

AGRICULTURE

CHAPTER 86

HOUSE BILL NO. 1087

(W. Erickson, Hickle, Hilleboe, Rivinius, Rundle)
(From Legislative Council Study)

NORTHWEST DISTRICT FAIR

AN ACT to amend and reenact sections 4-02-17 and 4-02-18 of the North Dakota Century Code; and to repeal section 4-02-21 of the North Dakota Century Code, relating to the Missouri Slope agriculture and fair association.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-02-17 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-17. DISTRICT FAIR - LOCATION.) A district fair may be held or arranged or contracted for by the northwest agricultural livestock and fair association at the city of Minot. The fair shall be subject to the conditions prescribed in this chapter. Location of the district fair shall be permanent.

SECTION 2. AMENDMENT.) Section 4-02-18 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-02-18. PREMISES OF DISTRICT FAIR - CUSTODY AND CONTROL.) The care, custody, management, and control of the premises upon which the district fair is located shall be vested in the northwest agricultural livestock and fair association of Minot and the general office shall be located upon the fairgrounds or at some suitable place in the city of Minot. The association shall keep its records in its office. Nothing in this section shall prevent the northwest agricultural livestock and fair association from making any necessary arrangements with the state fair association of the fairgrounds located at Minot for the conducting of a state fair by the state fair association.

SECTION 3. REPEAL.) Section 4-02-21 of the 1969 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 4, 1971

CHAPTER 87

HOUSE BILL NO. 1343
(Rundle, Rivinius, Gackle, Solberg)

STATISTICS ON
COOPERATIVE ENTERPRISES

AN ACT to repeal section 4-06-11 of the North Dakota Century Code, relating to the agriculture commissioner's duties concerning cooperatives.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. REPEAL.) Section 4-06-11 of the 1969 Supplement to the North Dakota Century Code, is hereby repealed.

Approved March 27, 1971

CHAPTER 88

SENATE BILL NO. 2110
(Pyle)

TRANSFER OF SEED DEPARTMENT

AN ACT to amend and reenact sections 4-09-02, 4-09-03, 4-09-07, and 4-09-20 of the North Dakota Century Code, relating to the transfer of the state seed department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-09-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-02. SEED DEPARTMENT - OFFICES AND LABORATORIES.) There shall be maintained a department of the state to be known as the "seed department of the state of North Dakota". Its headquarters, main offices, and other principal operating facilities and equipment shall be located at the North Dakota state university of agriculture and applied science. The state seed commissioner, with the approval of the commissioner of agriculture, may locate and establish branch offices and laboratories at such other locations in this state as in his judgment are necessary to carry out properly and effectively the provisions of this or other chapters in which he is charged with duties and responsibilities.

SECTION 2. AMENDMENT.) Section 4-09-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-03. STATE SEED COMMISSIONER - APPOINTMENT BY SPECIAL COMMITTEE - DUTIES - EMPLOYEES - SALARY.) The seed department shall be managed and operated directly by the state seed commissioner. A qualified state seed commissioner shall be appointed and his salary shall be fixed by a special committee consisting of the president of the crop improvement association, the president of the certified potato growers association, the director of extension and the president of the seed trade association, and the commissioner of agriculture, who shall serve as chairman, within legislative appropriations therefor, and he may be removed by the special committee for cause. The state seed commissioner shall designate the necessary divisions of work, duties, and operations for the department, as shall be provided by law or by regulations made in accordance with law, appoint and designate deputies to assist in handling

and directing the work and affairs of the respective divisions and in the performance of other duties assigned to him by law, determine, select, and appoint analysts, inspectors, and other necessary aides, employees, and agents, and fix their salaries within the limits of legislative appropriations. All appointees shall be directly subject to the direction and supervision of the state seed commissioner.

SECTION 3. AMENDMENT.) Section 4-09-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-07. OFFICIAL LABORATORIES - LOCATION - CERTIFICATES AND REPORTS - PUBLICATION.) The state seed commissioner, subject to the approval and supervision of the committee described in section 4-09-03, shall provide and maintain under his direction necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to effect such other results and work as may be necessary to carry out the provisions of this chapter. For these purposes, he may utilize such premises, space, and equipment at the North Dakota state university of agriculture and applied science as may be assigned to him by the state board of higher education. The state seed commissioner, subject to the approval of the state board of higher education, shall permit the facilities and services of the official laboratories to be used by such university at convenient times. When a report or certificate relating to the findings and determinations made in a laboratory is issued and signed by the state seed commissioner or a duly authorized agent, it shall be accepted as prima facie evidence of the statements therein contained, but the state seed commissioner or his analysts shall be subject to court order for a review of findings as set forth by such certificates or reports. The state seed commissioner may publish reports or explanatory material concerning seed or inspections, tests, analyses, or other determinations made by him and may enlarge the same with material setting forth the value or condition of the seed stocks which are produced in this state or in which North Dakota persons are interested. He also may publish lists of registered or certified seed.

SECTION 4. AMENDMENT.) Section 4-09-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-20. FEES AND COLLECTIONS - DISPOSITION.) All moneys arising from the collection of fees and other charges under the provisions of this chapter shall be deposited by the state seed commissioner with the state treasurer and credited to the seed department revolving fund, and shall be disbursed, within the limits of legislative appropriations therefrom, upon vouchers signed by the state seed commissioner, with the approval of the commissioner of agriculture and warrant-checks prepared by the department of accounts and purchases, after approval of such expenditures by the state auditing board.

Approved March 19, 1971

CHAPTER 89

HOUSE BILL NO. 1075
(Jenkins, Metzger, Olienyk, Sandness, Solberg)
(Legislative Council Study)

LABELING HERMETICALLY
SEALED SEED CONTAINERS

AN ACT to amend and reenact sections 4-09-10, 4-09-11, and 4-09-14 of the North Dakota Century Code, relating to the labeling of hermetically sealed seed containers, and to the time limit within which such seed containers must be retested.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-09-10 of the North Dakota Century Code is hereby amended and reenacted by creating a new subsection thereto to read as follows:

That the seed container itself is a hermetically sealed container. For the purposes of this subsection, the words "hermetically sealed container" shall have the meaning ascribed to them by regulation promulgated by the state seed commissioner.

SECTION 2. AMENDMENT.) Section 4-09-11 of the North Dakota Century Code is hereby amended and reenacted by creating a new subsection thereto to read as follows:

That the seed container itself is a hermetically sealed container. For the purposes of this subsection, the words "hermetically sealed container" shall have the meaning ascribed to them by regulation promulgated by the state seed commissioner.

SECTION 3. AMENDMENT.) Section 4-09-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-09-14. PROHIBITIONS.)

1. It shall be unlawful for any person to sell, offer for sale, expose for sale, transport for sale, or hold or store with the intent to sell, any agricultural or vegetable seed within this state if:

- a. The test to determine the percentage of germination required under sections 4-09-10 and 4-09-11 shall not have been completed within a nine-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation, provided that seeds contained in a hermetically sealed container, as defined by regulation issued by the seed commissioner, may be sold, transported for sale, or held for sale unless the test provided in this subdivision shall not have been completed within a thirty-six-month period, exclusive of the calendar month in which the test was completed, immediately prior to the sale, offering for sale, or transportation for sale;
- b. Such seed is not labeled in accordance with the provisions of this chapter or bears false or misleading labeling;
- c. There has been false or misleading advertising in connection with such seed;
- d. Such seed contains prohibited noxious weed seeds;
- e. Such seed is not labeled to show the rate of occurrence of restricted noxious weed seeds, as required under sections 4-09-10 and 4-09-11; or
- f. Such seed is designated, offered, represented, or advertised under any name or identification other than that by which it was known originally.

Any person, under rules and regulations to be made therefor by the commissioner, may submit to the commissioner a sample of any seed which he claims to be a new variety, distinct from any commonly known variety of such seed, together with a proposed, distinctive name therefor. The commissioner, within one year, shall make such tests as he shall consider necessary, and if he finds as a result of such tests that such seed or plant is of a new variety, distinct from any variety of such seed known theretofore and that the name proposed therefor will properly distinguish said seed from any and all other varieties thereof, he shall issue to the person applying therefor a permit to designate such seed by said name. The purchaser, vendor, or any person receiving any seed shipped into this state from without the state, shall have the same labeled in accordance with and in conformity to the requirements of this chapter. Certain standardized grades and labeling of seed in use elsewhere may be permitted by the commissioner in connection with shipments of seed into this state from

points outside thereof in lieu of the labeling provided for in this chapter.

2. Further, it shall be unlawful for any person in this state to:
 - a. Detach, alter, deface, or destroy any label provided for in this chapter or to alter or substitute seed in any manner with the intent to defeat the purpose of this chapter;
 - b. Disseminate any false or misleading advertisement concerning agriculture or vegetable seed in any manner or by any means;
 - c. Hinder or obstruct in any way any authorized person in the performance of his duties under this chapter;
 - d. Fail to comply with a "stop-sale" order;
 - e. Use on seed labels or tags, or to use or attach to literature, or to state in any manner or form of wording designed as a "disclaimer" or "non-warranty" clause with the intent to disclaim responsibility of the vendor of the seed for the data on the label required by law;
 - f. Use the words "type" or "trace" on any labeling in connection with the name and description of any agricultural and vegetable seed;
 - g. Move or otherwise handle or dispose of any lot of seed held under a "stop-sale" order, except with the written permission of the commissioner or his agent, and only for the purpose specified in such written permission; or
 - h. Use the name of the state seed department or the name of the official laboratory for advertising purposes in connection with seed analyzed or tested by the department or official laboratory, except in the case of registered or certified seed.

Approved February 20, 1971

CHAPTER 90

HOUSE BILL NO. 1088
(W. Erickson, Hickle, Hilleboe, Rivinius, Rundle)
(From Legislative Council Study)

POTATO COUNCIL MEMBERSHIP

AN ACT to amend and reenact section 4-10.1-04 of the North Dakota Century Code, relating to the composition of the state potato council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-10.1-04 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-10.1-04, NORTH DAKOTA STATE POTATO COUNCIL - MEMBERSHIP - ELECTION - TERM.) There is hereby established a North Dakota state potato council. The council shall be composed of the commissioner of agriculture or his designated representative, who shall be chairman of the council, and one participating grower elected from each of the districts hereinafter established. Every elected council member shall be a citizen of the state and a bona fide resident of and participating grower in the district he represents. The term of each elected member shall be three years and shall begin on July first of the year of election, except that initially one member shall be elected for a three-year term; two members shall be elected for two-year terms; and two members shall be elected for one-year terms as designated by the commissioner. If at any time during a member's term he shall cease to possess any of the qualifications provided for in this chapter, his office shall be deemed vacant and the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner shall conduct all elections under this section in each district in such a manner as he, in his discretion, deems fair and reasonable. All such elections shall be conducted in the month of June. No elected member of the council shall be eligible to serve more than two consecutive three-year terms.

Approved February 26, 1971

CHAPTER 91

HOUSE BILL NO. 1089
(W. Erickson, Hickle, Hilleboe, Rivinius, Rundle)
(From Legislative Council Study)

POULTRY IMPROVEMENT BOARD

AN ACT to amend and reenact sections 4-13-03, 4-13-04, 4-13-05, 4-13-06, 4-13-07, 4-13-10, 4-13-12, and 4-13-14 of the North Dakota Century Code, and to repeal sections 4-13-01, 4-13-02, 4-13-11, and 4-13-13 of the North Dakota Century Code, relating to the appointment, qualifications, and compensation of members of the poultry improvement board, providing for a penalty and for an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-13-03 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-03. NORTH DAKOTA POULTRY IMPROVEMENT BOARD -
PURPOSE.) The North Dakota poultry improvement board shall have for its purposes the following:

1. To improve poultry breeding and to cooperate with the North Dakota livestock sanitary board in controlling and eradicating communicable diseases of poultry.
2. To act as the official state agency for North Dakota in cooperation with the bureau of animal industry, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.
3. To act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products, and to require identification as to grade of poultry and poultry products offered for sale at the retail level, and to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.
4. To promote generally the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within this state through such means

and in such manner as may be deemed by the board conducive to such improvement, and to effectuate these purposes the provisions relating to the poultry improvement board shall be construed liberally.

SECTION 2. AMENDMENT.) Section 4-13-04 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-04. IMPROVEMENT BOARD - HOW CONSTITUTED - TERMS.) The North Dakota poultry improvement board shall consist of the commissioner of agriculture, who shall serve as chairman, the executive officer of the livestock sanitary board, and the chairman of the animal science department of North Dakota state university, all as ex officio members, and three members to be appointed by the commissioner of agriculture in the manner set forth in section 4-13-05.

SECTION 3. AMENDMENT.) Section 4-13-05 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-05. MEMBERS OF BOARD - QUALIFICATIONS - APPOINTMENT - TERM - VACANCIES.) Not later than July 10, 1971, the North Dakota hatchery and poultry breeders' association, the North Dakota egg producers' association, and the North Dakota turkey federation, shall each submit to the commissioner of agriculture a list of three nominees for appointment to the North Dakota poultry improvement board. Each such nominee shall be associated with either the hatchery industry, egg production or turkey production, and shall be nominated by his respective association. All of the nominees shall be qualified electors of the state of North Dakota. Not to exceed five days after the receipt of the lists of nominees, the commissioner of agriculture shall appoint from such lists, three members to the board, consisting of one member from each list. One of such members shall be appointed for a term to expire July 1, 1972, one for a term to expire July 1, 1974, and one for a term to expire July 1, 1976, and such members shall serve until such dates, respectively, and until their successors are appointed and qualified. On or before July first in each year when a term is to expire, the commissioner of agriculture shall appoint one member for a five-year term, who shall be appointed from a list of three nominees selected and submitted to him in the manner above set forth, such nominees to be named from the classification represented by the member whose term expires. Vacancies arising by reason of the death, resignation, removal, or disqualification of a member of the board shall be filled in the same manner as to nomination and appointment, and members appointed to fill vacancies shall serve for the unexpired portion of the term in which the vacancy has arisen.

SECTION 4. AMENDMENT.) Section 4-13-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-06. BOARD - CHAIRMAN - MEETINGS - QUORUM - REGULATIONS.) The board shall elect one of its members as vice chairman of the board to act in the absence of the chairman. The vice chairman shall serve for the period of time determined by the board. The board shall hold its meetings at such times and places within the state as it may determine, but there shall not be more than four regular meetings each year. The chairman of the board may call special meetings whenever in his judgment it is necessary. Special meetings shall also be called by the chairman upon the request of any two members of the board. A majority of the appointed members of the board shall constitute a quorum for the transaction of business. The board shall make all necessary rules and regulations for the conduct of its meetings and business, and for carrying out the purposes of this chapter.

SECTION 5. AMENDMENT.) Section 4-13-07 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-07. COMPENSATION OF BOARD MEMBERS.) The appointive members of the board shall receive ten dollars per day for the performance of their duties under this chapter, including the attendance at regular and special meetings of the board. In addition to such compensation, they shall receive travel expenses and the regular mileage rate provided by law for other state officials for each mile actually and necessarily traveled in the performance of their duties. The ex officio members of the board shall receive no compensation, but may receive travel expenses at the regular mileage rate provided by law for state officials, payable from funds appropriated by the legislative assembly for this purpose. The amounts herein specified shall be the only compensation allowable.

SECTION 6. AMENDMENT.) Section 4-13-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-10. LICENSES AND FEES.) No person shall engage in the business of poultry or turkey buyer, processor, packer, hatchery operator, baby chick jobber, or salesman, without first securing from the North Dakota poultry improvement board a license to engage therein. All such licenses shall expire on the first day of July of each year, and shall be issued or renewed only upon payment to the board of the license fees for each of said occupations in the amounts hereinafter set forth:

1. For poultry and turkey buyers, processors, and packers, the annual license fee shall be one dollar.
2. For hatcheries, the annual license fee shall be one dollar.
3. For baby chick and turkey poult jobbers and salesmen, the annual license fee shall be one dollar.

The annual license fees for the ensuing year must be paid before any license is issued. Failure to pay any license charge within ten days after the same shall become due shall constitute a violation of this chapter.

SECTION 7. AMENDMENT.) Section 4-13-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-12. POULTRY IMPROVEMENT FUND - DEPOSIT OF FEES.) All license charges collected under this chapter shall be deposited in the state treasury in the general fund.

SECTION 8. AMENDMENT. Section 4-13-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-13-14. PENALTY.) A violation of this chapter or the rules and regulations promulgated thereunder shall constitute a misdemeanor and shall be punishable by a fine of not more than fifty dollars for each offense, and as additional or alternative penalties, the board may revoke any license issued and may restrain by injunction the continuance of any operations covered by this chapter.

SECTION 9. APPROPRIATION.) There is hereby appropriated out of any monies in the general fund in the state treasury, not otherwise appropriated, the sum of \$20,000.00, or so much thereof as may be necessary, to the poultry improvement board for salaries and administrative expenses for the biennium beginning July 1, 1971, and ending June 30, 1973.

SECTION 10. REPEAL.) Sections 4-13-11 and 4-13-13 of the North Dakota Century Code, and sections 4-13-01 and 4-13-02 of the 1969 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 29, 1971

CHAPTER 92

SENATE BILL NO. 2205
(Holand)

DESIGNATION OF STATE FORESTER

AN ACT to amend and reenact section 4-19-01 of the North Dakota Century Code, relating to the state forester.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-19-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-19-01. STATE FORESTER - WHO TO BE - DUTIES.) A member of the staff of the state school of forestry designated by the board of higher education shall be state forester. He shall have general supervision of the raising and distribution of seeds and forest tree planting stock as hereinafter provided, shall promote practical forestry, compile and disseminate information relative thereto, and shall publish the results of such work by issuing and distributing bulletins, lecturing before farmers' institutes and other organizations interested in forestry, and in such other ways as most practically will reach the public.

Approved March 17, 1971

CHAPTER 93

SENATE BILL NO. 2375
(Morgan)

NURSERIES AND NURSERYMEN

AN ACT to create and enact a nurseries and nursery stock chapter of the North Dakota Century Code, to repeal chapter 4-20 of the North Dakota Century Code, relating to nurseries and nursery stock, and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) The following terms as used in this chapter, except where the context otherwise requires, shall include both the singular and the plural and shall be construed to mean:

1. "Commissioner" means the commissioner of the department of agriculture of this state or any designated representative to whom authority to act in his stead has been or hereafter may be delegated.
2. "Pest" means any insect, disease, or other organism of any character, causing or capable of causing injury to nursery stock. Alternate hosts of crop diseases shall be construed as being included.
3. "Infested" means actually infested or infected with a pest or so exposed to infestation that it would be reasonable to believe that an infestation exists.
4. "Nursery stock" means all plants and plant parts capable of propagation or growth, except field, vegetable, and flower seed.
5. "Certificate" means a document issued or authorized by the commissioner indicating that nursery stock is not contaminated with a pest.
6. "Nursery" means any place where nursery stock is propagated or grown for sale or distribution.
7. "Nurseryman" means any person who owns, leases, manages, or is in charge of a nursery.
8. "Dealer" means any person, not a grower of nursery stock, who obtains nursery stock for the purpose of

sale or distribution.

9. "Person" means any individual, corporation, company, society, association, government agency, or other entity.
10. "Agent" means any person who solicits orders for nursery stock under the control of a nurseryman, dealer, or other agent.
11. "Place of business" means each separate location from which nursery stock is being distributed or offered for sale.
12. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.

SECTION 2. ADMINISTRATION, RULES, AND REGULATIONS.) The commissioner shall have the responsibility for administration of the provisions of this chapter. The commissioner shall appoint a state entomologist and is authorized to assign functions provided for in this chapter to any unit of his department or designated representative and to delegate any authority provided for in this chapter, to be exercised under the commissioner's general supervision. The commissioner shall promulgate such rules and regulations as are necessary for the efficient execution of the provisions of this chapter.

SECTION 3. AUTHORITY FOR INSPECTION.) To effectuate the purposes of this chapter, the commissioner shall inspect all nurseries at least once each year and may enter and inspect any nursery or place of business, or stop and inspect, in a reasonable manner, any nursery stock in transit within the state.

SECTION 4. AUTHORITY FOR ABATEMENT - REMOVAL FROM SALE.) Whenever the commissioner finds nursery stock that is not viable, not certified, or is infested with a pest, or finds that a pest exists in any nursery or place of business, or is in transit on any nursery stock in this state, he may, upon giving notice to the owner or his agent in possession, seize, condemn, treat, remove from sale, or otherwise dispose of the pest or nursery stock at the owner's expense in a manner the commissioner deems necessary to suppress, control, eradicate, or to prevent or retard the spread of a pest.

SECTION 5. CERTIFICATION OF NURSERY STOCK.) A certificate of inspection may be issued annually by the commissioner for nursery stock that is found to be free from pests and is found to have otherwise complied with the provisions of this chapter. Certificates shall expire December thirty-first. Special or temporary certificates may be issued to persons requesting special inspection. All nursery stock purchased, offered for

sale, or distributed within the state shall be from officially inspected sources. A copy of a certificate of inspection from the state of origin shall accompany each lot or shipment of nursery stock that is sold or distributed within the state. If the shipment requires a federal inspection certificate or tag, it must also be attached. All reproductions of the certificate of inspection for shipping purposes, other than an actual copy of the original certificate, must be approved by the commissioner.

SECTION 6. NURSERY LICENSE - FEE.) No person shall be engaged as a nurseryman without a license from the commissioner. Licenses shall expire December thirty-first. Application for license and requests for inspection shall be submitted and accompanied by a fee of ten dollars on or before December thirty-first each year. A nursery may serve as a dealer under a nursery license.

SECTION 7. DEALER'S LICENSE - FEE.) No person shall be engaged as a dealer without a license from the commissioner. Licenses shall expire December thirty-first. Each person applying for a license shall certify that he will buy and distribute only certified nursery stock and shall list all sources of nursery stock on the application. License applications shall be submitted and accompanied by a fee of ten dollars on or before December thirty-first of each year. A separate license is required for each place of business.

SECTION 8. AGENT'S LICENSE - FEE.) No person shall be engaged as an agent without a license from the commissioner. Licenses shall expire December thirty-first. License applications shall be submitted and accompanied by a five-dollar fee on or before December thirty-first of each year.

SECTION 9. SUSPENSION AND REVOCATION OF LICENSES.) Any nursery, dealer's or agent's license may be temporarily suspended for thirty days upon written notice by the commissioner if the person has been notified of the violation and corrective measures have not been applied within a reasonable time. Licenses may be permanently revoked or not renewed for due cause after a hearing has been held as provided for by chapter 28-32.

SECTION 10. SPECIAL INSPECTIONS - FEES.) Persons requesting special inspection and certificates of nursery stock and plant material as to freedom from plant pests shall submit an application for inspection to the commissioner. Inspection of stock must be made before a certificate can be issued. The same rules and fee apply as for the inspection of nurseries.

SECTION 11. LABELING AND STANDARDS FOR NURSERY STOCK.) No person shall sell, offer for sale, or distribute any nursery stock not securely labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All

nursery stock offered for sale or distribution shall be in a viable condition and shall be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant that change the appearance of the plant surface so as to prevent adequate inspection are prohibited.

SECTION 12. MISREPRESENTATION.) It is unlawful for any person to misrepresent the name, age, origin, grade, variety, quality, or hardness of any nursery stock offered for sale or distribution, or to misrepresent by name or otherwise that he is a nurseryman or conducts a nursery business when such is not the case.

SECTION 13. RECIPROCAL AGREEMENTS.) The commissioner may enter into reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates. Nursery stock owned by persons from such states may be sold or delivered in this state without license or fee if like privileges are accorded to persons from this state. Any non-resident nurseryman or dealer, having a place of business in this state, shall obtain a license and pay the fees required as a dealer. Each nonresident nurseryman or dealer shall annually file a current copy of his official certificate of inspection or license with the commissioner.

SECTION 14. EXEMPTIONS.) The commissioner shall exempt certain nursery stock, nurseries, dealers, or persons dealing in the sale of annual vegetable and floral plants from all or part of the sections of this chapter.

SECTION 15. LATE FILING OF LICENSE APPLICATIONS - PAYMENT OF FEES.) Any person who shall file an application and fee for renewal of license subsequent to the expiration of such license shall pay an additional two-dollar fee for the first month delinquent and an additional five-dollar fee on or after February first.

SECTION 16. PENALTIES.) Any person violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or both, at the discretion of the court.

SECTION 17. DEPOSIT OF FUNDS.) The commissioner shall receive and account for all moneys collected under the provisions of this chapter and shall pay the same to the state treasurer monthly.

SECTION 18. REPEAL.) Chapter 4-20 of the North Dakota Century Code is hereby repealed.

March 27, 1971

CHAPTER 94

HOUSE BILL NO. 1215
(H. Johnson, Backes, Bier, DeKrey)

SOIL CONSERVATION DISTRICTS

AN ACT to amend and reenact sections 4-22-02, 4-22-03, 4-22-04, 4-22-06, 4-22-08, 4-22-09, 4-22-10, 4-22-11, 4-22-14, 4-22-16, 4-22-17, 4-22-21, 4-22-22, 4-22-23.1, subsection 6 of section 4-22-26, sections 4-22-27, 4-22-28, 4-22-29, 4-22-31, 4-22-32, 4-22-37, 4-22-42, 4-22-43, and 4-22-47 of the North Dakota Century Code; and to repeal sections 4-22-07, 4-22-18, 4-22-19, 4-22-20, and 4-22-22.1 of the North Dakota Century Code, relating to the state soil conservation committee and soil districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-02. DEFINITIONS.) In this chapter, unless the context or subject matter otherwise requires:

1. "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.
2. "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.
3. "State" means the state of North Dakota.
4. "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.
5. "District" or "soil conservation district" means a governmental subdivision of this state, and a public body, corporate and politic, organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth.

6. "Committee" or "state soil conservation committee" mean the state soil conservation committee established by this chapter.
7. "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.
8. "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to or shall be in possession of any agricultural, grazing, or forest lands lying within a district organized under the provisions of this chapter, whether as owner, lessee, renter, tenant, or otherwise.
9. "Petition" means a petition filed under the provisions of this chapter for the creation of a soil conservation district.
10. "Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation is available, by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing the notice for the adjourned dates.
11. "Qualified elector" means every person of the age of twenty-one or upwards who is a citizen of the United States and who shall have resided in the state one year and in the county ninety days and in the precinct thirty days next preceding any election.

SECTION 2.. AMENDMENT.) Section 4-22-03 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-03. STATE SOIL CONSERVATION COMMITTEE - MEMBERS - COMPENSATION - RECORDS AND SEAL.) The state soil conservation committee shall be maintained as an agency of this state to perform the functions conferred upon it in this chapter. The committee shall consist of seven voting members, of whom five shall be elected and two shall be appointed by the governor as provided herein:

1. Elective members:

For the purpose of electing the five elective members of the committee, the state of North Dakota is hereby divided into five areas, as follows:

- A. Area I shall include the counties of Benson, Cavalier, Eddy, Foster, Grand Forks, Nelson, Pembina, Ramsey, Towner, Walsh, and Wells.
- B. Area II shall include the counties of Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill.
- C. Area III shall include the counties of Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Renville, Rolette, and Ward.
- D. Area IV shall include the counties of Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Morton, Oliver, Sheridan, Sioux, and Stutsman.
- E. Area V shall include the counties of Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Stark, Slope, and Williams.

One member of the committee shall be elected from each of the said five areas by vote of the members of the boards of supervisors of the conservation districts in that area. Every voting member of a board of supervisors of a conservation district organized under this Act shall be eligible to vote in the election for a member of the committee in the area in which the district is located.

Elections shall be held under regulations to be issued by the committee and in cooperation with and at the time of the North Dakota association of soil conservation districts area meetings. In those cases where the territory of a district does not lie wholly within the boundaries of one of the five areas established under this section, the regulations shall provide for the assignment of such district by the committee for the purposes of such elections, to the area within which most of its population resides.

The election of members of the committee shall be conducted by the committee and need not be held on the same dates or in the same places as the general elections for state or local officers.

2. Appointive members:

Two members of the committee shall be appointed by the governor, who shall select appointees who can represent those interests within the state not already represented, or less fully represented, by one or more of the five elected members of the committee. The governor shall attempt, so far as feasible, to make possible suitable representation for all interests in the state in the membership of the committee, including the interests of, but not limited to, farmers, livestock growers, rural areas, small towns, cities, and industry and business, recognizing that any single member of the committee may sometimes appropriately be regarded as representing more than one of these interests.

The committee shall invite representatives of the state association of soil conservation districts, North Dakota cooperative extension service, the soil conservation service, North Dakota state water commission, the commissioner of agriculture, and the game and fish department to serve as advisory, nonvoting members of the committee. The term of office of every member of the committee shall be two years and until his successor is elected or appointed. The governor shall have the power to extend the terms of one or more members of the committee in office upon the effective date of this Act, in order to provide for overlapping terms for the members of the committee. A member of the committee shall be eligible for re-election and reappointment, but no member may serve for more than two full, successive terms. Vacancies in either elective or appointive terms may be filled for the unexpired term by appointment by the governor. The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this Act.

SECTION 3. AMENDMENT.) Section 4-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-04. COMMITTEE - DESIGNATION OF CHAIRMAN - QUORUM - PROVISION FOR SURETY BONDS AND ANNUAL AUDIT.) The committee shall meet annually and select its chairman, who shall serve for one year from the date of his selection. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within its duties shall be required for its determination. The members of the committee shall receive twenty-five dollars per day as compensation for their services on the committee, and shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials. The committee shall provide for the execution of surety bonds, which may be issued by the state bonding fund, for all employees who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all

resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements.

SECTION 4. AMENDMENT.) Section 4-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-06. DUTIES AND POWERS GENERALLY.) In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

1. To offer such assistance as may be appropriate to the supervisors of soil conservation districts in the carrying out of any of their powers and programs.
2. To keep the supervisors of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them.
3. To coordinate the programs of the several conservation districts so far as this may be done by advice and consultation.
4. To secure the cooperation and assistance of state, federal, regional, interstate, and local, public, and private agencies with conservation districts; and to facilitate arrangements under which conservation districts may assist or serve county governing bodies and other agencies in the administration of any activity concerned with the conservation of natural resources.
5. To disseminate information throughout the state concerning the activities and programs of the soil conservation districts, and to encourage the formation of such districts in areas where their organization is desirable.
6. To review district programs, to coordinate the programs of the several districts, and to coordinate programs and activities as they relate to other special purpose districts.
7. To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with state, federal, interstate, or other public or private organizations, and advise the districts concerning such agreements or forms of agreement.

8. To recommend the inclusion in annual and longer term budgets of funds necessary from the legislature to finance the activities of the committee and districts; and to distribute such moneys appropriated by the legislative assembly according to applicable state laws or regulations.
9. To compile information and make studies, summaries, and other analyses of district programs in relation to each other and to other resource conservation programs on a statewide basis.
10. To represent the state in matters affecting soil conservation.
11. To require annual reports from conservation districts, the form and content of which shall be developed by the committee on consultation with district supervisors.
12. To establish uniform accounting methods which shall be used by soil conservation districts, and to establish a uniform auditing reporting system.
13. Pursuant to procedures developed mutually by the committee and other state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of natural resources, to receive from such agencies for review and comment suitable descriptions of their plans, programs, and activities for purposes of coordination with district conservation programs; to arrange for and participate in conferences necessary to avoid conflict among such plans and programs; to call attention to omissions; and to avoid duplication of effort.

SECTION 5. AMENDMENT.) Section 4-22-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-08. DISTRICTS - PETITION - CONTENTS - MORE THAN ONE PETITION FILED.) Any twenty-five qualified electors living within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized in the territory described in the petition. Such petition shall set forth:

1. The proposed name of the district.
2. The need for a soil conservation district to function in the territory described in the petition.
3. A description of the territory proposed to be organized as a district.

4. A request that the state soil conservation committee duly define the boundaries for such district, that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory, and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any of such petitions.

SECTION 6. AMENDMENT.) Section 4-22-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-09. HEARINGS ON PETITIONS - WHEN HELD - NOTICE - DETERMINATIONS.) Within thirty days after a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity for the creation of such district, the appropriate boundaries to be assigned thereto, the propriety of the petition and the other proceedings taken under this chapter, and upon all other questions relevant thereto. All qualified electors living within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties shall have the right to attend and be heard at such hearing. If it shall appear at the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of hearing has been given, the hearing shall be adjourned and notice of further hearing shall be given throughout the entire area considered for inclusion in the district, and such further hearing shall be held. If the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the public interest, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define the boundaries of such district by metes and bounds or by legal subdivisions. In making such determination and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration, the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this chapter, and such other physical, geographic, and economic factors as are relevant, having due regard to the legislative policy set forth in section 4-22-01. If the committee shall determine after such hearing and due consideration of the relevant facts that there is no need for a

soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six months shall have expired from the date of the denial of any such petition, a subsequent petition covering the same or substantially the same territory may be filed and a new hearing held and new determinations made thereon.

SECTION 7. AMENDMENT.) Section 4-22-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-10. REFERENDUM - WHEN HELD - CONTENTS OF BALLOT - WHO MAY VOTE.) After the committee has determined the necessity for the organization of a district and has defined the boundaries thereof, it shall hold a referendum within the proposed district upon the proposition of the creation thereof and shall cause due notice of such referendum to be given. The question shall be submitted by ballot in substantially the following form:

Shall a soil conservation district be created embracing lands situated in the counties of _____ and _____ and described as follows: (Here inserting description).

Yes

No

All qualified electors living within the boundaries of the proposed district shall be entitled to vote in such referendum.

SECTION 8. AMENDMENT.) Section 4-22-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-11. PUBLICATION OF REFERENDUM RESULTS - DETERMINATION OF PRACTICABILITY OF OPERATION OF DISTRICT.) The committee shall publish the results of any referendum. If a majority of the votes cast in the referendum are in favor of the creation of a district, the committee shall consider and determine whether the operation of a district within the boundaries specified on the referendum is administratively practicable and feasible. In making such determination, the committee shall consider such factors, objects, and other determinations as to accomplish the policy and scope of this chapter as set forth in section 4-22-01.

SECTION 9. AMENDMENT.) Section 4-22-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-14. PETITION TO INCLUDE ADDITIONAL TERRITORY WITHIN EXISTING DISTRICT.) Petitions to include additional territory within an existing district may be filed with the committee at any time, and the proceedings provided in connection with a

petition to organize a district shall be observed in the case of a petition for such inclusion. Provided, however, that a portion of a district may upon petition of a majority of the qualified electors in such portion, and without an election, be annexed to an adjoining district, and become a part of same upon filing such petition with the state soil conservation committee.

SECTION 10. AMENDMENT.) Section 4-22-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-16. NOTICE TO FILE NOMINATING PETITIONS AND OF ELECTION OF DISTRICT SUPERVISORS.) As soon as practicable after the issuance by the secretary of state of the certificate of organization of a soil conservation district, and before the next general election, the committee shall give notice that nominating petitions may be filed with the county auditor, and that at the next general election held in such district three supervisors shall be elected, who shall be land occupiers of the district and who shall constitute the governing body of the district.

SECTION 11. AMENDMENT.) Section 4-22-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-17. NOMINATING PETITIONS - PETITIONS REQUIRED - FINAL FILING DATE.) Any person running for the office of supervisor shall present to the county auditor of the county or counties in which his district lies a petition giving his name, post-office address, title of the office, and containing the signatures of not less than twenty-five nor more than three hundred qualified electors of the district. No person shall participate directly or indirectly in the nomination for more than one person for each office to be filled. The final filing date for nominating petitions shall be no later than thirty-five days before the day of the election and not later than four o'clock p.m. of such day.

Upon receipt of the petition the county auditor shall without fee place the name of the candidate so nominated on the no-party ballot at the ensuing general election.

SECTION 12. AMENDMENT.) Section 4-22-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-21. REGULAR ELECTION OF DISTRICT - WHEN HELD - REGULATIONS GOVERNING.) The regular election of soil conservation districts shall be held at the same time, and at the same place, as the general election is held. Any land occupier living in the district desiring to be a candidate for the office of supervisor at a district election and who has failed to file a nominating petition may furnish stickers to be attached to the ballot; and the ballot shall have blank spaces below the names

of candidates nominated by petition for writing in other names.

SECTION 13. AMENDMENT.) Section 4-22-22 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-22. SUPERVISORS - TERMS OF OFFICE - VACANCIES - REMOVAL - EXPENSES.) At the general election to be held in 1972, three district supervisors shall be elected. The candidate receiving the largest number of votes shall be elected for a six-year term; the candidate receiving the second highest number of votes shall be elected for a four-year term; and the candidate receiving the third highest number of votes shall be elected for a two-year term. At each succeeding general election, one supervisor shall be elected for a term of six years, or until his successor is duly elected and qualified, to each expiring or vacant term. In newly formed districts, three supervisors shall be elected at the first general election following the district's organization. The candidate receiving the largest number of votes shall be elected for a six-year term; the candidate receiving the second highest number of votes shall be elected for a four-year term; and the candidate receiving the third highest number of votes shall be elected for a two-year term. At each succeeding general election, one supervisor shall be elected for a term of six years, or until his successor is duly elected and qualified, to each expiring or vacant term.

In order to be eligible for election to the office of supervisor, candidates must be land occupiers of the district. Candidates shall be elected on a nonpartisan ballot. In case the office of any supervisor shall, for any reason, become vacant, the remaining members of the board of supervisors shall, with the advice and consent of the state committee, fill the vacancy by appointment. In the event that vacancies shall occur in the office of two supervisors, the remaining supervisor and the state committee shall fill the vacancy; and in case the offices of all supervisors of a district shall become vacant, the state committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy shall hold office until the next general election. A supervisor elected to fill a vacancy shall serve the balance of the unexpired term in which the vacancy occurred.

Any soil conservation district, upon resolution of the three elected supervisors, may appoint two additional supervisors who shall serve for a term of one year from and after the date of their appointment. Such supervisors shall be appointed by a majority of the three elected supervisors and shall have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors shall be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.

Any supervisor of a soil conservation district may after notice given and hearing held in accordance with the Administrative Practices Act of this state, be removed from office by the state committee.

The supervisors of soil conservation districts shall receive no compensation for their services other than travel and subsistence expenses necessarily incurred in attending district, state, or other meetings approved by the state soil conservation committee, which expenses shall be paid from appropriations available to the state committee. All other expenses including travel incurred by district supervisors while transacting district business and not specifically authorized by the state soil conservation committee shall be paid from district funds.

SECTION 14. AMENDMENT.) Section 4-22-23.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-23.1. ASSISTANCE FOR DISTRICT SUPERVISORS.) In those counties of North Dakota wherein all or a substantial part of the county has been created and is operating as a soil conservation district under the provisions of chapter 4-22 of this Code, as amended, the board of county commissioners may from time to time, in their discretion, and upon the request of the supervisors of such soil conservation district, assign an employee or employees of the county to assist the supervisors in the performance of their duties authorized by this chapter. When soil conservation district boundaries shall embrace more than one county, the county commissioners of each county may provide, in their discretion, assistance for the supervisors. The duties of the employee or employees shall be under the direct supervision of the supervisors of the soil conservation district.

SECTION 15. AMENDMENT.) Subsection 6 of section 4-22-26 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. To make available, on such terms as it shall prescribe, to land occupiers, government units or qualified electors within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers, government units or qualified electors to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion;

SECTION 16. AMENDMENT.) Section 4-22-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-27. SUPERVISORS MAY FORMULATE LAND-USE REGULATIONS

FOR SUBMISSION TO QUALIFIED ELECTORS.) The supervisors of any district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion, and may conduct public meetings and hearings upon tentative regulations as may be necessary to assist them in this work. The proposed regulations shall be embodied in a proposed ordinance for submission to the qualified electors in the district, and copies of the proposed ordinance shall be available for inspection by the eligible voters in the district during the period of time between the publication of the notice of referendum upon the ordinance and the date of the referendum.

SECTION 17. AMENDMENT.) Section 4-22-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-28. NOTICE OF REFERENDUM - FORM OF BALLOT ON REFERENDUM - CONDUCT OF ELECTION - WHO MAY VOTE.) The notice of referendum on a proposed ordinance shall be given in the same manner as is provided in section 4-22-16 relating to notice of election of supervisors, and shall recite the contents of the proposed ordinance or shall state where copies thereof may be examined. The question of adoption or rejection of the proposed ordinance shall be submitted by ballot at an election to be held in the district. The ballot shall be in substantially the following form:

Shall proposed ordinance number _____, prescribing land-use regulations for conservation of soil and prevention of erosion be adopted?

Yes

No

The supervisors shall supervise the referendum, prepare appropriate regulations governing the conduct thereof, and publish the result of the election. The right to vote in the referendum shall be limited to qualified electors living within the district. No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if the notice of referendum shall have been given substantially as provided in this section and the referendum shall have been conducted fairly.

SECTION 18. AMENDMENT.) Section 4-22-29 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-29. MAJORITY REQUIRED TO ADOPT ORDINANCE - EFFECT OF ORDINANCE AFTER ADOPTION.) No ordinance shall be effective unless it is approved by at least three-fourths of the voters voting in the referendum. If a proposed ordinance is approved,

the supervisors shall enact it into law. Land-use regulations prescribed in any ordinance adopted by the supervisors pursuant to this section shall have the force and effect of law in the district and shall be binding and obligatory upon all qualified electors living within the district.

SECTION 19. AMENDMENT.) Section 4-22-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-31. REGULATIONS TO BE UNIFORM - COPIES FURNISHED IN DISTRICT.) Land-use regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this chapter shall be printed and made available to all qualified electors living within the district.

SECTION 20. AMENDMENT.) Section 4-22-32 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-32. AMENDING, SUPPLEMENTING, OR REPEALING LAND-USE REGULATIONS.) Any qualified elector living within a district at any time may file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this chapter be amended, supplemented, or repealed. Land-use regulations prescribed in any such ordinance shall not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this chapter for the adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more than once in any six-month period.

SECTION 21. AMENDMENT.) Section 4-22-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-37. PETITION TO BOARD OF ADJUSTMENT TO VARY LAND-USE REGULATIONS - SERVICE - HEARING - BOARD'S POWERS.) Any qualified elector living within the district may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardships in the way of his strictly complying with the land-use regulations prescribed by any ordinance, and praying the board to authorize a variance from the terms of such land-use regulations in the application thereof to the lands occupied by the petitioner. Copies of such petition shall be served upon the chairman of the supervisors of the

district within which his lands are located and upon the chairman of the committee. The board shall fix a time for the hearing of the petition and shall cause due notice of such hearing to be given. The petitioner may appear in person, by agent, or by attorney at the hearing and the supervisors and the committee may appear and be heard. If the board shall determine on the facts presented at the hearing that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardships. Upon such findings and determination, the board may enter an order authorizing a variance from the terms of the land-use regulations in their application to the lands of the petitioner consistent with the spirit of the land-use regulations, and with substantial justice and the public health, safety, and welfare.

SECTION 22. AMENDMENT.) Section 4-22-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-42. DISCONTINUANCE OF DISTRICTS - PETITION - REFERENDUM - ELIGIBLE VOTERS.) After the expiration of five years from the date upon which a district has been organized, twenty-five percent of the qualified electors living within the boundaries thereof may file a petition with the state soil conservation committee praying that the operations of the district be terminated and the existence of the district discontinued. The committee shall then conduct public meetings and hearings upon such petition in order to determine whether or not there is sufficient basis for a referendum to be held. If the committee determines that there is sufficient basis for a referendum, it shall give due notice of the holding of a referendum and shall issue appropriate regulations governing the conduct thereof within sixty days after it has made its determination. The question to be voted on at the referendum shall be submitted by ballot in substantially the following form:

Should the (insert name of district) _____
be terminated?

Yes

No

All qualified electors within the boundaries of the district shall be eligible to vote in such referendum. The committee shall supervise the referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof shall have been given substantially as herein provided and the referendum shall have been conducted fairly.

SECTION 23. AMENDMENT.) Section 4-22-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-43. DUTIES OF COMMITTEE AFTER REFERENDUM ON DISCONTINUANCE OF THE DISTRICT HAS BEEN HELD.) The committee shall publish the result of any referendum on the question of discontinuance of a district immediately after the vote has been had. If a majority of the votes cast in the referendum favored the discontinuance of the district, the committee shall make its certificate that it has determined that the continued operation of the district is not administratively practicable and feasible. If a majority of the votes cast in the referendum favored the continuance of the district, the committee shall consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of the district is administratively practicable and feasible, it shall record such determination and deny the petition for discontinuance, and if it shall determine that the continued operation thereof is not administratively practicable and feasible, it shall record such determination and certify its determination to the supervisors of the district. In making its determination, the committee shall give due weight and regard to the number and attitudes of the qualified electors living within the district, the number voting in the referendum, the proportion which the votes cast in favor of the discontinuance of the district are of the total number of votes cast, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to such determination having regard to the legislative policy as set forth in section 4-22-01.

SECTION 24. AMENDMENT.) Section 4-22-47 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-22-47. CONSOLIDATION OF DISTRICTS - PETITION -REFERENDUM - CONDUCT OF REFERENDUM.) Two or more soil conservation districts may be consolidated into one district by compliance with the provisions of this chapter. A petition or petitions for consolidation of soil conservation districts shall be filed with the secretary of the state soil conservation committee and shall be signed by at least twenty-five qualified electors living in each district. Upon the filing of such petition or petitions, the state committee shall by resolution fix a date for a referendum to be held in each such district and shall direct the board of supervisors thereof to cause notice of such referendum to be posted in at least five conspicuous places within the district and to be published once each week for two consecutive weeks prior to the referendum in a newspaper of general circulation therein. Only qualified electors living within the district shall be eligible to vote at the referendum. Such notice shall state the date of the referendum, the polling place or places for holding such referendum, the time when the polls will open and close,

and the question to be submitted to the qualified electors. Such notice shall be substantially in the following form:

Notice is hereby given that on the _____ day of _____, 19____ a referendum will be held at _____ (Designate polling place or places) for the purpose of submitting to the qualified electors within _____ soil conservation district the question as to whether _____ (Name of district) _____ (Names of districts) soil conservation districts embracing the following townships _____ (Designate townships, by number and range) shall be consolidated into one soil conservation district.

The ballot will be in the following form:

Shall _____ soil conservation districts (Names of districts) embracing the following townships _____ (Designate townships, by number and range) be consolidated into one soil conservation district?

Yes _____

No _____

The board of election for each polling place shall be appointed by the board of supervisors of the district and shall consist of one inspector, one judge, and one clerk. Members of such election board shall receive the sum of five dollars for their services.

SECTION 25. REPEAL.) Sections 4-22-07, 4-22-18, 4-22-19, 4-22-20, and 4-22-22.1 of the North Dakota Century Code are hereby repealed.

Approved March 4, 1971

CHAPTER 95

HOUSE BILL NO. 1531
(Giffey, Rivinius, Livingston, Herman, Dotzenrod)

WHEAT TAX

AN ACT to amend and reenact subsection 3 of section 4-28-02, sections 4-28-07 and 4-28-08 of the North Dakota Century Code, relating to the definition of a first purchaser, time of assessment of state wheat tax and duties and functions of the state wheat commission.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 3 of section 4-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. First purchaser means any person, firm, corporation, association, partnership, agent or broker buying, accepting for sale or otherwise acquiring, after harvest, the property in or to wheat from the grower and shall include a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, where the actual or constructive possession of wheat is taken as part payment or in satisfaction of such mortgage, pledge, lien, or claim;

SECTION 2. AMENDMENT.) Section 4-28-07 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28-07. WHEAT TAX LEVY.) There is hereby levied and imposed, effective July 1, 1959, a tax of two mills per bushel by weight upon all wheat grown in this state and sold through commercial channels by a producer to a first purchaser, such tax to be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels are not accurately determined at the time of the lien, pledge, or mortgage. At the time of sale, the purchaser shall issue and deliver to the producer a record of the transaction in such manner as the commission may prescribe.

Any producer subject to the deduction provided in this chapter may, within sixty days following such deduction or final settlement, make application by personal letter to the wheat commission for a refund application blank. Upon the return of said blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer shall be refunded the net amount of the deduction collected. If no request for refund shall have been made within the period prescribed above, then the producer shall be presumed to have agreed to such deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, shall be entitled to a refund of the overpayment.

The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.

SECTION 3. AMENDMENT.) Section 4-28-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28-08. STATE WHEAT COMMISSION FUND - APPROPRIATION.) Each first purchaser shall make quarterly reports and returns to the commission, on such forms as shall be prescribed by the commission, on or before the twentieth day of the month next succeeding each calendar quarterly period, commencing with the calendar quarter ending September 30, 1959, and with each such report and return shall remit to the commission, in the form of a remittance payable to the state treasurer, the tax due. The commission shall transmit all such payments to the state treasurer to be deposited in the state treasury to the credit of a fund to be known as the "state wheat commission fund". The provisions of section 54-27-10 of this code shall not apply to appropriations to or for the wheat commission, nor shall any part of such fund and appropriations revert at the expiration of any biennium. Expenditures from such fund or appropriation, may be made upon vouchers duly approved by the commission to carry out the provisions of this chapter.

Approved March 27, 1971

CHAPTER 96

HOUSE BILL NO. 1337
(Reimers)

FLAX TAX

AN ACT to create and enact sections 4-28.1-04 and 4-28.1-05 of the North Dakota Century Code, relating to administration of the flax utilization research fund by the business and industrial development commission; to amend and reenact subsection 2 of section 4-28.1-02 of the North Dakota Century Code relating to the definition of "first purchaser"; to amend and reenact section 4-28.1-01, relating to flax tax levy and refunds, and to provide for an appropriation, and penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-28.1-01 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-28.1-01. FLAX TAX LEVY.) There is hereby levied and imposed a tax of one-quarter cent per bushel by weight upon all flaxseed produced in this state and sold, for whatever purpose, through commercial channels to a first purchaser. The administration and manner in which the tax is collected and paid, as well as the procedure for making application for refunds and the requirements for the making of refunds shall be governed by the provisions of section 4-28-07 of the North Dakota Century Code, as amended, and shall apply as if same were fully recited herein, except that the business and industrial development commission shall make refunds from the flax utilization research fund.

SECTION 2. AMENDMENT.) Subsection 2 of section 4-28.1-02 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "First purchaser" means any person, firm, corporation, association, partnership, agent or broker buying, accepting for sale or otherwise acquiring, after harvest, the property in or to flaxseed from the producer, and shall include a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, where the loan or claim is secured by such flax, or where the flax is taken as part payment or in satisfaction of a mortgage,

pledge, lien or claim.

SECTION 3.) Section 4-28.1-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-28.1-04. BUSINESS AND INDUSTRIAL DEVELOPMENT COMMISSION TO ADMINISTER FUND - APPOINTMENT OF ADVISORY COMMITTEE.) The business and industrial development commission shall appoint an advisory committee of three flaxseed producers to serve for such periods of time as the commission may direct and to advise the commission concerning research into and promotion of the utilization of and prospective markets for flax and flax products and the expenditure of flax utilization research funds. The business and industrial development commission shall administer and expend the fund to promote the utilization of and the development of prospective markets for flax and flax products. It shall compensate the state wheat commission from such fund for expenses incurred for collecting and remitting the flax tax levy to the state treasurer and for processing, verifying and certifying refund applications to the business and industrial development commission for payment. Members of the flax producers advisory committee shall be reimbursed from the fund for expenses incurred in attending meetings and otherwise performing official duties to further the purposes of this section at the same rates and in the same manner as other state officials.

SECTION 4.) Section 4-28.1-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

4-28.1-05. PENALTY.) Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars or by imprisonment in the county jail for not more than thirty days or by both such fine and imprisonment.

SECTION 5. APPROPRIATION.) There is hereby appropriated out of the flax utilization research fund, or such portion of that amount as may be available in the fund, the sum of fifty thousand dollars, or so much thereof as may be necessary, to the business and industrial development commission for the purpose of research and promotion of the utilization of and the development of prospective markets for flax and flax products and for purposes provided in section 4-28.1-04 of this code for the biennium beginning July 1, 1971, and ending June 30, 1973. The provisions of section 54-27-10 of this code shall not apply to such appropriation nor shall any part of the flax utilization research fund and appropriation revert at the expiration of any biennium. Expenditures from such fund may be made by the business and industrial development commission in carrying out the provisions of this chapter upon vouchers duly approved by the commission.

Approved March 29, 1971

CHAPTER 97

HOUSE BILL NO. 1041

(K. Johnson, J. Peterson, Reimers, Solberg, Tweten)
(From Legislative Council Study)

MILK AND CREAM TESTER'S LICENSE

AN ACT to amend and reenact section 4-30-12 of the North Dakota Century Code, relating to the increase in the license fee for all milk and cream testers licensed by the department of agriculture, and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-30-12 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-12. LICENSE NEEDED TO SAMPLE, GRADE, OR TEST - EXAMINATION - TERM - FEE.) No person shall sample, grade, or test milk, or milk products, for the purpose of determining the value or grade thereof without obtaining a license from the dairy department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the dairy commissioner. The licensee shall be responsible for the acts of his substitute. An applicant for license shall file an application with the dairy department stating the type of sampling, grading, or testing he wishes to be licensed for. Before a license is issued, the applicant must pass a written examination prepared and given by the dairy department, he shall show that he is conversant with the requirements of this chapter which pertain to such sampling, grading, or testing, and must prove by actual demonstration that he is competent and qualified to perform each type of sampling, grading, and testing listed on his application. The dairy commissioner shall then issue a license which shall state the types of sampling, grading, or testing which the applicant has proven to be able to perform. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee and after he has satisfactorily passed the required examinations for each such addition. All examinations should be given by the dairy department within fifteen days after receiving the application. A licensee need not take any examinations when renewing his license unless his ability at performing such sampling, grading, or testing is questioned by the dairy commissioner or his assistants. Licenses issued

under this section shall expire on December thirtieth of each year, shall be posted conspicuously in the licensee's place of operation, and shall not be transferable. The fee for the annual license shall be five dollars, and a one-dollar penalty fee shall be applied after the thirty-first day of January if renewals are not paid prior to that date.

Approved March 4, 1971

CHAPTER 98

SENATE BILL NO. 2234
(Morgan, Nasset)

BUTTERFAT TEST FEE

AN ACT to amend and reenact section 4-30-47 of the 1969 Supplement to the North Dakota Century Code, relating to official butterfat tests, other tests and the fees therefor.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 4-30-47 of the 1969 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-30-47. DISPUTE OVER TEST - OFFICIAL TEST MADE - BY WHOM - OTHER TESTS - FEES.) If a disagreement between a seller and a buyer or the legal representatives of both or either arises over the percentage of butterfat contained in any quantity of milk or cream sold or offered for sale at the request of the owner and in his presence, a sample of such milk or cream obtained as provided in sections 4-30-19 and 4-30-20 and mutually agreed upon by the interested parties as being a representative sample, shall be sealed satisfactorily and mailed by the buyer to the office of the dairy commissioner. There shall accompany each sample a statement giving the name and address of the seller and the buyer of the milk or cream in question, the net weight thereof, the percentage and amount of butterfat contained therein, the price per pound for butterfat, and the amount of money paid or offered in payment for the same and bearing the signature of the seller and the buyer. The commissioner or his agent shall determine the percentage of butterfat contained in the sample and shall make a report of the result in triplicate, the original to be filed in his office, one copy to be sent to the seller, and one to the buyer of the milk or cream. The percentage of butterfat so determined and reported shall constitute the "official butterfat test" and shall be the basis on which final settlement shall be made. The fee for the making of the official butterfat test and any other tests required shall be in such amount as set by regulation of the dairy commissioner, considering the actual costs of making the test, and such fee shall be mailed to the dairy commissioner at the time of forwarding the sample for such official butterfat or other test.

Approved March 29, 1971