29 **SECTION 16. REPEAL.** Sections 4-10.3-01, 4-10.3-04, and 4-10.3-13 of the North
30 Dakota Century Code are repealed.

NOTE: NDCC Section 4-10.3-01 explains the purpose behind this chapter. It is not statutory in nature and therefore it should be repealed. See note following Section 8.

- NDCC Section 4-10.3-04 pertains to the establishment of the dry bean districts. Because the content of this section needed to be moved, the section was repealed and the content was placed into a new section.
- NDCC Section 4-10.3-13 provides that all records of the council are public information and must be available for inspection during regular business hours. Chapter 44-04 addresses public records. Its provisions are applicable to the North Dakota Dry Bean Council and therefore do not need to be reiterated in this chapter.