

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1086

2007 HOUSE AGRICULTURE

HB 1086

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1086

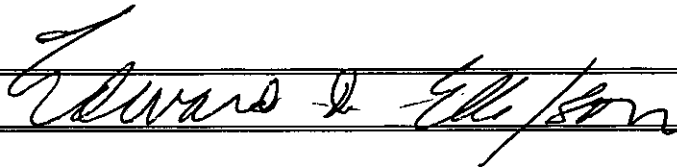
House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2007

Recorder Job Number: 1023

Committee Clerk Signature



Minutes:

Roll Call was taken and no one was absent.

Chairman Johnson began the hearing for 1086.

This bill is related to definitions and referendums by potato growers and to repeal refunds of non participating potato growers.

Vice Chairwoman Kingsbury: Joyce Kingsbury serves District 16. She again handed out her testimony. See attached. She is sponsoring this bill.

Senator Gullickson: I would encourage you to pass this and send it to the senate side so that we can review it more.

Testimony from Barry Kingsbury from Walsh County, past chairman of Northern Plains State Growers Association, past board member of National Potato Council gave testimony in favor of HB 1086. See attached testimony.

Chuck Gunnerson: Owner and operates the Ada Produce Co. in Ada, MN. Chuck is the current chairman of the Minnesota Area One Potato Research and Promotion Council and director of the Northern Plains Potato growers Association. He encourages support of HB 1086. See attached testimony.

Duane Preston: He is a Professor and was hired for the position as the area Extension Agent for Potatoes 29 years ago. His testimony is for the support of this bill. See attached testimony.

David Moquist: A farmer and potato grower from Crystal, ND. gave testimony in favor of bill HB1086. See attached testimony.

Bob Moe: I raise potatoes for Fry Processors in ND. My testimony is to support the passage of HB 1086. See attached testimony.

Bennet Tucker: Farms in St Thomas, ND. Testimony is in favor of HB 1086. See attached testimony.

Mike Beltz: Farms near Hillsboro and is Vice Chairman of ND Ag Coalition. On behalf of the Ag Coalition, he encourages support of HB 1086. See attached testimony.

Duane Maatz: Representing Northern Plains Potato Growers Association asking for support of HB 1806. See attached testimony.

Duaine C Espgaard: His testimony is opposition to HB 1086.

Joel Gilbertson; A member of the Vogel Law Firm is going to introduce growers to give testimony. He began first by giving some information on Century Code Title 4, for comparison to other commodities. (93)

Ron Crawford: Spoke in opposition of the HB 1806. He feels it check off has worked well in the past and will continue to work as it is. He feels potato research will not live or die whether Potato Association pays \$120,000 or \$160,000 to research.

Greg Halvorson: A potato grower in Forest River, ND. I grow potatoes in Kidder and Stutsman County, along with Grand Forks County. I would urge for your support.

John Stock: I grow potatoes in the Grand Forks area. We still grow potatoes because it almost the only crop that we can grow without subsidies, acres control and other regulations.

My point here is freedom. I have never asked for a refund but we want the freedom to do so.

Keith Bjorneby: A third generation potato grower from Minto, ND. He is in opposition of the bill. See attached testimony. (113)

Gary Secor: Professor of Plant Pathology at NDSU and am in support of this bill as to the aid it would give our research. See attached testimony.

Brad Nilson: From Hoople, ND. He is a certified seed potato grower and encourages support of HB 1086. See attached testimony.

John L. Galegher, Jr. Their family has raised potatoes for over fifty years in the Red River Valley in ND. See attached testimony in support of HB 1086.

Paul Dolan: Is employed as the manager of Associated Potato Growers in Drayton, Grafton and Grand Forks. See attached testimony in support of HB 1086.

Dale Collette: Farms SE of Grafton, ND. and is support of HB 1086.

Ronald Pape, Potato grower north of East Grand Forks, ND. His testimony is in favor of HB1806.

Mark Thompson: He is a seed potato grower from Park River, ND and serves as the Research Committee Chairman of the Northern Plains Potato Growers Association. His attached testimony is in support of HB 1086.

Justin Dagen; Justin is from NPPGA and his testimony suggests that the refund provision be removed now.

Randy Hurtt: Is a potato grower from Hoople, ND and his attachment asks for a yes vote on HB 1086.

Camburn Shephard of Crystal, ND is a fresh and process potato grower and is in support of the intent of HB 1086. Testimony attached.

Kit Midgarden of Hoople, ND is a potato farmer and has served two three year terms on the ND Potato Council. He is in full support of HB 1086. Testimony attached.

Richard Schlosser represents 35,000 members of the ND Farmers Union. Testimony attached is in support of HB 1806.

An attached copy of a news article from the Associated Press is included.

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1086

House Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: 1-12-2007

Recorder Job Number: 1465

Committee Clerk Signature

*Edward Ellefson*

Minutes:

Chairman D. Johnson: Committee hearing on HB 1086.

Vice Chairwoman Kingsbury: Offers proposed amendments for 101 for 1086 and seconded by fellow committee member (no name written or said to identify person).

Rep. Kingsbury: I am introducing this bill at the request of the North Dakota Potato Council Association. The amendment would put the vote back to the potato growers.

The changes and description of changes are in attached testimony.

Roll Call vote was taken to pass the amendment. There were 9 yeas and 4 nays.

A motion was made to pass the amendment.

Rep Belter: He was not for the bill and said he understood the problems that face the potato industry but to change the rules for one group is not good public policy. If we make this change for the potato industry we are to see the other commodity groups come forward similar provisions. This problem needs to be solved within the industry itself. Unfortunately we have large players, but that is not the fault of the legislature or should the legislature deal with that.

Rep Kingsbury: There are commodities that are refundable and I compare them with honey which receives this ability. I am surprised to hear that there is fighting going on in this industry which is not true.

Rep Headland: I too will not support this bill. Rep Kingsbury said in her testimony that in there are check offs there are not refundable record should show that those are all national check offs. Currently the state check offs there are no commodities that allow non-refunding.

Rep Onstad: 50% of these funds are to be used for research but because of the large refund only 25% is being used for research. I feel that we should give a two year grace period and they can come back to us again at that time. I am going to support it as amended.

Rep Brandenburg: I do not feel that the amendment adjusts the fairness at all. I feel they need to sit down and resolve the issues they have within their industry. I will not support this bill.

Rep Kingsbury: I would like to add that the testimony did not include that the Wash plant for red potatoes, pays two cents extra for the process research.

Rep Brandenburg: Made a motion for a Do Not Pass.

Rep Headland: I second the motion.

Roll Call vote was 7 yeas, 6 nays and 0 absent for a do not pass.

Rep. Brandenburg will carry the bill.

Chairman Johnson closed the hearing for HB 1086.



**FISCAL NOTE**  
**Requested by Legislative Council**  
01/31/2007

Amendment to: HB 1086

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0			\$130,000		
Expenditures	\$0			\$130,000		
Appropriations	\$0	\$0				

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Passage of HB 1086, as ammended, would increase ND Potato Council revenues through the elimination of refunds. The increase in non refundable revenue is over \$130,000 in 2006. The trend is increasing annually and could likely top \$150,000 for the 2007 crop year

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

"special funds", ND Department of Agriculture, ND Potato Council

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	Diane Peycke	Agency:	ND Potato Council
Phone Number:	218-773-3633	Date Prepared:	01/31/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/05/2007

**REVISION**

Bill/Resolution No.: HB 1086

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0			\$130,000		
<b>Expenditures</b>	\$0			\$130,000		
<b>Appropriations</b>	\$0	\$0				

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Passage if HB 1086 would increase ND Potato Council revenues through the elimination of refunds. The increase in non refundable revenue is over \$130,000 in 2006. The trend is increasing annually and could likely top \$150,000 for the 2007 crop year

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

"special funds", ND Department of Agriculture, ND Potato Council

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Diane Peycke	<b>Agency:</b>	ND Potato Council
<b>Phone Number:</b>	701-739-3366 cell #	<b>Date Prepared:</b>	01/04/2007

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/27/2006

Bill/Resolution No.: HB 1086

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0					
Expenditures	\$0					
Appropriations	\$0	\$0				

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Passage if HB 1086 would increase ND Potato Council revenues through the elimination of refunds. The increase in non refundable revenue is over \$130,000 in 2006. The trend is increasing annually and could likely top \$150,000 for the 2007 crop year

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

"special funds", ND Department of Agriculture, ND Potato Council

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	Diane Peycke	<b>Agency:</b>	ND Potato Council
<b>Phone Number:</b>	701-739-3366 cell #	<b>Date Prepared:</b>	01/04/2007

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1086

Page 1, line 2, remove the second "and"

Page 1, line 4, after "growers" insert "; and to provide a contingent effective date"

Page 3, after line 8, insert:

**"SECTION 4. CONTINGENT EFFECTIVE DATE.**

1. This Act becomes effective on the date the potato council certifies to the secretary of state and the legislative council that:
  - a. The potato council has conducted a referendum among all potato growers in the state, as indicated on the records of the council for the preceding year, to determine whether the ability to obtain a refund of the assessment paid under section 4-10.1-09 should be repealed;
  - b. The potato council prepared and mailed the ballots at least thirty days before the final date established by the council for filing ballots;
  - c. Each ballot was accompanied by a notice indicating the date and place at which the ballots would be tabulated and indicating that any grower may attend the opening and tabulation of the ballots; and
  - d. A majority of those voting upon the question favored repealing the ability to obtain a refund of the assessment paid under section 4-10.1-09.
2. The certification required by subsection 1 must be completed before January 1, 2008."

Renumber accordingly

Date:  
Roll Call Vote #:

1086  
1-19-07

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment  
Number

Action Taken amendments

Motion Made  
By

Joyce Kingsbury

Seconded By

Tracy Boe

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson	✓		Tracy Boe	✓	
Joyce Kingsbury	✓		Raymond Froehel		✓
Wesley Belter		✓	Phillip Muller	✓	
Mike Brandenburg		✓	Kenton Mott	✓	
Craig Headland		✓	Ben Vig	✓	
Brenda Heller	✓				
John D. Wall	✓				
Gerry Upton	✓				

Total (Yes) 9 No 4

Absent 0

Floor  
Assignment

If the vote is on an amendment, briefly indicate intent:

Date:  
Roll Call Vote #:

HB 1086

1-19-07

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

House AGRICULTURE Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do not pass

Motion Made By

BRAND

Seconded By

HEADLAND

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chairman	<input checked="" type="checkbox"/>		Tracy Boe		<input checked="" type="checkbox"/>
Joyce Kingsbury Vice Chairman		<input checked="" type="checkbox"/>	Rodney J Froelich	<input checked="" type="checkbox"/>	
Wesley Belter	<input checked="" type="checkbox"/>		Phillip Mueller		<input checked="" type="checkbox"/>
Mike Brandenburg	<input checked="" type="checkbox"/>		Kenton Onstad		<input checked="" type="checkbox"/>
Mike Brandenburg			Ben Vig		<input checked="" type="checkbox"/>
Craig Headland	<input checked="" type="checkbox"/>				
Brenda Heller	<input checked="" type="checkbox"/>				
John D Wall	<input checked="" type="checkbox"/>				
Gerry Uglem		<input checked="" type="checkbox"/>			

Total (Yes) 17 No 6

Absent

0

Floor Assignment

BRAND

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1086: Agriculture Committee (Rep. D. Johnson, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1086 was placed on the Sixth order on the calendar.

Page 1, line 2, remove the second "and"

Page 1, line 4, after "growers" insert "; and to provide a contingent effective date"

Page 3, after line 8, insert:

**"SECTION 4. CONTINGENT EFFECTIVE DATE.**

1. This Act becomes effective on the date the potato council certifies to the secretary of state and the legislative council that:
  - a. The potato council has conducted a referendum among all potato growers in the state, as indicated on the records of the council for the preceding year, to determine whether the ability to obtain a refund of the assessment paid under section 4-10.1-09 should be repealed;
  - b. The potato council prepared and mailed the ballots at least thirty days before the final date established by the council for filing ballots;
  - c. Each ballot was accompanied by a notice indicating the date and place at which the ballots would be tabulated and indicating that any grower may attend the opening and tabulation of the ballots; and
  - d. A majority of those voting upon the question favored repealing the ability to obtain a refund of the assessment paid under section 4-10.1-09.
2. The certification required by subsection 1 must be completed before January 1, 2008."

Renumber accordingly

2007 SENATE AGRICULTURE

HB 1086



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1086

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4681

Committee Clerk Signature

*Cassie Krohn*

Minutes:

**Sen. Flakoll** opened the hearing on HB 1086, a bill relating to the definitions and referendums by potato growers and to refunds of nonparticipating potato growers. All members (7) were present.

**Joyce Kingsbury**, district 16, testified in favor of the bill. See attached testimony.

**Sen. Taylor-** one thing your testimony mentioned was equity with larger producers having multiple entities, can you explain how that works?

**Joyce Kingsbury-** yes maybe they are growing in one area with one farm and maybe in a partnership in another area with another farm and maybe even a third site and each one is considered a first handler and they would each have a vote.

**Sen. Tallackson**, district 16, testified in favor of the bill. See attached testimony.

**Barry Kingsbury**, from Walsh county, testified in favor of the bill. See attached testimony.

**Sen. Klein-** you said that they refund because they can, has there been any discussion with these refunders as to why they want to refund?

**Barry Kingsbury-** it is because they can.

**Sen. Klein-** you don't have any feed back then that you could take back to a board and say that we could keep these folks on board over here if we stuck a few bucks into this research?

**Barry Kingsbury-** the association has done just that in the past.

**Sen. Klein-** should this be mandated you guys would pick up about an additional \$130,000 what does that mean for the total budget, where are you currently at and what do you hope to be at?

**Barry Kingsbury-** I don't know the answer to that.

**Sen. Klein-** Rep. Kingsbury talked about other states with all inclusive provisions plus higher checkoffs, how do we rate as far as other states in how much we charge per hundred?

**Barry Kingsbury-** it is my understanding that we are one of the lower assessed states in our industry that have assessments. We have smaller budgets compared to many other states.

**Ben Tucker,** potato producer, testified in favor of the bill. See attached testimony.

**Sen. Erbele-** of the people that refund do they generate refunds 100% of what they have coming to them or can you just say that you want \$5,000 back from when they may have placed \$15,000 in or do they generally take the 100% out?

**Ben Tucker-** they do have that option, they generally receive their refund and then write a check back. Sometimes they will refund their chip money but not their red money. It works in many different ways.

**Sen. Erbele-** we heard that 2% or refunding nearly 25% of the funds is that then the request not taking into consideration of what they are taking back in or are you still losing 25% of the funds even after they have paid back?

**Ben Tucker-** even after that we are losing 25% of our budget.

**Sen. Taylor-** its been mentioned a little bit about variety development and I am curious what the associations relationship is with the NDSU and how you participate with variety development. Is there a transfer of funds or support, how do you go about that?

**Ben Tucker-** we over the decades have had a very close relationship to NDSU, we do fund the program and they do a good job of taking those funds and going out and finding matching funds to bring into all of their programs.

**Sen. Klein-** so I am lead to believe then that it is just a small group of big producers that are hitting the fund the hardest?

**Ben Tucker-** that would be true.

**Sen. Klein-** as boards meet do you have a quarterly or annual meeting announced to everyone and participation is then by the entire industry, how does the board that works with these funds operate?

**Ben Tucker-** the board is made up of farmers we talk with our neighbors and we meet and we set up the budgets and we divide up to committees where non board members are on the research committee or marketing committee. We do have an annual meeting.

**Rod Holth,** KIP Farms, testified in favor of the bill. See attached testimony.

**John L. Galegher Jr.,** potato producer, testified in favor of the bill. See attached testimony.

**Sen. Klein-** you talked about the other industries and the refunding ability and issues that they have concerns with. Has any discussion been held at all on whether or not an increase to the checkoff is even something that has been considered?

**John Galegher-** we have always had refund situations for various reasons, there has been discussions about raising the assessment or attempting to which would take action by the North Dakota Potato Council and I think that at the end of the day the decision was reached that we already have what is referred to as a commons dilemma which is receiving the benefits without having to pay for them and we decided that it was inequitable to ask the people that re already supporting the issue to pay more so that others could have free benefits.

**Deana Wiese**, testified in favor of the bill on behalf of Kent Albers from the ND Ag Coalition.

See attached testimony.

**Woody Barth**, NDFU, testified on behalf of the bill.

**Woody Barth**- We support the potato growers associations right to determine their own policy on their checkoff by referendum. We support the bill as engrossed.

**Sen. Flakoll**- did you also support the bill as introduced?

**Woody Barth**- yes and the engrossed version also fits better with our policy.

**Brian Kramer**, NDFB, testified in favor of the bill.

**Brian Kramer**- We to support the bill, we have a policy supporting the potato council and the potato growers association in their efforts to have this bill put forward. I think the provision that allows the potato growers to ask themselves the question of whether or not they want a non refundable checkoff is a very fair way of going about it.

**Sen. Klein**- would you support mandating a wheat checkoff?

**Brian Kramer**- if our members came to use and put that through or policy development process and the policy was there.

Testimony in favor of the bill was also submitted by **Duane Maatz, Mark Thompson, Bob Moe, David Moquist, Paul Dolan, Brad Nilson, Nick Otto, Dale Collette, Randy Hurtt, Camburn Shepard, Kit Midgarden, Keith Bjorneby, and Justin Dagen**; see attached.

**Keith McGovern**, lived in ND for 19 years, testified in opposition to the bill. Went over map with committee 45:50-55:23.

**Sen. Taylor**- your families operations in other states you mentioned that some mandatory higher checkoffs and some have none, as far as the bulk of your production what is the layout as far as you support other industries in other states?

**Keith McGovern-** the largest amount of our production is Minnesota we do have a large operation in Oregon that functions as part of the Washington potato growers association. The Washington organization typically leads the industry in negotiating contracts with potato processors.

**Sen. Taylor-** and what is the layouts in Washington and Oregon as far as their checkoffs?

**Keith McGovern-** it is mandatory but I can't tell you quite what it is.

**Sen. Erbele-** when you were talking about when they can refund did I hear you say that sometimes in some cases the reason for the refund would be because of a bad growing situation on a particular farm or something that those refund dollars might be what would keep them whole for that year?

**Keith McGovern-** I don't think it is enough to keep them whole but it might make them feel better.

**Sen. Wanzek-** in your view do you think that you would have a fair chance of having someone represent your side to be able to get on the council through their governance process?

**Keith McGovern-** I do think that we would have a fair chance.

**Sen. Behm-** what is your checkoff policy in Minnesota?

**Keith McGovern-** it is a mandatory checkoff.

**Sen. Erbele-** it was stated earlier that 25% is refunded, what would you have to take to the table to drop that down/

**Keith McGovern-** I believe that if this bill was killed there would be hardly any refunding but if people had say on how their money was spent.

**Duane Espegard**, representing himself, testified in opposition to the bill. See attached testimony.

**Duane Mutch**, former senator, testified in opposition to the bill.

**Duane Mutch-** I stand in opposition to this bill, I think that it is unfair and confusing to have it non refundable.

**Craig Steinmeiser**, farmer/grower, testified in opposition to the bill.

**Craig Steinmeiser-** I stand in opposition to this bill. I currently do not refund and do not feel that we need to have a mandate because I think it makes you lose your stand on things. I think we need to stream line things.

**Sen. Wanzek-** if this bill does fail do you think that out of bitterness that people may refund, are you willing to keep your money in there?

**Craig Steinmeiser-** I don't think that it will matter either way.

**Sen. Wanzek-** you are not going to start refunding out of bitterness?

**Craig Steinmeiser-** not me personally.

**Jeff Vonrey**, grower, testified in opposition to the bill.

**Jeff Vonrey-** this is the first time that I have refunded in 12 years. I don't think that it is fair one vote one grower. I support a do not pass.

**Sen. Klein-** beyond the checkoff the growers are required to pay \$100 to the board?

**Jeff Vonrey-** yes in every association and every group.

**Jack Scott**, grower/producer, testified in opposition to the bill. See attached testimony.

**Mike Sitzmann**, farmer, testified in opposition to the bill.

**Mike Sitzmann-** I stand here in opposition to this bill and I encourage a do not pass vote.

**Sen. Flakoll** closed the hearing.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1086


Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 8, 2007

Recorder Job Number: 4734

Committee Clerk Signature



Minutes:

**Sen. Flakoll** opened discussion on HB 1086.

**Sen. Heckaman**- I think however we vote it is not going to resolve anything for either side.

**Sen. Behm**- I feel very uncomfortable voting either way. If I could I would rather not vote.

**Sen. Taylor**- I only have one potato grower in my district and he is for this. It seems like the russet guys are upset but that they have good representation on the board. Beef has a mandatory check off and there is no complaint with that, it is kind of a fairness issue.

**Sen. Heckaman**- I think that there may be some ways for them to sit down and use their import dollars to channel that back out into the area. They should figure this out among themselves.

**Sen. Wanzek**- I guess I can appreciate both sides concerns I wonder if there is some way to put a little bit of teeth in this study. If it does become mandatory I would like to know more about that too.

**Sen. Taylor**- We could do something with the effective date of the legislation of one year or something of that nature.

**Sen. Heckaman-** or we could say something like that there will be a negotiation period from such and such a date and if something hasn't been resolved then it would go to a study or something like that. Is there any thought of having them decide this amongst themselves?

**Sen. Flakoll-** it has forced them to try to come to a resolution on this but I think that it still goes back and forth.

**Sen. Erbele-** did they ever make clear what that offer was?

**Sen. Flakoll-** no.

**Sen. Wanzek-** it seems to me that they have very different needs.

**Sen. Heckaman-** well you have 1/3 of the people and 2/3 of the money and I think that is where the problem comes.

**Sen. Flakoll** closed the discussion.



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1086

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: 4782

Committee Clerk Signature

*Nassu Krohn*

Minutes:

**Sen. Flakoll** opened the discussion on HB 1086.

**Sen. Klein-** a lot of discussion yesterday on both sides, I sense that there is a little tension among the groups and that we are going to have a struggle to pass this. We talked about a council study with has interest from some of the parties and some suggesting not. The study would have some sort of the direction and that would be given by that committee whose job would be to see to it that the issue in the study are covered and that there is something resolved from that. I would like to hog house the bill and make it more of a study. I would move the amendments.

**Sen. Taylor-** we did have some amendments that someone else brought to the table also that I think that we should take a look at regarding research and electing their dollars toward that. My preference would be to fail this study for now and visit a couple of things on the bill itself and if those are unattached then come back to a study resolution.

**Sen. Klein-** I don't think that I would support that. I have a sense that the bill has some trouble. I would support a study I don't know if I would support all the other amendments.

**Sen. Erbele-** if we would go to the amendment of allowing them to determine where to go with their refund is that really the major issue? Cause I think that would still cause some conflict

with the larger group because it would leave less money for research for other groups and cause greater division.

**Sen. Taylor-** the amendment that was presented just said research and was submitted by the opposition. My feeling is that many considered this reasonable.

**Sen. Behm-** I got emails to that said that a lot of them could live with that amendment.

**Sen. Klein-** the amendments do not change the fact that there would be a mandatory check off and this would just change the way the governess would have to take a look at where the dollars go. So even if we adopt those amendments it is not going to give us anymore traction then the study resolution would.

**Sen. Erbele-** I would think that determining where the dollars are spent the council itself should be able to come up with that solution and that would still leave the refund in place.

**Sen. Taylor-** it is not mandatory until the growers that pay it say its mandatory.

**Sen. Wanzek-** I would most likely support the amendments but I don't know if I would support the bill. I think that they need to sit down and discuss this and work it our among themselves. I know there is the fear that if we support the study that it will not really get done. I would like to see that if this is going to move forward a little more of a majority vote on this

**Sen. Flakoll-** I think that it the bill goes up clean that it is dead.

**Sen. Heckaman-** how would this study differ from the other study resolution?

**Sen. Klein-** it differs because it adds some things to it but I think what it is doing is showing them that we are serious about this and that this is the root of the problem. I really believe that this would be studied and I think that before this is even formed that the groups would be working together because they know this would be coming.

**Sen. Flakoll** closed the discussion.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1086

Senate Agriculture Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2007

Recorder Job Number: 4790

Committee Clerk Signature

*Passa Kron*

Minutes:

**Sen. Flakoll** opened the discussion on HB 1086.

**Sen. Behm**- I would like to see the bill stand on its own.

**Sen. Taylor**- I would move to amend the amendments.

**Sen. Taylor** motioned to further amend the amendments and was seconded by **Sen.**

**Heckaman**, roll call vote 1: 3 yea, 4 nay, 0 absent. **Sen. Klein** motioned to move amendments 78090.0202 and was seconded by **Sen. Wanzek**, roll call vote 2: 4 yea, 3 nay, 0 absent. **Sen. Klein** motioned for a do pass as amended and was seconded **Sen. Wanzek**, roll call vote 3: 4 yea, 3 nay, 0 absent. **Sen. Klein** was designated to carry the bill to the floor.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1086

Page 1, line 2, after the semicolon, insert "to amend and reenact section 4-10.1-07 of the North Dakota Century Code, relating to expenditure of funds by the council;"

Page 2, after line 10, insert:

**"SECTION 2. AMENDMENT.** Section 4-10.1-07 of the North Dakota Century Code is amended and reenacted as follows:

**4-10.1-07. Expenditure of funds.** Every expenditure of funds made pursuant to this chapter must be approved by the council, submitted upon itemized voucher to the office of the budget for approval, and paid by warrant-check issued by the office of management and budget. Each grower paying an assessment to the council must annually be allowed by the council to make an election whether the grower's total payment is to be specifically used by the council for expenses committed to research. Assessments designated by growers for research shall be used by the council only for that purpose."

Renumber accordingly

Date: March 9, 2007  
Roll Call Vote #: 1

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1086**

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Further Amend (Taylor amendments)

Motion Made By Taylor Seconded By Heckaman

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman		X	Arthur H. Behm	X	
Terry M. Wanzek-Vice Chairman		X	Joan Heckaman	X	
Robert S. Erbele		X	Ryan M. Taylor	X	
Jerry Klein		X			

Total (Yes) 3 No 4

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*[Handwritten signature]*  
3-9-7

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1086

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the potato assessment law.

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2007-08 interim, the potato assessment law, including the membership, governance structure, and spending priorities of the potato council, the feasibility and desirability of eliminating refunds from the potato assessment law, the effect that eliminating refunds would have on the potato industry in this state and on efforts to promote potatoes, and the effect that eliminating refunds of potato assessments might have with respect to the checkoff provisions of other commodities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

Date: March 9, 07  
Roll Call Vote #: 2

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1086**

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Move Amendments 78090.0202

Motion Made By Klein Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Tim Flakoll-Chairman	X		Arthur H. Behm		X
Terry M. Wanzek-Vice Chairman	X		Joan Heckaman		X
Robert S. Erbele	X		Ryan M. Taylor		X
Jerry Klein	X				

Total (Yes) 4 No 3

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: March 9, 2007  
Roll Call Vote #: 3

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1086**

Senate	Agriculture	Committee
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☐ Check here for Conference Committee**Legislative Council Amendment Number**

Action Taken Do Pass as Amended

Motion Made By Klein Seconded By Wanzek

[illegible]

Total (Yes) 4 No 3

**Absent** ☐

Floor Assignment Sen. Klein

**If the vote is on an amendment, briefly indicate intent:**



**REPORT OF STANDING COMMITTEE**

**HB 1086, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1086 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the potato assessment law."

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

**SECTION 1. LEGISLATIVE COUNCIL STUDY.** The legislative council shall consider studying, during the 2007-08 interim, the potato assessment law, including the membership, governance structure, and spending priorities of the potato council, the feasibility and desirability of eliminating refunds from the potato assessment law, the effect that eliminating refunds would have on the potato industry in this state and on efforts to promote potatoes, and the effect that eliminating refunds of potato assessments might have with respect to the checkoff provisions of other commodities. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly."

Renumber accordingly

2007 SENATE APPROPRIATIONS

HB 1086

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1086

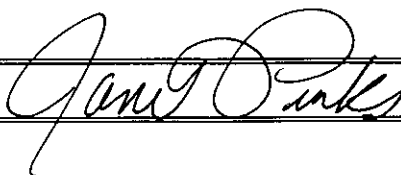
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-19-07

Recorder Job Number: 5254

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1086 indicating it is a bill with extensive hearings in the House and Senate and we will deal with the fiscal note and its impact on other funds. The current version we are using is the first engrossment .0200.

Duane Maatz, representing the ND Potato Council, distributing written testimony and testifying in support of HB 1086, noting that the revenue will increase the first year and again the second year. Should HB 1086 be signed into law, it would allow a referendum of the growers and if that passes, these dollars utilized for production research within the industry.

Chairman Holmberg indicated this was well described on floor. There are federal check offs that are mandated. What are the other state check offs that are mandated. The response was all states pay a mandatory 2 cents assessment and all other major states have 4.5 to 5 cents; Idaho has 10 going to 15 cents.

Senator Klein testified on the referendum and how fair it will be. I suggest we look at some amendments to remove that portion. There are about 200 growers and maybe we need to return to the original bill.

Chairman Holmberg distributed amendments had been placed on his desk and they would be distributed when the bill is discussed.

Roxanne discussed what the amendment means; it removes section 4, which takes the bill back to its original status.

Duane commented on what the industry wants to make this work. If the date is removed it could perhaps solve the problems in the industry. He could not promise that opposition would agree to that.

Chairman Holmberg indicated the bill won't pass today, the committee needs to gather information

Senator Tallackson asked if the amendment was put on in the House and if this was a compromise. The response was it is the beginning of a compromise.

Cal Rolfson representing the John Scott farms, testified in response to questions. There are 10 state check-off programs and none of them are mandatory. If this passes this will be the first one mandated. The problem with the mandate that frustrates both sides is that the amendment that was put on in the House discusses producers voting and the area Mr. Maatz representing six counties and 35 percent of the production. Today the production has increased to other counties. The majority of the voters on the board are inequitable and they are trying to work out the fairness. The suggestion to put the bill back in its original form makes this all fair.

Chairman Holmberg indicated there is some discussion as to why the legislature must try to make this fair. The response is the organization is trying to work this out.

Senator Tallackson, indicated he on bill as sponsor and there was 100% vote of council to ask us to introduce this bill. The response was that is certainly correct.

Chairman Holmberg indicated we don't plan to pass this out now -- if parties come back hand in hand would be nice.

The Dept of Agriculture was represented responding to comments and indicating the commissioner serves as chairman of the council. The council is elected by people not by what is produced and in no time was there questions raised by the council to the board that the money should be spent other then how it is allocated. There was every opportunity for that group and there was never any serious debate about where money go to-- not like any producers have been shut out.

Senator Bowman indicated when things go good there is no reason to challenge anything , but over period of time things change and in this case the research is questionable. Those producers have had right to have money in or request money back. Hopefully don't have to pull out. We get twitches when things change and this is a request for the legislative body to correct it. If you can't satisfy those few people, you are not listening to the whole body. I hope the message goes out that everyone satisfied. This won't be resolved unless everyone works together. The response was the only reason people refund is because they are not satisfied with the council. You see similar names on other councils (of dissent). When you take the cattle and soybeans, they cannot ask for a refund. It is sad they cannot reach agreement. The association will not survive if something does not happen. Agriculture Commission indicates some action needs to be taken.

Chairman Holmberg closed the hearing on HB 1086.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1086

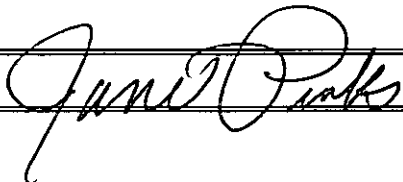
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: 03-21-07

Recorder Job Number: 5381

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1086 indicating this title would be incorrect because it is really not a council study anymore.

Senator Christmann indicated he thinks the amendments of .0200 on page 3 indicates if a majority of the growers voting on the question; the amendment would change that to require a 60 percent vote.

Senator Tallackson indicated he would sooner wait until after the amendment comes from the Legislative Council. No vote was taken.

Chairman Holmberg closed the session.

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1086

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: **March 22, 2007**

Recorder Job Number: **5452 Start 4:45m**

Committee Clerk Signature

*Janet Pinks*

**S Christmann** distributed amendments .0203.

**S Holmberg** asked to have the amendment described.

**S Christmann:** I don't understand all the full details of the bill, but know what we requested and seems reasonable. This is controversial and take ½ the people to impose the first mandated check off. This amendment changes if from majority to 60%. Simple

**S Christmann** moved the amendment

**S Grindberg** second the motion

. What should be done is we should pass the bill when it comes over from the House in my estimation, and if that's the reason for the amendment, I would be against it.

If this is going to change the votes from the inside, is that part of the deal?

**S Christmann** it is not going to change my vote. I was opposed to it in the first place.

. You know what's going to happen, it will go to the House and go into a fight all over again.

**S Holmberg** took vote on the amendment. Oral vote, then show of hands on the nay. Motion for the amendment carried.

**S Christmann** has always been opposed to mandatory state check off.

**Do pass as amended from S Tallackson**

**Second from S. Lindaas**

Page 2

Senate Appropriations Committee

Bill/Resolution No. **HB 1086**

Hearing Date: **March 22, 2007**

**Roll call on a DO PASS AS AMENDED HB 1086 – Failed**

**Motion for a DO NOT PASS S Christman**

**Second from S Bowman – Passed**

**Carrier: S Bowman**

2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1086

Page 1, line 2, after the semicolon, insert "and"

Page 1, line 4, remove "; and to provide a contingent effective date"

Page 3, remove lines 9 through 24

Renumber accordingly



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1086

Page 3, line 21, replace "A majority" with "Sixty percent"

Renumber accordingly

Date:  
Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1086

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DP as amend

Motion Made By Tallack Grindberg Seconded By Lindaas

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm		✓	Senator Aaron Krauter	✓	
Senator Bill Bowman, V Chrm		✓	Senator Elroy N. Lindaas	✓	
Senator Tony Grindberg, V Chrm		✓	Senator Tim Mathern	✓	
Senator Randel Christmann		✓	Senator Larry J. Robinson	✓	
Senator Tom Fischer		✓	Senator Tom Seymour	✓	
Senator Ralph L. Kilzer		✓	Senator Harvey Tallackson	✓	
Senator Karen K. Krebsbach		✓			
Senator Rich Wardner		✓			

Total (Yes) 6 No 8

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3/22  
Roll Call Vote #: 2

**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1086**

Senate Appropriations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken \_\_\_\_\_

Motion Made By \_\_\_\_\_

Seconded By \_\_\_\_\_

Senators	Yes	No	Senators	Yes	No
Senator Ray Holmberg, Chrm	✓		Senator Aaron Krauter		✓
Senator Bill Bowman, V Chrm	✓		Senator Elroy N. Lindaas		✓
Senator Tony Grindberg, V Chrm	✓		Senator Tim Mathern		✓
Senator Randel Christmann	✓		Senator Larry J. Robinson		✓
Senator Tom Fischer	✓		Senator Tom Seymour		✓
Senator Ralph L. Kilzer	✓		Senator Harvey Tallackson		✓
Senator Karen K. Krebsbach	✓				
Senator Rich Wardner	✓				

Total (Yes) 8 No 6

Absent \_\_\_\_\_

Floor Assignment Bowman

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 22, 2007 5:44 p.m.

Module No: SR-54-5997  
Carrier: Bowman  
Insert LC: 78090.0203 Title: .0400

**REPORT OF STANDING COMMITTEE**

**HB 1086, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO NOT PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). Engrossed  
HB 1086 was placed on the Sixth order on the calendar.

Page 3, line 21, replace "A majority" with "Sixty percent"

Renumber accordingly

2007 TESTIMONY

HB 1086

**NORTH DAKOTA LEGISLATIVE ASSEMBLY**

**HB 1086**

**My name is Joyce Kingsbury I serve District 16**

**Mr. Chairman, Members of the House Ag Committee**

**I am introducing this bill at the request of the North Dakota Potato Council, and the Northern Plains Potato Growers Association.**

**HB 1086 would remove chapter 4-10. 1-12 of the Potato Industry Promotion Act.**

**The NPPGA gets its funding from the ND Potato Council and the Minnesota Area 1 Potato Council in northern Minnesota. The growers pay 3 cents per hundred weights sold, compared to 4 cents in Washington and Oregon, 5 cents in Wisconsin, Colorado, Maine and Michigan, and Idaho is at 10 cents.**

**The production, research and marketing of potatoes are important to North Dakota, the 4<sup>th</sup> largest producing state; with over 1000 processing jobs.**

**Current production in ND is 98,000 harvested acres, and 48,000 harvested acres in Minnesota.**

**The Minnesota legislature granted the nonrefundable provision some years ago. ND is the last major potato producing state that still has a refund provision.**

**The refunding situation has grown to be a problem in that while the percent of refunders sound small, 2% of our growers refund 25% of the budget. Every potato farm benefits in some way from work done by the Northern Plains Potato Growers Association, and it has become a fairness issue.**

**In the interest of fairness, I would offer an amendment # 78090.0101, to grant the NPPGA the authority to hold a referendum of all potato growers on this issue.**

**I submit amendment 78090.0101 for HB 1086.**

**Thank you, Are there any questions?**

Mr. Chairman and members of the committee, my name is Barry Kingsbury from Walsh County in the northeast corner of our state. I am a past Chairman of the Northern Plains Potato Growers Association, past National Potato Council Board member and a current Board member of the United States Potato Board but today I am here as a concerned potato grower from North Dakota to speak in support of HB 1086.

Our industry needs a consistent and credible voice when it comes to addressing the growers needs, whether it be towards policymakers, regulatory agencies or researchers. The Northern Plains Potato Growers Association does just those things by being the voice of our area's industry. Without consistent funding from the North Dakota potato industry the growers association has a difficult task in reaching its objectives when we can not plan far into the future, due to not knowing what funds will be available.

One of the main areas our association channels its efforts is towards research. The growers themselves send the ideas and concerns to the association. The association then gathers all the information and works with various researchers on different projects, obviously the more funds and more consistent funds will help researchers plan into the future with the projects that can not be completed in one year. This consistency will help researchers focus on the research, instead of constantly looking for funds to continue the work being done for the industry.

Variety development, I think, is probably one of the most important areas of research for the future of the industry. If you ask growers what varieties they grow now compared to what we grew 10, 15 and 20 years ago you will hear many different answers. Variety development takes many years of breeding and "real world" evaluations to show that they can help us compete against other areas in the country and world with a consistent supply of quality and quantity.

I could go on with other areas of importance but I am sure you have and will hear more from others. The bottom line is with the financial input from everyone, we will receive the most important input and that is the grower involvement making sure their dollars are working the best for our potato industry.

Right now it is too easy to not be involved by refunding the assessment. The potato industry in North Dakota can be much more successful but we need all the growers involvement and this is the best way to do that.

Thank you for listening and I ask for your support on HB 1086.

Barry Kingsbury  
7647 145<sup>th</sup> Ave. NE  
Grafton, ND 58237

701-352-2032

**A Letter of Testimony to the House Committee on Agriculture concerning HB 1086:**

Chairman Dennis Johnson  
Vice Chairperson Joyce Kingsbury  
Members of the House Committee on Agriculture

My name is Chuck Gunnerson. I own and operate the Ada Produce Company, a potato processing facility located in Ada, MN and am the current Chairman of the Minnesota Area One Potato Research and Promotion Council. I also serve as a director of the Northern Plains Potato Growers Association. I encourage your support of HB 1086.

The North Dakota Potato Council and the Minnesota Area One Potato Council contract with the Northern Plains Potato Growers Association to provide research, advertising and promotion, contract bargaining and grower education for potato growers in North Dakota and Minnesota. This is a relationship that has existed for over 50 years.

I wanted to provide the committee with a brief history of how the Minnesota Area One Potato Council achieved a no refund provision for the Minnesota Potato Promotion Order. Our situation was no different than the North Dakota Potato Council's is today. The Minnesota Area One Potato Council has always had a loyal grower support but as times changed and single growing operations grew larger we found our Council was refunding 30% of our projected budget to one growing operation. This angered our growers and they threatened to also refund their dues unless we corrected this injustice. The growers stated that the growing operation that benefited most from our research and promotion was asking for a "free ride".

In 1990 the Minnesota Area One Potato Council and the North Dakota Potato Council with the help of the Red River Valley Potato Growers Association (now the Northern Plains Potato Growers Association) made a decision to approach the North Dakota Legislature and the Minnesota Legislature in order to remove the refund provision of both potato promotion orders. The Minnesota Area One Potato Council was successful but the North Dakota Potato Council was not successful because of a handful of large growers with strong political ties.

Today there is concern among Minnesota potato growers that they support the North Dakota-Minnesota potato industry 100% but the North Dakota growers should also. It becomes a fairness and equity issue all over again.

I am writing this testimony to show my strong support for HB 1086. I have observed the inequities in the North Dakota Potato Promotion Order for many years and feel it is long overdue to bring fairness to the issue of supporting the North Dakota Potato Industry by removing the refund provision.

It is wrong that the majority of North Dakota potato producers support and fund research, grower education, advertising and promotion and various other means of benefiting the North Dakota Potato Industry yet a very small minority, two percent of North Dakota potato producers do not share in this funding mechanism. This two percent of producers is the very large growing operations that benefit most from the initiatives funded by the North Dakota Potato Council yet they choose to refund their assessments. The inequity is that this two percent of growers are refunding 25% of the Council's operating funds.

Please support HB 1086 and help the potato industry come together to further their mutual goals and help resolve the issue of fairness and equity.

Thank you for your time and consideration.

Sincerely,

Chuck Gunnerson



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Chairman Dennis Johnson  
Vice Chairperson Joyce Kingsbury  
Members of the House Committee on Agriculture

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Please support HB 1086 and help the potato industry come together to further their mutual goals and help resolve the issue of fairness and equity.

Thank you for your time and consideration.

Sincerely,

Chuck Gunnerson

State of North Dakota  
Committees on Agriculture; Regarding HB 1086

I would like to relate how important the Potato Association and industry is in North Dakota and Minnesota. I was hired for this position as the Area Extension Agent-Potatoes, 29 years ago. The potato position was created at the request of the Red River Valley Potato Growers Association Board of directors. This request created a potato position with the memorandum of agreement, between the Extension Services of North Dakota State University and the University of Minnesota.

The position office and portion of the expenses are funded from the potato assessment from potato producers in North Dakota and Area I in Minnesota.

The potato industry has been very successful in the region because of the leadership and financial support from potato producers through their voluntary assessment or check-off of 3 cents per cwt. However times have changed and budgets have decreased in all areas of potato programs.

Big concerns facing the potato industry is lack of finances to support the association programs, ranging from contact negotiations, researcher support at NDSU, UMN, USDA, research budgets for an irrigated research and dry land research and staff positions.

Millions of dollars have been added to the region, as a result of new potato varieties developed from the potato breeding program at North Dakota, which was only possible from large budget support from the growers association.

In the last 25 years the industry has changed, with new processing factories being constructed in Jamestown, ND and Park Rapids, MN, which has expanded the potato, chemical, irrigation industry and job market for hundreds of new positions from farm labor to factory employees. This has resulted into multi-million dollars of revenue to the states as a result of potato production.

This is in part, a result of beneficial research projects and results from the assessments from the potato growers association. If the North Dakota potato industry is to continue to provide research and education, more revenue is needed from the assessments from the producers and manufacturers.

I hope HB 1086, can provide the support for theses potato projects and programs.

Duane Preston  
Professor,  
Area Extension Agent-Potatoes  
NDSU/UMN  
Box 301  
East Grand Forks, MN

January 8, 2007

To whom it may concern:

I am a farmer and potato grower from Crystal, ND. Our family has been raising potatoes for over 50 years and have been very involved with the Northern Plains Potato Growers Association (NPPGA) originally the Red River Valley Potato Growers Assn. I am presently the chairman of the Advertising and Promotion Committee of the NPPGA and also serve on the US Potato Board. I have also served on the North Dakota Potato Council and also on the Board Of Directors of the NPPGA.

I feel that the work the NPPGA does is critical to us as potato growers. They represent us on political issues much more effectively then we could as individuals. They represent us on issues dealing with crop insurance, EPA regulations and other federal issues. Through the NPPGA we have access to our senators, congressman, governor and other state officials that we could never have as individuals. Collectively as an association we work together on research, promotion, advertising and support bargaining efforts as well. Many of the programs, research and researchers we support are respected on a national if not international level.

As you can see, with all these things going on, reliable funding is a necessity and without a change, all of what has been achieved over the years is at risk. There are presently about 2% of the growers refunding 25% of the budget. I understand we are the only state that has a refund provision and also the potato growing region with the lowest check off. We could achieve so much more with reliable funding. I for one am tired of other growers benefiting with out paying their fair share. Therefore I submit that the refund provision should be removed.

Thank you very much for your consideration in this matter. If you have any questions you can reach me at 701-657-2152 or [ocschulz@polarcomm.com](mailto:ocschulz@polarcomm.com).

Sincerely,

David Moquist

January 8, 2007

Mr. Chairman & Members of the House Agriculture Committee:

My name is Bob Moe. I live in Fargo, ND and I raise potatoes for Fry Processors in ND. My potato production and warehouse / shipping facilities are located near Lisbon, ND. I am a director on the North Dakota Potato Council and a member of the North Dakota State Seed Commission.

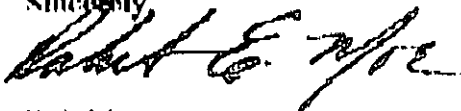
Every potato producer in North Dakota benefits from the work done by and the representation of the Northern Plains Potato Growers Association. These benefits include, but are not limited to the following:

1. Research: Varietal breeding through all aspects of potato production and storage issues / education.
2. Production Contracts: Processor production contract improvements via unified grower negotiations with Fry Processors.
3. National Representation: Input from and on behalf of the Northern Plains Potato Growers to numerous National potato interests ie: PMA, NPC, PMANA, Risk Management Federal Agencies.

North Dakota and Minnesota share in the funding of the Northern Plains Potato Growers Association. When the Minnesota growers passed non - refundable legislation, North Dakota was to do the same, but failed. This caused an inequity in funding to Minnesota growers when 2 % of the North Dakota growers refund 25 % of the Northern Plains Potato Growers Association budget. This is EXTREMELY UNFAIR to the growers that do not refund. Why should they subsidize the larger growers that do refund, but still receive the same benefits from the Association as the growers who do not refund???

In conclusion, this letter is being written to confirm my support for the passage of HB # 1086.

Sincerely,



Bob Moe  
Valley View Farms  
P. O. Box 582  
West Fargo, ND 58078

A Letter of Testimony to the House Committee on Agriculture concerning HB 1086:

Chairman Johnson, Vice chair Kingsbury, members of the House Committee on Agriculture,

My name is Bennet Tucker. I live and farm in St. Thomas, North Dakota. I am here today to testify in favor of House Bill 1086.

The facts of the situation are clear. A few growers refund their check-off money. Although they are few, they refund 25% of our budget. This negatively impacts our ability to do research, marketing and to represent our area at a national level. This unfairness is compounded by the fact that we cross one state line and the Minnesota farmers do not have a refund provision. In fact, although we are the lowest check-off rate of any major potato producing area, we are the last major potato producing state to still have a refund provision.

What I would like to draw to your attention today is that, in addition to the current facts, the immediate future looks even more bleak. The amount and impact of the refunds are chartable trends. What grew slowly from 5% to 15% and then quickly to 25%, now gives us enough information that we are projecting next year's budget at only \$400,000 because of refunds totaling \$175,000. That will be over 30%.

The logic behind the trend is a simple downward spiral. With the situation becoming more unfair, people like me will also begin to refund because we are tired of paying the bills for programs that benefit everyone. The Association will then become less effective, causing even more farmers to file for a refund. Research, breeding and marketing will go undone. We will be left without a voice at the meetings of the national associations, which would be a shame since we are a significant producing area.

It is all foreseeable and predictable. Soon we will approach 50%. This unfair situation needs to be corrected now. Other avenues have been tried and explored by the North Dakota Potato Council and the Northern Plains Potato Growers Association. This bill is the last chance to correct a growingly desperate situation. I urge you to vote in favor of the bill.



P.O. Box 2599  
Bismarck, ND 58502  
(701) 355-4458  
FAX (701) 223-4645

#### MEMBERS

AmeriFlax  
Milk Producers Association of  
North Dakota, Inc.  
Minn-Dak Farmers Coop  
North Dakota Ag Aviation  
Association  
North Dakota Ag Consultants  
North Dakota Agricultural  
Association  
North Dakota Agri-Women  
North Dakota Association of Soil  
Conservation Districts  
North Dakota Association of  
Agricultural Educators  
North Dakota Barley Council  
North Dakota Beef  
Association  
North Dakota Corn Growers  
Association  
North Dakota Corn Utilization  
Council  
North Dakota Crop  
Improvement and Seed  
Association  
North Dakota Department of  
Agriculture  
North Dakota Dry Bean Council  
North Dakota Elk Growers  
North Dakota Farm Bureau  
North Dakota Farm Credit Council  
North Dakota Grain Dealers  
Association  
North Dakota Grain Growers  
Association  
North Dakota Lamb and Wool  
Producers  
North Dakota Oilseed Council  
North Dakota Pork Producers  
North Dakota Soybean Growers  
Association  
North Dakota State Seed  
Commission  
North Dakota Wheat  
Commission  
Northern Canola Growers  
Association  
North Dakota Plains Potato Growers  
Association  
North Dakota Pulse Growers  
Association  
Red River Valley Sugarbeet  
Growers

Testimony of Mike Beltz  
North Dakota Ag Coalition  
Before the House Agriculture Committee  
Friday, January 12, 2007  
HB 1086

Chairman Johnson, members of the House Agriculture Committee, I am Mike Beltz. I farm near Hillsboro and am here today as the vice chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I would encourage your support of House HB 1086.

For more than 20 years, the North Dakota Ag Coalition has provided a unified voice for North Dakota agricultural interests. Today, the Coalition is made up of 30 statewide organizations or associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on a limited number of issues that have a significant impact on North Dakota's ag industry. HB 1086 is one of these issues.

The Ag Coalition is in support of this bill as it seeks to create equality and fairness among growers within the potato industry by removing the checkoff refund provision. Commodity checkoff programs are an asset in that they allow producers to pool resources toward a unified goal. However, as it currently stands with a refund provision for potato growers, less than two percent of the growers refund more than 25 percent of the checkoff revenue. This two percent is still able to access the services enabled by the checkoff revenue, including research and promotion, even though they have chosen not to participate in the program.

With North Dakota being the only potato-producing state in the nation that still has a checkoff refund provision, we feel there is a need to eliminate the provision as a matter of fairness to all North Dakota potato producers. Therefore, we encourage your support of HB 1086.

House Committee on Agriculture  
Regarding House Bill 1086

Our hearing was interesting last week. Thank you for the opportunity to work with you and the committee. There are several streams of information that I feel the need to respond to in an effort to correct inaccuracies.

A resounding question is why do people refund? You will get a variety of answers from as many persons as you ask. It currently is within the law to refund and I have been told the provision was put in place to give farmers having a difficult financial year an avenue to recapture some dollars needed within their operation. It is seldom used within that reasoning today.

The refund is used to make a statement to the Association and its Board of Directors. The reasons behind taking a refund are usually due to misinformation of lack of involvement with the Association. It is certainly not because of a lack of return on investment.

One reason for refunding was a perception of spending too many dollars on fresh marketing efforts. Several years ago this issue was addressed during budgeting. We currently spend a total of 20% of our funds on marketing which includes inventory and flow monitoring. That category of expense also includes promotional efforts for chips and seed. It also includes the funding provided for the Minn-Dak Bargaining Coop, which provides the negotiation efforts for our process growers. The check-off revenues received from fresh exceed 30% of our gross check-off funds. Wash plant operators also voluntarily contribute another 2 cents per hundredweight to enhance our marketing capabilities. Our fresh marketing according to the % of budget is actually under-funded. We made these changes under the demands of our process growers.

There are concerns about research funding. Concerns are from both sides of the aisle. We all need research. We have listened to the demands of our growers and we have performed. Four years ago we purchased land to conduct irrigated research on potatoes. We continue to own and operate a non-irrigated farm near Grand Forks. Rotation on our irrigate farm allows for 17 acres of plot work. The non-irrigated site contains about 7 acres of plot work annually. The focus is on irrigated research. Incidentally, the rental incomes received on the non-irrigated farm pay the ownership and operational costs of the irrigate site.

Under our current system we are unable to reach our goal of investing 33% of our funds into research. During the past 5 years we have performed as high as 49% of revenue on investment. Today's level of funding is at a meager 25%. Securing our method of funding would allow us to utilize \$170,000 – 200,000 for research annually.



The funding we provide greases the wheels for our researchers to acquire additional dollars using our funding and support as matching funds and support for higher level of funding. We are also active on the federal scene working to increase funding levels and get them channeled to our region.

We have listened to growers and performed according to their goals, needs and demands. We hold regularly scheduled elections for positions on our Board of Directors and volunteers are needed for our standing committees each year. We welcome additional involvement on every level within our organization(s).

If we have a weakness today, it involves keeping our members well informed. Involved members do not recognize this as a problem, however, uninvolved members may not recognize our efforts as they otherwise could. Today our communication effort is largely through email and our Valley Potato Grower Magazine which is published 10 times annually to national and international audience. This venue is hardly a replacement for direct mailing sent from the Association to our growers. Three years ago in making budget changes we reduced our staffing and eliminated our communication position. Along with that elimination were the mailings and newsletters sent directly to growers on a monthly basis.

Another question is related to other organizations wanting to change their provision to become nonrefundable. We asked other organizations of their intentions regarding their refund clause. No other commodity group in North Dakota has passed a resolution to move that initiative forward. It is generally a non issue with other groups. Refund levels range from 2 – 8% for the other organizations. The highest is wheat at 8%. The lowest is pea and lentils at 2%. There are several organizations where no refund can be made. Those groups are soybeans, beef, sugar beets and honey.

Thank you for attention to these matters. Please support HB 1086.

Duane Maatz  
Northern Plains Potato Growers Association

HB 1086  
NORTH DAKOTA 60<sup>th</sup> LEGISLATURE  
House of Representatives  
Agriculture Committee  
Dennis Johnson, Chairman  
January 12, 2007

Chairman Johnson and members of the committee for the record my name is Duaine C. Espegard and I am here today in opposition to HB 1086.

HB 1086 seeks to amend and reenact section 4-10.1 which is known as the "Potato Industry Promotion act of North Dakota". It is similar to other promotion groups in section 4 of the century code such as the barley, oilseed, dry bean, corn, wheat and is for the promotion of the crop. Each promotion group while allowed by legislation to collect a tax on the commodity when sold, also allows in the code for a grower to become a non participating grower and to request a refund of the tax collected. In other words it is a volunteer tax

HB 1086 intends to take this option away from potato growers. It takes away the definition of a Participating Grower and in reality the rights of a grower to not participate. If enacted all growers would become one.

The definition of a participating grower is one that has not requested a refund of the past years tax.

The bill also repeals the entire section that allows for the refund of the tax to a grower who elects not to participate.

The legislative intent of the original statues appears to say that only growers that have been participating in the program can vote to increase the tax on themselves, but still allows a grower to not participate and elect a refund of the tax each year. In other words if a growers see's or does not see a benefit in the tax collected he or she can elect to participate or not each year.

The Potato industry is changing and in reality the revenue has been decreasing from this tax. Total revenue has decreased from over \$600,000 in 2003 to an estimated \$400,000 in 2007 with refunds increasing from a little over \$100,000 to \$175,000 in the same time period. This does not mean the refund should not be allowed. It appears the industry is changing.

It is said that the association includes Eastern Minnesota as well as North Dakota and that Minnesota does not allow for refunds. Records will show that to be correct, but by far the growers are from North Dakota both in numbers and revenue.

Our opposition is not about the growers association or its merits; it is about the right to participate or not in the promotion of the commodity. The same as other commodities in this section. It is up to the association to prove the merits and value of a tax to their growers.

Let's not make this another forced tax on the grower.

I request you vote a DO-NOT-PASS on HB 1086.

Mr. Chairman I would be happy to answer any question you or the committee may have in regard to my testimony.

Respectfully submitted,

Duaine C. Espegard

## CHAPTER 4-10.1 POTATO INDUSTRY PROMOTION ACT

**4-10.1-01. Title of act.** This act is known as the "Potato Industry Promotion Act of North Dakota".

**4-10.1-02. Legislative policy.** It is hereby declared that the production, development, marketing, and promotion of Irish potatoes in North Dakota is important to the general welfare of the people of the state of North Dakota; that it is in the public interest that better methods of production, processing, and marketing of potatoes and the advertising and promoting of potatoes grown in the state of North Dakota be fostered, encouraged, developed, and improved so that the potato industry within the state of North Dakota, the people employed by said industry, directly or indirectly, and the people of the state of North Dakota should be benefited thereby, the accomplishment of which requires and demands the establishment of a North Dakota state potato council for the purposes and with the objectives of contributing to the stabilization and improvement of the agricultural economy of this state. The provisions of this chapter must not be construed to 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 are supplementary thereto and in aid and cooperation therewith; nor may the provisions of this chapter be construed to authorize the North Dakota state potato 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 Irish potatoes.

**4-10.1-03. Definitions.** Whenever used in this chapter:

1. "Commissioner" means agriculture commissioner.
2. "Council" means the North Dakota potato council.
3. "Designated handler" means any person who initially places potatoes, whether that person is an owner, agent, or otherwise, into the channels of trade and commerce, or who is engaged in the processing of potatoes into food for human consumption in any form. A grower selling that grower's unharvested potatoes, or delivering that grower's potatoes from the farm on which they are produced to storage facilities, packing shed, or processing plant, within the state, is not considered to be a designated handler.
4. "Grower" means any person who plants, raises, and harvests Irish potatoes from more than ten acres [4.05 hectares].
5. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of potatoes based on invoices or bills of lading records.
6. "Participating grower" means a grower who has not gained exemption from the payment of taxes on potato production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on potato production under the terms of this chapter.
7. "Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.
8. The term "potatoes" means any and all varieties of Irish potatoes harvested within the state of North Dakota.
9. "Processor" means a person who is actively engaged in the processing of potatoes for human consumption.

**4-10.1-12. Nonparticipating growers - Refunds.** Growers may become nonparticipating growers and claim exemption from the provisions of this chapter. To claim exemption, a nonparticipating grower shall notify the council, in writing, on or before July fifteenth of each year, of his intention not to participate under the program and to claim a refund of the assessment herein levied on potatoes grown by him during that current year. Such grower, if he has notified the council of his intention not to participate, as herein provided, is eligible between June first and June fifteenth of the following year, to claim a refund of the assessments paid on such crop pursuant to this chapter. The claim for refund must be made in the manner and form prescribed by the council. Upon receipt of a claim for refund from an eligible, nonparticipating grower, the council shall refund the assessments paid on the crop grown during the year of the claimed exemption.

**4-10.1-13. Referendum by growers.** Whenever fifteen percent of the participating growers, but not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct a referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 4-10.1-09. Such referendum must be conducted only among participating growers who have paid all taxes assessed pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots must be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the department prepare a bill to submit to the legislative assembly at the next legislative session to modify this chapter in conformity therewith. The results of such referendum are advisory only and the legislative assembly is in no way obligated to adopt legislation enacting the proposals contained in any referendum.

**4-10.1-14. Collection of unpaid assessment.** If a designated handler fails to pay the assessment provided herein, the collection thereof may be enforced by the council in any court with competent jurisdiction within this state.

**4-10.1-15. Misdemeanor to violate provisions of this chapter.** Any person who willfully violates the provisions of this chapter is guilty of a class B misdemeanor.

**4-10.1-16. Penalty for nonpayment of assessment.** Any designated handler who fails to pay any assessment levied by this chapter on the date that the same becomes due is delinquent and the council may levy a penalty on the delinquent payments of ten percent of the assessment due, plus interest at the rate of six percent per annum from the due date, which penalty and interest must be collected in the manner as prescribed by section 4-10.1-14.

**4-10.1-17. Records of council - Inspection.** All of the records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and must be available for the inspection of any person for any lawful purpose; provided, however, that the council is empowered to make rules

## CHAPTER 4-10.2 OILSEED INDUSTRY PROMOTION

**4-10.2-01. Legislative policy.** It is hereby declared that the production, development, marketing, and promotion of sunflower, safflower, rapeseed or canola, crambe, and flax is important to the general welfare of the people of this state; that it is in the public interest that better methods of production, processing, and marketing of sunflower, safflower, rapeseed or canola, crambe, and flax and that advertising and promoting of sunflower, safflower, rapeseed or canola, crambe, and flax be fostered, encouraged, developed, and improved so the sunflower, safflower, rapeseed or canola, crambe, and flax industries within the state, the people directly or indirectly employed by these industries and the people of this state should be benefited thereby, the accomplishment of which requires and demands the establishment of a 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; nor does this chapter authorize the council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote sunflower, safflower, rapeseed or canola, crambe, and flax produced or marketed for sale in this state.

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

1. "Commissioner" means agriculture commissioner or the commissioner's designated representative.
2. "Council" means the North Dakota oilseed council.
3. "First purchaser" means any person buying, accepting for shipment, or otherwise acquiring sunflower, safflower, rapeseed or canola, crambe, or flax, from a grower. The term includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower where the actual or constructive possession of the oilseed is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim. For the purposes of assessments and reporting, the term includes a grower selling the grower's unharvested sunflower, safflower, rapeseed or canola, crambe, or flax out of state, or delivering the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm where they were produced to any storage facilities, packaging sheds, or processing plants located outside the state.
4. "Grower" means any person who plants, raises, and harvests sunflower, safflower, rapeseed or canola, crambe, or flax from more than ten acres [4.05 hectares].
5. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or a combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of sunflower, safflower, rapeseed or canola, or crambe based on invoices or bills of lading records.
6. "Participating grower" means a grower who has not gained exemption from the payment of assessments on sunflower, safflower, rapeseed or canola, crambe, or flax production under this chapter for a particular year, or a grower who is not exempt from the payment of assessments on sunflower, safflower, rapeseed or canola, crambe, or flax production under this chapter.
7. "Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.
8. "Sunflower" means every variety of sunflower harvested within the state.

Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

**4-10.2-09. Nonparticipating growers - Refunds.** Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the council for a refund application blank. Upon the return of said blank, properly executed by the grower, accompanied by a record of the assessment by the first purchaser, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above, then the grower is presumed to have agreed to such assessment. However, a grower, for any reason, having paid the assessment more than once on the same sunflower, safflower, rapeseed or canola, crambe, or flax, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the sunflower, safflower, rapeseed or canola, crambe, and flax assessment 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 sunflower, safflower, rapeseed or canola, crambe, and flax.

**4-10.2-10. Referendum by growers.** Whenever fifteen percent of the participating growers in an industry, with not more than fifty percent of the signatory parties from any one district, if applicable, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct a referendum among the participating growers of the state in that industry to determine whether they wish the legislative assembly to raise or lower the assessment imposed by section 4-10.2-08 for that industry. Such referendum must be conducted only among participating growers for such industry who have paid all assessments pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots must be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers in an industry voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to submit to the next legislative session to modify this chapter in conformity therewith. The results of the referendum are advisory only and the legislative assembly is not obligated to adopt legislation enacting the proposals contained in any referendum.

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

1. Any person who violates any provision of this chapter is guilty of a class B misdemeanor.

## CHAPTER 4-10.3 DRY BEAN INDUSTRY PROMOTION

**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.

**4-10.3-02. Definitions.** Whenever used in this chapter:

1. "Commissioner" means agriculture commissioner or the commissioner's designated representative.
2. "Council" means the North Dakota dry bean council.
3. "Designated handler" means any person who initially places dry beans, whether as an owner, agent, or otherwise, into the channels of trade and commerce, or any person who is engaged in the processing of beans into food for human consumption in any form. A grower selling the grower's unharvested dry beans, or delivering the grower's dry beans from the farm on which they are produced to storage facilities, packing sheds, or processing plants within the state is not considered to be a designated handler. For the purposes of assessments and reporting, "designated handler", includes a grower selling the grower's unharvested dry beans out of state, or delivering the grower's dry beans from the farm where they were produced to any storage facilities, packing sheds, or processing plants located outside the state.
4. "Dry beans" means any and all varieties of dry beans, excluding soybeans, harvested within the state.
5. "Grower" means any person who plants, raises, and harvests dry beans from more than ten acres [4.05 hectares].
6. "Hundredweight" means a one hundred pound unit [45.36 kilograms] or a combination of packages making a one hundred pound unit [45.36 kilograms] or any shipment of dry beans based on invoices or bills of lading records.
7. "Participating grower" means a grower who has not gained exemption from the payment of taxes on dry bean production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on dry bean production under this chapter.
8. "Person" means an individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.
9. "Processor" means a person who is actively engaged in the processing of dry beans for human consumption.

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



paid to the council for deposit in the state treasury to the credit of a special revolving account designated the "dry bean fund". All money in the dry bean fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the agriculture commissioner.

**4-10.3-09. Nonparticipating growers - Refunds.** Any grower subject to the assessment provided in this chapter may, within sixty days following such assessment or final settlement, make application by personal letter to the dry bean council for a refund application blank. Upon the return of the blank, properly executed by the grower, accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund has been made within the period prescribed above then the grower is presumed to have agreed to such assessment. However, a grower, for any reason, having paid the tax more than once on the same dry beans, upon furnishing proof of this to the council, is entitled to a refund of the overpayment. The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the dry bean 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 dry beans.

**4-10.3-10. Referendum by growers.** Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct a referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 4-10.3-08. Such referendum must be conducted only among participating growers who have paid all taxes assessed pursuant to this enactment for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.
2. Of the date and place where the council will open and tabulate the ballots, which date must be not less than five days after the last date for filing the ballots.
3. Of the last date upon which ballots must be filed with the council, or postmarked if delivered to the council by mail.
4. That any participating grower may attend the meeting of the council at the time the ballots are opened and the votes tabulated.

If a majority of the participating growers voting upon the question are in favor of the proposed change, the council shall certify the result to the commissioner with the request that the commissioner prepare a bill to submit to the next legislative session to modify this chapter in conformity therewith. The results of the referendum are advisory only and the legislative assembly is not obligated to adopt legislation enacting the proposals contained in any referendum.

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

1. Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.
2. Any assessment levied by this chapter and unpaid by the date that the assessment becomes due is delinquent and the council may levy a penalty against the designated handler on such delinquent payments of ten percent of the assessment

## CHAPTER 4-10.4 BARLEY

### **4-10.4-01. Definitions.** Whenever used in this chapter:

1. "Barley" means any and all varieties of barley harvested within the state.
2. "Commissioner" means the agriculture commissioner or the commissioner's designated representative.
3. "Council" means the North Dakota barley council.
4. "First purchaser" means any person, public or private corporation, limited liability company, or partnership buying, accepting for shipment or otherwise acquiring barley from a grower, and includes a mortgagee, pledgee, lienor, or other person, public or private, having a claim against the grower, where the actual or constructive possession of such barley is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim.
5. "Grower" means any person who plants, raises, or harvests barley, and includes both the owner and tenant jointly, a person, partnership, association, corporation, limited liability company, cooperative, trust, sharecropper, and any other and all business units, devices, and arrangements.
6. "Participating grower" means a grower who has not claimed on that grower's own behalf any refunds for the payment of taxes on barley production under this chapter for a particular year, or a grower who is not exempt from the payment of taxes on barley production under this chapter.
7. "Person" means any individual, partnership, corporation, limited liability company, association, grower, cooperative, or any other business unit.

**4-10.4-02. Policy of state.** The public policy of North Dakota is to protect and foster the health, prosperity, and general welfare of the people by protecting and stabilizing the barley industry and the economy of the areas producing barley. The council is the agency of the state for these purposes. This chapter may not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the commissioner or any other agency of the state, nor may this chapter be construed to authorize the council to engage in competitive business enterprises.

**4-10.4-03. Council - Membership - Election - Term.** The council is composed of one participating grower elected from each of the districts established in section 4-10.4-04. The chairman of the council must be an elected member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council and does not have a vote. Every elected council member must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and one member must be elected for a one-year term as designated by the commissioner. Notwithstanding the terms provided for members elected before August 1, 1997, the board, before December 31, 1997, shall determine by lot the order of subsequent elections for its members so that two members are elected for a four-year term during 1998, and one member is elected for a four-year term during each of the subsequent three years. The term of each member elected after July 31, 1997, is four years and begins on April first of the year of election. If at any time during a member's term a member ceases to possess any of the qualifications provided for in this chapter, the member's office is vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section

5. Investigate and prosecute in the name of the state any action or suit to enforce the collection or ensure payment of taxes authorized by this chapter, and to sue and be sued in the name of the council.
6. Formulate the general policies and programs of the state respecting the discovery, promotion, and development of markets and industries for the utilization of barley grown within the state.

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

1. A tax at the rate of ten mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state, delivered into the state, or sold to a first purchaser in the state. This tax is due upon any identifiable lot or quantity of barley.
2. Every first purchaser of barley shall collect the tax imposed by this section by charging and collecting from the seller the tax at the rate of ten mills per bushel [35.24 liters] by deducting the tax from the purchase price of all barley subject to the tax and purchased by the first purchaser.
3. Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of barley, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council by the thirtieth day of each calendar quarter stating the quantity of barley received, sold, or shipped by it. The remittance of the tax as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "barley fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.
4. The tax provided for by this section must be deducted as provided by this chapter whether the barley is stored or sold in this or any other state, but if agreements have not been made with dealers and first purchasers outside of the state for collecting the tax, the grower shall remit the tax to the council on all barley sold by the grower outside the state.

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

1. Any grower who sells barley to a first purchaser in this state and who is subject to the tax provided in this chapter and who objects to the collection of the tax, within sixty days following the collection, may make application by personal letter to the council for a refund application blank. Upon return of this blank, properly executed by the applicant and accompanied by a true copy of the invoice or invoices delivered by the purchaser to the grower, the council shall refund to the grower the net amount of the tax collected. If no request for refund is made within sixty days after the collection of the tax, the grower is conclusively presumed to have agreed to the deduction. However, a grower, for any reason, having paid the tax more than once on the same barley, upon furnishing proof of this to the council, is entitled to a refund of the overpayment.
2. The council shall develop and disseminate information and instructions relating to the purpose of the barley tax and the manner in which refunds may be claimed and shall cooperate with state and federal governmental agencies and private businesses engaged in the purchase of barley.

**4-10.4-10. Referendum by growers.** Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year petition the council, the council shall conduct a referendum among the participating growers of the state to determine whether

## CHAPTER 4-10.6 CORN INDUSTRY PROMOTION

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

1. "Commissioner" means the agriculture commissioner or the commissioner's designated representative.
2. "Corn" means all varieties of corn marketed in the state except sweet corn or popcorn.
3. "Council" means the North Dakota corn utilization council.
4. "Designated handler" means any grain warehouse, licensed grain buyer, processing plant, or ethanol plant which purchases corn from a grower and any person having a claim against the grower, when the actual or constructive possession of the corn is taken as security, part payment, or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Grower" means a person who plants, raises, and harvests corn.
6. "Marketed in this state" means the sale of corn to a designated handler residing in or doing business in this state and actual delivery of the corn in this state.
7. "Participating grower" means a grower who has paid the assessment on corn production under this chapter and who has not applied for a refund of the assessment.
8. "Voting grower" means a grower who has paid the assessment under this chapter, whether or not the grower has applied for a refund.

**4-10.6-02. North Dakota corn utilization council - Members - Election - Term.** The North Dakota corn utilization council must be composed of one member elected from each district established by section 4-10.6-03. The chairman of the council must be a member of the council elected by a majority vote of the council. Each member must be a resident of and participating grower in the district the member represents. The term of each member is four years, beginning on April first of the year of election, except that initially three members must be elected for four-year terms; two members must be elected for three-year terms; and two members must be elected for two-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the council shall appoint a qualified participating grower from any district to complete the term of office. The council shall administer all elections and may request the assistance of the commissioner. Elections must be conducted no later than April first of each year. Before the expiration of a member's term, the council shall appoint a nominating committee made up of participating growers who reside in the member's district. The committee shall nominate a resident participating grower as a candidate for the office. Additional candidates may be nominated by a written petition of five growers from the district. No council member may serve more than two consecutive four-year terms. When a member's office is vacant, the council, before beginning the nominating process, shall notify growers of the vacancy and pending election by letter or by publishing a conspicuous notice of the vacancy, in the official newspaper of every county in the district.

**4-10.6-03. Corn districts.** The following corn districts are established:

1. District one consists of Richland County.
2. District two consists of Cass, Traill, and Steele Counties.

marketed in this state, until a national corn checkoff is implemented. This assessment is due upon any identifiable lot or quantity of corn.

**4-10.6-09. Collection of assessment.** Every designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all corn subject to the assessment and purchased by the designated handler. If a grower sells corn to a person who is not a designated handler, the grower shall forward the assessment to the council at the time and in the manner prescribed by the council.

**4-10.6-10. Records by designated handlers - Continuing appropriation.** Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of corn which may be examined by the council at all reasonable times. Every designated handler shall report to the council, in a manner and at a time prescribed by the council. The assessments collected by the designated handler must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each quarterly period to the council for deposit in the state treasury to the credit of a special revolving account designated as the corn fund. All money in the corn fund is appropriated on a continuing basis to the council to be used exclusively to carry out this chapter. Quarterly periods end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

**4-10.6-11. Nonparticipating growers - Refunds.** The council shall develop and disseminate information and instructions relating to the purpose of the corn assessment and manner in which refunds may be claimed, and shall cooperate with governmental agencies and private businesses engaged in the purchase of corn. Any grower subject to the assessment provided by this chapter, within ninety days following an assessment or final settlement, may apply to the council for a refund application. If the refund application is properly executed by the grower, returned within ninety days of the date it was mailed to the grower, and accompanied by a record of the assessment by the designated handler, the grower must be refunded the net amount of the assessment collected. If no request for refund is made within the period prescribed above, the grower is presumed to have agreed to the assessment. However, if a grower pays the assessment on the same corn more than once, the grower is entitled to a refund upon furnishing the council with proof of the overpayment.

**4-10.6-12. Advisory referendum by voting growers.** Whenever fifteen percent of the voting growers petition the council, the council shall conduct an advisory referendum to determine whether the assessment imposed by this chapter should be changed. The referendum may be conducted only among voting growers who have paid all assessments pursuant to this chapter for the preceding year. The ballots must be prepared by the council and available at each county extension office for a vote on a date set by the council. Each ballot must be accompanied by a notice stating the date and place where the council will open and tabulate the ballots and stating that any voting grower may be present. Voting growers who reside outside the state or voting growers within the state who expect to be absent from their county on the day of the vote may request an absentee ballot. The council shall provide to any voting grower an absentee ballot upon request beginning thirty days prior to the vote. A voting grower requesting an absentee ballot shall file a statement with the council affirming the grower's eligibility to vote. The council shall provide a statement form upon request. All absentee ballots and statements must be received by the council at least two working days prior to a vote. If a majority of the voting growers vote for the proposed change, the council shall certify the result to the commissioner and request that the commissioner prepare appropriate proposed legislation for submission to the next legislative assembly.

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

**4-10.6-14. Penalty for nonpayment of assessment.** A designated handler who fails to pay the assessment provided by this chapter on the date the assessment becomes due is

## CHAPTER 4-10.7 DRY PEA AND LENTIL COUNCIL

**4-10.7-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry pea and lentil council.
3. "Dry peas and lentils" means the range of pulse crops including lentils, dry peas, chickpeas, and lupins.
4. "First purchaser" means any person, firm, corporation, association, partnership, agent, or broker buying, accepting for sale, or otherwise acquiring dry peas and lentils after harvest from a grower. The term includes a mortgagee, pledgee, lienor, or other claimant having a claim against the producer, when the actual or constructive possession of lentils and dry peas is taken as part of payment of or in satisfaction of the mortgage, pledge, lien, or claim.
5. "Grower" means any person who plants, raises, or harvests dry peas and lentils, and includes both the owner and the tenant jointly, a person, partnership, association, corporation, limited liability company, cooperative, trust, sharecropper, and any other, and all business units, devices, and arrangements.
6. "Participating grower" means a grower who has not claimed any refunds for the payment of taxes on dry peas and lentils produced under this chapter for the previous or current year.

**4-10.7-02. Dry pea and lentil council - Membership - Term.** There is a North Dakota dry pea and lentil council. The council is composed of one participating grower elected from each of the districts established in section 4-10.7-04. The chairman of the council must be a member of the council elected by a majority vote of the council. The agriculture commissioner is an ex officio member of the council. Every elected member of the council must be a citizen of the state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified grower from the affected district for the remainder of the term of the office vacated. No elected member of the council is eligible to serve more than three consecutive three-year terms.

**4-10.7-03. Dry pea and lentil council - Election.** The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. The first election must be held within forty-five days after July 1, 1997, and all elections thereafter must be conducted prior to April first. Prospective candidates for the council must have planted dry peas or lentils in the previous year or intend to plant dry peas or lentils in the coming year. County election meetings are to be announced in the official newspaper of the county not less than five days nor more than thirteen days prior to the meeting. Any current or prospective participating dry pea and lentil grower is eligible to vote. Elected county representatives shall then meet in district caucus to elect one person from that group to act as the district representative.

**4-10.7-08. Certification of first purchasers.** A first purchaser of dry peas and lentils shall file an application with the council on forms prescribed and furnished by the council. The forms must contain the name under which the first purchaser is transacting business within the state, the first purchaser's places of business, the location of loading and shipping places of agents of the first purchaser, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any dry peas or lentils until the first purchaser has furnished a certificate as required by this section.

**4-10.7-09. Assessment.** Effective July 1, 1997, an assessment at the rate of one percent of the net value of dry peas and lentils must be levied and imposed upon all dry peas and lentils grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of dry peas or lentils.

**4-10.7-10. Collection of assessment.** Every first purchaser of dry peas or lentils shall collect the assessment from the seller by deducting the assessment from the net purchase price of all dry peas and lentils subject to the assessment and purchased by the first purchaser.

Each first purchaser shall keep as part of the first purchaser's permanent records a record of all purchases, sales, and shipments of dry peas and lentils, which may be examined by the council at any and all reasonable times. Each first purchaser shall report to the council, in a manner and at a time prescribed by the council, the quantity in individual and total amounts of dry peas and lentils received, sold, or shipped by the first purchaser. The report must state from whom each individual amount was received. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each calendar quarter. Regular audits of the council's accounts may be conducted in accordance with chapter 54-10 and submitted to the commissioner.

**4-10.7-11. Nonparticipating growers - Refunds.** Any grower subject to the assessment provided by this chapter, within sixty days following the assessment or final settlement, may apply to the council for a refund application. Upon the return of the properly executed refund application and within sixty days of the date it was mailed to the grower, and accompanied by a record of the assessment collected the council shall issue a refund to the grower. If no request for refund is made within sixty days of sale, then the grower is presumed to have agreed to the assessment. However, a grower, having paid the tax more than once on the same dry peas or lentils, is entitled to a refund of the overpayment upon furnishing proof to the council.

The council, to inform the grower, shall develop and disseminate information and instructions relating to the purpose of the dry pea and lentil tax and manner in which refunds may be claimed, and to this extent shall cooperate with governmental agencies and private businesses engaged in the purchase of dry peas and lentils.

**4-10.7-12. Advisory referendum by growers.** Whenever fifteen percent of the participating growers, with not more than fifty percent of the signatory parties from any one district, as disclosed by the records of the council for the preceding year, petition the council, the council shall conduct an advisory referendum among the participating growers of the state to determine whether they wish the legislative assembly to raise or lower the tax imposed by section 4-10.7-09. The advisory referendum may be conducted only among participating growers who have paid all taxes assessed pursuant to this chapter for the preceding year, and the ballots must be prepared by the council and mailed to each participating grower at least thirty days prior to the last date for filing ballots. In addition, each ballot must be accompanied by a notice to each participating grower:

1. Of the date of the filing of the petition by the growers for the referendum and the number of signatures contained thereon.

## CHAPTER 4-12.1 HONEY PROMOTION ACT

### **4-12.1-01. Definitions.** Whenever used in this chapter:

1. "Association" means the North Dakota beekeeper's association.
2. "Beekeeper" means any person, firm, association, corporation, or limited liability company owning or controlling one or more colonies of bees for the production of honey, beeswax, or byproducts either for personal or commercial use.
3. "Commissioner" means the agriculture commissioner.
4. "Market development" means research, promotion, and education programs toward better and more efficient production, marketing, and utilization of honey for resale. The term also means the use of other methods including, but not limited to, public relations and other promotion techniques, for the maintenance of present honey markets, for the development of new or larger domestic or foreign markets, for the sale of honey and for prevention, modification, or elimination of trade barriers which obstruct the free flow of agricultural commodities to market. The term includes providing promotion funds for a North Dakota honey queen program.

**4-12.1-02. Assessment.** There is hereby levied on beekeepers an assessment of five cents per colony of honeybees licensed by the beekeeper. The minimum assessment is one dollar. The assessment must be remitted to the commissioner at the same time the annual license application is due as specified in section 4-12.2-04.

**4-12.1-03. Fees - Special fund - Continuing appropriation.** The association may charge fees for items sold to promote honey. The state treasurer shall deposit all moneys received under this chapter in a special revolving fund to be known as the honey fund. All moneys deposited in the honey fund are appropriated on a continuing basis to the commissioner for use pursuant to this chapter.

**4-12.1-04. Refunds.** Any beekeeper who makes a written application under separate cover therefor to the commissioner within thirty days of the remission of his fees to the commissioner shall receive a refund of the assessment submitted by him.

**4-12.1-05. Delinquent assessment remittance.** Any beekeeper who fails to remit the assessment as specified is delinquent and shall levy a penalty assessment of five percent of the assessment due plus interest at the rate of six percent per annum, from the due date. The penalty and interest must be collected in the manner described in section 4-12.1-06.

**4-12.1-06. Collection of unpaid assessments.** If a beekeeper fails to remit the proper assessment, the commissioner may enforce the remittance in any court of competent jurisdiction in the state.

**4-12.1-07. Commissioner to effectuate purposes of this chapter - Advice of the association sought.** The commissioner is hereby authorized to expend moneys and take the actions the commissioner deems necessary and proper to effectuate the purposes and policies of this chapter. The commissioner shall request the advice, review, and comment of a committee appointed by the association regarding the projects, programs, and policies undertaken to carry out the provisions of the chapter.

**4-12.1-08. Honey information in report.** The commissioner shall include information concerning the commissioner's activities under the provisions of this chapter, including a complete listing of the assessments collected and the moneys spent under this chapter, in the commissioner's report to the governor.



## CHAPTER 4-13.1 TURKEY PROMOTION ACT

**4-13.1-01. Title.** This chapter must be known as the North Dakota Turkey Promotion Act.

**4-13.1-02. Definitions.** The following definitions are given for purposes of this chapter:

1. "Commissioner" means the agriculture commissioner.
2. "Federation" means the North Dakota turkey federation.
3. "Integrator" means a person who both produces and processes turkeys. Where applicable, an integrator may be included in the definitions of both a producer and a processor.
4. "Market development" means research and education programs directed toward better and more efficient production, marketing, and utilization of turkeys and turkey products produced for resale. The term also means the use of other methods, including but not limited to, public relations and other promotion techniques, for the maintenance of present turkey markets, for the development of new or larger domestic or foreign markets, for the sale of turkeys, and for prevention, modification, or elimination of trade barriers which obstruct the free flow of agricultural commodities to market. The term includes providing promotion and research funds for North Dakota's participation in activities such as the national turkey federation research fund and such other activities as may be authorized by the commissioner.
5. "Processor" means any person who purchases more than one thousand turkeys each year for slaughter.
6. "Producer" means any person doing business within this state who raises turkeys for slaughter each year.
7. "Secretary" means the agriculture commissioner.
8. "Turkeys" means turkeys raised for slaughter.

**4-13.1-03. Assessment.** There is hereby levied on producers an assessment upon each turkey delivered for processing. The assessment rate is one cent for each turkey weighing less than ten pounds [4.54 kilograms] live weight, and up to two cents for each turkey weighing ten or more pounds [4.54 or more kilograms] live weight.

**4-13.1-04. Assessment collected and remitted by processor.** The assessment must be collected by the processor at the time the turkey is delivered to a processing plant. It must be deducted by the processor from the price he pays to the producer. The processor shall quarterly remit the assessments he collects under this chapter to the commissioner for deposit in a special fund in the state treasury.

**4-13.1-05. Special fund - Continuing appropriation.** The state treasurer shall deposit all moneys received under this chapter in a special revolving fund to be known as the turkey fund. All moneys deposited in the turkey fund are appropriated on a continuing basis to the commissioner for use pursuant to this chapter.

**4-13.1-06. Processor to give invoice to producer.** The processor shall, at the time of delivery, sign and give to the producer separate invoices for each purchase. The invoice must show the name and address of the producer and the seller, if the seller is not the producer; the name and address of the processor; the number of turkeys sold; the amount of assessment

collected; and the date of delivery. The commissioner shall have the authority to require such other records as may be necessary to expedite the collection and remittance of the assessment.

**4-13.1-07. Refunds.** Any producer who makes a written application therefor to the commissioner within sixty days of the delivery of his turkeys to a processor shall receive a refund of the assessment deducted from him.

**4-13.1-08. Commissioner to effectuate purposes of this chapter - Advice of federation sought.** The commissioner is hereby authorized to expend moneys and take the actions it deems necessary and proper to effectuate the purposes and policies of this chapter. The commissioner shall request the advice, review, and comment of a committee appointed by the federation regarding the projects, programs, and policies undertaken to carry out the provisions of this chapter.

**4-13.1-09. Out-of-state processors.** The commissioner is hereby authorized to enter into negotiations and agreements with out-of-state processors for the collection and remittance of the assessment.

**4-13.1-10. Turkey information in report.** The commissioner shall include information concerning its activities under the provisions of this chapter, including a complete listing of the assessments collected and the moneys spent under this chapter, in its report to the governor.

**4-13.1-11. Collection of unpaid assessments.** If a processor fails to collect or remit the proper assessments, the commissioner may enforce the collection or remittance, as the case may be, in any court of competent jurisdiction in the state.

**4-13.1-12. Delinquent assessment remittances.** Any processor who fails to remit the assessments he has collected on the date they become due is delinquent and shall levy a penalty assessment of five percent of the assessment due, plus interest at the rate of six percent per annum, from the due date. The penalty and interest must be collected in the manner described in section 4-13.1-11.

**4-13.1-13. Penalty.** A willful violation of this chapter is a class B misdemeanor.

To whom it may concern;

My name is Keith Bjorneby. I am a third generation potato grower from Minto, ND. This letter is being drafted to show our support of HB 1086. Our family farm is now into the fourth generation of farmers growing, packing, and shipping our own red potatoes, to customers all over the United States. We have always supported the Northern Plains Potato Growers Assn. and before that, the Red River Valley Growers Assn.

Our concern at this time is that as our potato industry continues to shrink in numbers of active growers, we are losing our voice. Our potato growers association has done a good job of serving our needs on potato promotion, transportation issues, legislative concerns and many other areas. At this time, our association is struggling financially, due to a few large growers refunding their potato assessments.

Every other potato growing area in the country has a higher per cwt. assessment, as well as the fact that the assessment is non refundable. If we hope to maintain our hard earned status, as a major potato shipping area, we must have all funds available to be collected, be collected! We feel that the few large growers in question are riding the coattails of the smaller growers. We also feel that this provision would help foster unity in the association. We need to get all growers involved, not just the same people every year.

Thanks for you consideration on this very important bill!

Sincerely;

Keith Bjorneby

State of North Dakota, House Committee on Agriculture  
January 9, 2007

Mr. Chairman, members of the committee:

I am Gary Secor, Professor of Plant Pathology at North Dakota State University, and I would like to provide some comments to you and the committee on the importance of potato research.

In recent years there has been both a decrease in the actual number of potato growers and the dollar amount available to the Northern Plains Potato Growers Association. This trend has resulted in fewer dollars available for potato research to solve industry problems and keep our industry competitive nationally. I feel qualified to provide some comments to you on the importance of potato research because I have been conducting potato research with the Agricultural Experiment Station at NDSU since 1978 and have relied on funding and facilities from the potato association to conduct many of our studies. Many of the discoveries in variety development, disease management and production practices have resulted in an increase in both yield and quality of the potatoes grown in our area, which results in more profit to our producers. We have a national, an international, reputation for high quality commercial and seed potatoes, and this is in part due to the cooperative association that exists between the research community at NDSU and the growers that fund and utilize our research results.

Of course there is never enough money to support all the research projects that can be done, but I can think of a few critical examples where additional funding would have a direct impact:

- Irrigated research. There has been a tremendous increase of irrigated potato production of processing potatoes in central and western ND to support the three French fry manufacturing facilities in our region. In the past ten years it has grown from a few acres to over 35,000 acres. These growers have requested additional research on irrigated potato production be conducted in central ND. In response, the NPPGA purchased and financially supports an irrigated potato research site near Tappen ND. In recent years there has not been enough money to maintain this site adequately, and because of the lack of research funds, there is a danger of this site not being utilized.
- The non-irrigated research farm owned by the NPPGA has not been utilized due to lack of funding to hire a farm manager and maintain the facility, including the NDAWN weather station.
- Several worthy research projects remain unfunded due to lack of funds. The current budget only allows support for the breeding program and operation the irrigated research site. Projects for weed control, entomology, storage management and crop rotation remain unfunded.
- The Red River Valley production area of ND and MN has a national reputation for high quality red-skinned fresh table potatoes. In recent years, the price of these potatoes has been high and the demand strong. Most of the varieties grown have been released from the NDSU potato breeding program. Additional funding is needed to continue to develop superior red varieties and develop technology that will provide high quality table potatoes after long term storage when prices are highest.

Potatoes are a high value crop that contributes a huge amount to the economy of ND and our region directly and indirectly. Continuing research will add benefits with yield and quality that translate to higher profitability to the growers and allied industries.

Mr. Chairman and members of the House Ag Committee:

My name is Brad Nilson from Hoople, ND. I am a certified seed potato grower in Walsh County and have always been a supporter of the NPPGA.

I ask for your consideration and support of HB1086 to remove the refund provision from the North Dakota State Potato Council check off.

The NPPGA is a very important part of our business as potato growers. It is our opportunity to have our voices heard for research issues, for new chemicals, for promotion at many local, state and national meetings, and also for political issues such as this one.

The NPPGA also provides support for our Extension potato position along with NDSU and U of MN. This is very important as our long time extension agent Duane Preston is retiring this spring.

Fortunately NDSU and U of MN are willing to keep the position funded, but there will be some changes and they still will require our financial support. For this we need all our growers support, both for input to the position and to meet our financial obligations that benefit every grower.

I believe it is very important that all growers participate in our grower's organization. I realize as growers get larger, the check off dollars also get larger, but the benefits are still the same per acre for everyone.

Thank you for your consideration and I do encourage your support of HB1086.

Brad Nilson  
Hoople, ND

John L. Galegher, Jr.  
P.O. Box 242  
Thompson, ND 58278  
701 599-2376  
[johnlgr@invisimax.com](mailto:johnlgr@invisimax.com)

9 January 2007

North Dakota House Agriculture Committee Members:

I am writing today to ask you to support house Bill #1086, regarding the refund provision on the potato assessment.

Our family has been raising potatoes for over fifty years in the Red River Valley of North Dakota. We were involved in the chipping potato side of the business for most of that time, and are now raising primarily red potatoes for the fresh market. I currently farm with my cousin Paul, and on our fourth generation farm we raise between 200 and 300 acres of potatoes annually.

We have been active supporters of the Northern Plains Potato Growers Association (formerly the Red River Potato Growers Association) for all of our farming careers. I had the privilege of serving as chair of the organization and have served the North Dakota potato industry as a member of the National Potato Council Board of Directors.

I feel that the organization does an excellent job of promoting marketing opportunities and providing research to the North Dakota potato growers. The checkoff of \$0.03/cwt of potatoes currently being assessed is the lowest in the nation in a competitive industry. Also North Dakota is the only state that allows the checkoff to be refunded. Both of these put our industry and our association at a disadvantage.

The issue of refunds of checkoff dollars has been a problem for the last several years. I believe that all the growers need to contribute in order to better serve the industry, now and in the future. By allowing the growers to refund their checkoff dollars, they are reaping the rewards of successful research and marketing programs brought about by the Association's efforts. This "freerider" dilemma of those who choose to refund their checkoff dollars is not a responsible way to move our industry forward. We operate in a competitive environment, and removing the refund provision would help to level the playing field for all participants.

Again, please support House Bill #1086. Thank you for your support.

Sincerely,

John L. Galegher, Jr.



2001 North 6<sup>th</sup> Street  
Grand Forks, ND 58203

Date: 01/09/07

Mr. Chairman and members of the House Ag Committee,

My name is Paul Dolan. I work for potato growers within the fresh table potato segment of our industry as the manager of Associated Potato Growers located in Drayton, Grafton and Grand Forks. I am asking for your support of HB 1086.

I feel that this legislative action is long overdue. We need to make are assessments non-refundable so that all growers and concerned parties are treated equally. The monies collected from these assessments go towards the support of our growers association and towards valuable research in the potato industry with in the state of ND. It is not fair to the majority of growers that a select few chose to refund and jeopardize the process for all. The same few may privately fund pet projects that they have that are more directly beneficial to their specific needs, and not to the group as a whole.

We are one of the last states in the potato industry that does not have their assessment non-refundable. Even our neighboring state of MN, passed legislation several years ago to make their assessments non-refundable. Please take our concerns and support of this bill seriously, as the funds from this assessment are very important to our industry and association. Its time to step up and be on the same playing field as other growing areas. Its time to make everyone accountable and responsible for their share. Please listen to what the majority of growers and concerned parties are saying about the assessment. Please support HB 1086 for the betterment of the potato industry in North Dakota.

Thank you for your interest in this initiative and for your support of HB 1086.

Thank you,

Paul Dolan

**A Letter of Testimony to the House Committee on Agriculture concerning HB 1086**

Chairman Johnson, Vice-chair Kingsbury, members on the House Committee on Agriculture;

My name is Dale Collette. I live and own a farm, southeast of Grafton, ND. I'm writing today asking for your support of HB 1086. I will not be able to attend your hearing today due to my fathers declining health condition.

The reason I ask for your support of HB 1086 is so that **everyone in our industry that grows potatoes** contributes equally and shares in the responsibility of providing funding for research, marketing and representing our area at a national level. We as an industry need everyone to contribute, and have no free rides, because everyone that grows potatoes benefits from the research and marketing that is being done.

If this is not done I believe that our industry, which was second to none years ago, will be doomed, because people will start refunding at a more rapid pace and we as an industry will not have the financial means to do the research necessary to compete on a national level. It will be a sad day when North Dakota is known as a growing area that doesn't believe in itself because a few people had the option not to support an industry that has supported them for many years.

Therefore I ask for your support on HB 1086 because I believe this bill is the last chance to correct a growing desperate situation that will get worse. **Our time is now and I urge you to vote in favor of the bill**

Thank you for your time.

**Dale M. Collette**



Mr. Chairman,

Members of the North Dakota House.

My name is Ronald Pape, potato grower north of East Grand Forks.

I write to you in favor of HB 1086. I feel it is unfair for North Dakota growers to be able to refund while we on the MN side cannot. Both sides are part of the NPPGA and both share in the benefits that our checkoff dollars provide. Such as research and promotion.

In the mid 90's when MN passed our nonrefundable checkoff we were also led to believe that North Dakota would follow our lead. Now is the time for North Dakota to get on board with MN. The repercussions of North Dakota being able to refund has severely limited the budget of the NPPGA.

Our checkoff is the lowest in the nation compared to other regions( Idaho 10 cents, Wisconsin 5 cents) all nonrefundable, but is still allowed to refund. Please support our effort. We need to be a strong and viable industry for years to come.

Thank you for your time.

Ronald Pape

Mr. Chairman, Members of the Ag Committee,

My name is Mark Thompson. I am a seed potato grower from Park River, ND. I currently serve as the Research Committee Chairman of the Northern Plains Potato Growers Association. I am also a past chairman of our organization. I currently serve on the Board of Directors of the National Potato Council and have served two terms on the United State Potato Promotion Board. I am asking for you to support HB 1086.

Halting the ability of growers to refund is clearly a matter of fairness among our growers and between the members of our two states. As research committee chairman I have watched our research budget dwindle from nearly \$300,000 in 2003 to our current level of funding of just over \$100,000. Yet when I attend our educational activities I recognize that the refunding farm operations are present and receiving information which has been funded by our members in good standing.

A recent report written at the University of North Dakota indicates the economic development value of research funding. The study indicates a regional value of \$2.02 for each dollar invested in research. We encourage that our research funding be used as matching funds so researchers can acquire additional grants and build stronger programs. This helps stretch the value of our funding by doubling the value through the match and doubling it again by spending those dollars in our communities. By fulfilling our goal of funding \$200,000 in research annually it carries an economic development value of \$800,000. This is above and beyond any benefit or value that is realized by the potato industry. It is an important investment made by our industry.

The refund clause in our Industry Promotion Act was inserted to allow access to dollars when a grower had a particularly difficult financial year. It is now being used for personal reasons. These few farm operations requesting a refund are not indicating any discord with the association. They simply want to keep their money. As I mentioned, they recognize value in the research and tend to be early adaptors of technology so research results are applied more quickly on their operations.

Our goal for funding research is 33% of our check-off revenue. We reached that goal in 2001 and exceeded that goal in 2003. Under our current mechanism of funding that goal is unattainable.

During expansion of our fry industry in Kidder County, we recognized the increased number of irrigated acres in conjunction with the construction of a new fry plant. Our Association made every effort to address the needs of this emerging group of growers. We purchased land selected by growers in that area and developed it for conducting irrigation research on potatoes. Our committee gives needs based direction to our researchers and we have placed irrigated research as an area of great importance.

Our largest refunders tend to be heavily involved in the Bargaining Cooperative for negotiating fry contracts. This gives them an immediate benchmark of return on their investment in the Association. Price improvements in 2006 and 07 contracts range from 20 – 28 times the cost of their check-off fees. And they still receive the value of research, trade and legislative education and representation that is needed by all growers.

My research committee has worked hard to address the most important area of demand within our Association. Having all inclusive participation among all potato growers in our state is long overdue. Please support potatoes, economic development and our industry by voting yes on HB 1086.

Mr. Chairman and Ag Committee Members:

The economic liability of the potato industry in North Dakota is currently threatened by a small number of growers (2%) who unfairly refuse to participate in the cost of research and promotion that are vital to the long term success of the industry.

Antiquated language in the current Potato Promotion Industry Act allows a small handful of producers to cripple the industry through the refund provision. The immediate removal of the refund provision will restore fairness to the potato industry in North Dakota by allowing all recipients of benefits of research and promotion to share in the costs.

Other successful growing regions in the United States have already figured this out and inacted legislation years ago. It is time for North Dakota to get on board or be left behind.

REMOVE THE REFUND PROVISION NOW.

Justin Dagen  
NPPGA

My name is Randy Hurtt and I am a potato grower from Hoople, ND. For the past three years I have served on the Board of Directors for the North Dakota Potato Council. In that time, I have seen the refunds grow and the marketing and research dollars dwindle.

I feel we are very fortunate to have such a great organization and staff at the Northern Plains Potato Growers Association and that they play an important part in the growth of the potato industry. Their knowledge and experience in marketing and research has been a huge asset.

I strongly believe that for the future of North Dakota potatoes, we need to keep this organization going!

Please vote yes on House Bill 1086.

Sincerely,

Randy Hurtt  
Hurtt Seed Farm  
7469 139th Avenue NE  
Hoople, ND 58243

State of North Dakota  
Ag Committee Members

I, Camburn Shephard, a fresh and process potato grower fully support the intent of HB 1086 for the purpose of stabilizing funding for research and development in the potato industry. The approval of this bill is very important for the future of the potato industry in the Midwest.

Camburn Shephard  
8533 Cty Rd 12  
Crystal, ND 58222

Mr. Chairman and Ag Committee Members.

My name is Kit Midgarden and I am a potato farmer in the Hoople, ND area. I served two three year terms on the ND Potato Council and know first hand the struggles the ND Potato Council has faced regarding the increase in refund dollars.

I am in full support of HB1086 and urge you to consider this legislation change as it is important to have everyone participating equally instead of a handful of growers refunding and still reaping the benefits of the Northern Plains Potato Growers Association.

Thank you.

# North Dakota Farmers Union

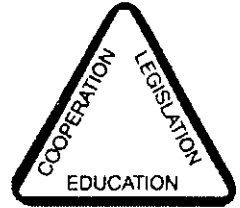
PO Box 2136 • 1415 12th Ave SE • Jamestown ND 58401

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E-MAIL: [ndfu@ndfu.org](mailto:ndfu@ndfu.org)



HB 1086

House Agriculture Committee

Chairman Johnson and Members of the House Agriculture committee,

My name is Richard Schlosser; I am here representing over 35,000 members of North Dakota Farmers Union. I am here to testify in support of House Bill 1086 with the proposed amendments.

North Dakota Farmers Union believes commodity promotion programs can be valuable tools for consumer education and market development. We recommend that research and promotion programs financed through producer check-offs be closely evaluated to see whether such programs are strictly farmer controlled.

We support legislation put forth by the North Dakota Potato Council and the Northern Plains Potato Growers Association to determine their own policy on their check-off system by referendum.

Thank you Chairman Johnson and members of the committee.

get discussions. The staffing level study has been completed. Items remaining on the ongoing project agenda are: with the intergovernmental and Bismarck-Mandan Chamber of Commerce

## Bill deals with potato checkoff

By BLAKE NICHOLSON  
Associated Press Writer

Supporters of making North Dakota's potato checkoff tax mandatory believe it is only fair that all farmers pay, but critics say allowing growers to seek a refund lets them show any dissatisfaction about how the money is spent.

At least one lawmaker wonders if a mandatory potato tax would prompt other commodity groups to ask for the same treatment. "I think what we do here will set precedents," said Rep. Mike Brandenburg, R-Edgeley. "When you open the door on this, all the other groups are going to be coming in."

North Dakota potato growers pay 3 cents for every 100-pound bag of potatoes they produce to promote the industry, but they can ask for their money back. A bill in the North Dakota House would eliminate that option.

The Northern Plains Potato Growers Association, which gets nearly 90 percent of its \$450,000 budget from the checkoff, says all

potato farmers who benefit from its efforts should pay. The association finances research, education and advertising.

"I am tired of other farmers benefiting without contributing," Crystal farmer David Moquist told members of the House Agriculture Committee on Friday.

Lisbon farmer Bob Moe said North Dakota is the only major potato-producing state that has a checkoff-refund provision. "It enables them to become freeloaders and get a free ride," he said.

Only about six out of 200 farmers ask for refunds. However, Ben Tucker, an association board member, said they are mostly large growers. Their refunds in the past year totaled about \$130,000.

The Northern Plains Potato Growers Association also gets about \$50,000 a year from the Minnesota Area 1 Potato Council. Board member Chuck Gunnerson said Minnesota has no refund provision, and some growers there believe the same should be true across the border.

"It becomes a fairness and equity issue," he said.

Opponents of making the checkoff mandatory say asking for a refund is the only way some farmers can make a meaningful statement about association practices.

"It allows the grower to vote with his dollars whether or not the association is doing what it's supposed to do and is truly advancing the potato industry," said Ron Offutt, a founder and owner of Fargo-based R.D. Offutt Co.

Offutt grows potatoes in 11 states. He told lawmakers he has asked for refunds in some years to protest what he considered subpar representation of farmers who grow potatoes for the processing industry, rather than other markets such as table potatoes.

Gregg Halverson, who farms near Forest River, implored lawmakers not to change the law.

"This bill is about choice, it's about the ability to vote with your checkbook," he said. "I do not believe that this choice should be taken away."

## Fargo man faces charges of vandalizing

FARGO (AP) — A man who got caught tapping into a neighbor's cable box faces new charges after he was spotted walking away from the box with a wire cutter, authorities say.

Brian Cossette, 20, of

Fargo, initially was charged with theft of cable television service. A repairman discovered an illegal tap after the neighbor called the cable service to report bad reception, authorities said.

Several days later, the

neighbor reported another outage, and Cossette was seen walking away from the cable box with a handful of wires and a wire cutter, authorities said. Damage to the box was estimated at \$3,000.

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STATE AUDITOR  
ROBERT R. PETERSON



PHONE  
(701) 328-2241  
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(701) 328-1466

STATE OF NORTH DAKOTA  
**OFFICE OF THE STATE AUDITOR**  
STATE CAPITOL  
600 E. BOULEVARD AVE. - DEPT. 117  
BISMARCK, ND 58505

December 26, 2006

House and Senate Agriculture Committees:

Transmitted herewith are the financial statements and auditor reports of the North Dakota Potato Council as required by North Dakota Century Code section 4-24-10.

Specifically you will find the state auditor's report on the financial statements, the statement of revenues and expenditures, notes to the financial statements and the compliance and internal control report. Complete audit reports may be obtained by contacting my office.

The Office of the State Auditor would like to thank the commodity groups for their cooperation in preparing these reports.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Peterson".

Robert R. Peterson  
State Auditor

# Office of the State Auditor

*Division of State Audit*

## North Dakota Potato Council Grand Forks, North Dakota

House and Senate Agriculture Committee Report  
For the Two-Year Period Ended June 30, 2006

*Robert R. Peterson*  
*State Auditor*



*Ask Legislative Council Librarian  
for a copy —*

Rep. Joyce Kingsbury

HB 1086

Mr. Chairman, members of the Senate Ag Committee

HB 1086 is about potatoes. It's about the future of the potato industry in the 4<sup>th</sup> largest potato producing state.

HB 1086 would change the Potato Promotion Act in 4-10.1-12. with a referendum of all Growers in regard to the refunding provision. ND is the only potato producing state that has a refunding provision. Section 4 of the Potato Promotion Act indicates the process to be followed by the ND Potato Council to conduct the referendum, certify with the Secretary of State, and must be completed by January 1, 2008. The referendum vote gives equity among the growers as larger producers have multiple entities and will have more than one vote according to current guidelines, based on ND Potato Council handler data.

There are important factors leading this action. ND growers pay a 3 cents per hundredweight sold, to the ND Potato Council. The council then contracts with the Northern Plains Potato Growers Association to secure the research needed for the diverse growing conditions. With non-irrigated land in the valley to the irrigated areas in central and western parts of the state, research is essential for the production of seed, fresh table, chipping and fry potato products to start with the suitable varieties needed to satisfy the demands of processors.

Under the current provision growers may request a refund of check off dollars paid. Over 95% of growers are members in good standing. About 2 % are refunding nearly 25% of the funds. This takes a substantial cut out of research and program operation. We need to be competitive and cooperative with other states that operate with an all-inclusive provision, plus higher check offs.

As a matter fairness the Association is asking for the participation of all growers. Each operation benefits through improved production capabilities, expanded markets, international trade, and an improved business climate. An important part of Association participation provides for the Minn-Dak Bargaining Co-op, which benefits growers with negotiation efforts with processors. Because of the budget shortfalls there had to be lay offs in the NPPGA office, which isn't in the best interests of those who expect the services contracted for.

Quoting a young potato producer "We know what we are asking is difficult, but the strength of the industry relies on HB 1086 passing." This generation of farmers are passionate about preserving the integrity of the Association which served their fathers and grandfathers. I urge the committee to give this ND industry the tool it needs to continue to be competitive as the 4<sup>th</sup> largest potato producing state.

*Thank you  
Rep. Joyce Kingsbury*

Letter of Testimony to the Senate Committee on Agriculture concerning HB 1086

Chairman Tim Flakoll

Vice Chairman Terry Wanzek

Members of the Senate Committee on Agriculture

Mr. Chairman and members of the committee, my name is Barry Kingsbury from Walsh County in the northeast corner of our state. I am a past Chairman of the Northern Plains Potato Growers Association, past National Potato Council Board member and a current Board member of the United States Potato Board, but today I am here as a concerned potato grower from North Dakota to speak in support of HB 1086.

Our industry needs a consistent and credible voice when it comes to addressing the growers needs, whether it be towards policymakers, regulatory agencies or researchers. The Northern Plains Potato Growers Association does just those things by being the voice of our area's industry. Without consistent funding from the North Dakota potato industry the growers association has a difficult task in reaching its objectives when we can not plan far into the future, due to not knowing what funds will be available.

One of the main areas our association channels its efforts is towards research. The growers themselves send the ideas and concerns to the association. The association then gathers all the information and works with various researchers on different projects, obviously the more funds and more consistent funds will help researchers plan into the future with the projects that can not be completed in one year. This consistency will help researchers focus on the research, instead of constantly looking for funds to continue the work being done for the industry.

Variety development, I think, is probably one of the most important areas of research for the future of the industry. If you ask growers what varieties they grow now compared to what we grew 10, 15 and 20 years ago you will hear many different answers. Variety development takes many years of breeding and "real world" evaluations to show that they can help us compete against other areas in the country and world with a consistent supply of quality and quantity.

About 15 years ago when our area was recovering from a drought which affected our supply we, our potato chip industry, were hit again when a growing area in WI and MI and East of there took market share with the Snowden variety, at that time our breeding departments within NDSU and the U of MN had more varieties coming up and since then we have hit the potato chip market with several varieties helping bring back some of that market share at the same time being at a freight disadvantage to our customers.

And even though we are at a freight disadvantage this area's market "red" area has maintained a fair price while growing the market. This is not only a reflection on the promotion being done for that industry but a reflection on the breeding departments that have brought us new varieties that appeal to today's more discriminating and knowledgeable consumer.

I could go on with other areas of importance but I am sure you have and will hear more from others. The bottom line is with the financial input from everyone, we will receive the most important input and that is the grower involvement making sure their dollars are working the best for our potato industry.

Right now it is too easy to not be involved by refunding the assessment. Potato growers that refund their assessment in North Dakota do so simply because they can and they know that they will receive all the same benefits as their neighbors but without any cost to their operation. The potato industry in North Dakota can be much more successful but we need all the growers involvement and this is the best way to do that.

All we are asking for is that you pass this Bill which will give the small number of potato producers in the state the opportunity to decide for themselves what they think is best for their local industry.

Thank you for listening and I ask for your support on HB 1086.

Barry Kingsbury  
7647 145<sup>th</sup> Ave. NE  
Grafton, ND 58237

701-352-2032

A letter of testimony to the Senate Agriculture Committee

Chairman Flakoll and members of the Senate Agriculture Committee:

My name is Bennet Tucker. I live and farm in St. Thomas, North Dakota. I am a third generation potato farmer and my family has grow potatoes for over 70 years. I would like to urge your support of HB 1086.

The hard numbers and chartable trends paint a foreboding picture. This past year the North Dakota Potato Council contracted with the Northern Plains Potato Growers Association for \$400,000 to conduct research, marketing, and represent us at the national level. During this same year, the Council had to return refunds totaling \$130,034. This meant that staff positions have been eliminated. Research budgets have been slashed. Our participation in the National Potato Council has been curtailed. The immediate future looks even worse. We are budgeting \$170,000 in refunds for next year's budget.

Very few growers refund their check-off dollars. These growers have taken advantage of the refund provision, which was originally intended as a method of protest. For years the North Dakota Potato Council and the Northern Plains Potato Growers Association have been in contact with the refunders and have taken actions on each one of their concerns. This method of protest is not needed. The Council and the Board have proven that they are very responsive to members and non-members alike. Still, they continue to refund simply because they can. All of this while our partners in Northern Minnesota, who also belong to the NPPGA, do not have a refund option. The lines of fairness have not only been crossed, they have been shattered. With other avenues of addressing this problem proving futile, the Council voted UNANIMOUSLY to ask for this legislation. The Association's Board of Directors then UNANIMOUSLY voted to support this move.

A vital and vibrant growers association is important to any commodity group. The potato industry is important to North Dakota. Research is important to the health of this industry and at NDSU we have the best potato research team in the world. The situation is dire and getting worse. Whatever reasons may exist to not support this bill, they pale in the face of the facts that the growers association is being crippled, that it is an important association, that the potato industry is important to our state and economic impacts of this situation are great. The situation does require an answer.

As amended, HB 1086 would put the refund provision to a vote of the growers. These growers are typical, conservative, intelligent and educated North Dakota citizens who are knowledgeable and thoughtful. Please allow this referendum by the citizens who are most aware of the problems and most impacted by the problems.

Please vote yes on HB 1086. Thank you for your consideration.

**Rod Holth**

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**From:** "Rod Holth" <kipfarms@invisimax.com>  
**To:** <jbakke@nd.gov>; <rerbele@nd.gov>; <tflakoll@nd.gov>; <nhacker@nd.gov>;  
 <jheckaman@nd.gov>; <jheitkamp@nd.gov>; <rhoImberg@nd.gov>; <rhorne@nd.gov>;  
 <jklein@nd.gov>; <kkrebsbach@nd.gov>; <dnething@nd.gov>; <doconnell@nd.gov>;  
 <doehlke@nd.gov>; <tpotter@nd.gov>; <tseymour@nd.gov>; <htallackson@nd.gov>;  
 <rtaylor@nd.gov>; <btollefson@nd.gov>; <ctriplett@nd.gov>; <tmwanzek@nd.gov>;  
 <rwardner@nd.gov>  
**Sent:** Tuesday, March 06, 2007 2:04 PM  
**Subject:** HB 1086

Dear members of the Senate Ag committee and other members of the ND Senate:

This e-mail is in support of HB 1086, asking you to support all potato growers in North Dakota. The bill prays for a referendum vote of all North Dakota Potato growers either in support or against the refunding provision in potato checkoff dollars.

The Northern Plains Potato Growers Ass'n. supports all potato growers through research, education, marketing, and communications. Most of the NPPGA's funding comes from checkoff dollars through the ND Potato Council. A present refunding provision in the law allows growers to be refunded their checkoff dollars. The number of growers that refund their assessment is very small, but unfortunately the amount they get refunded is around 25 to 30% of all of the checkoff dollars. This has forced our association to severely limit dollars spent on the benefits mentioned above.

As they are difficult to quantify, for the moment, let's suspend discussion about the benefits mentioned above - research, education, marketing, and communications. A spinoff sister organization of NPPGA is the Minn-Dak Bargaining Cooperative. The members of this cooperative, through their negotiations with our two in-state frozen potato processors, have achieved the following results that were badly needed: For the 2006 growing year, we received an increase in the contract price of \$.25 per cwt from Simplot and \$.62 per cwt from Cavendish. For 2007, Simplot has agreed to an increase that at best estimate right now is worth about \$.73 per cwt. While the Cavendish contract is not yet settled for 2007, the current offer on the table amounts to about \$.47 per cwt. Multiplying these increases by the plant capacities of each (Simplot - 10 million cwt, Cavendish - 5 million cwt) amounts to increased revenue just in these markets of \$20,850,000 over the two year period. Some of the opponents of this bill are the biggest recipients of these revenue increases.

Another spinoff sister organization is Northern Plains Market Development, LLC, of which I am the chairman of the board. The mission of this LLC is to attract new processing opportunities to North Dakota. The past three years we haven't even bothered to meet, as we have no funds available.

Of the major potato producing states, North Dakota has the smallest assessment at \$.03 per cwt and is the only one with a refunding provision. Idaho has the largest, at \$.10 per cwt. Idaho doesn't grow better potatoes than North Dakota - they've just done a lot better job of marketing with the checkoff dollars available to them.

HB 1086 doesn't ask for a lot, just that the potato growers themselves vote on whether or not checkoff dollars can be refunded. As the law stands right now, it's just not fair that everybody that benefits does not pay the price for these benefits.

Thank you for your consideration.

Rod Holth  
 KIP Farms  
 Karlsruhe and Grand Forks

3/6/2007

14 February 2007

North Dakota Senate Agriculture Committee Members:

As amended, HB 1086 allows potato farmers to vote on an industry wide issue. People who are closest to an issue and most directly involved should have the opportunity to determine the future of the check-off. Our growers are directly impacted and the most knowledgeable regarding this issue.

When I served as Chairman of the Board of Directors of the Association, the name was changed from the Red River Valley Potato Growers Association to the Northern Plains Potato Growers Association. This change, along with a realignment of the Board, was made to reflect the changes occurring in the North Dakota potato industry.

Opponents of HB 1086 seem to want to make this an issue of a split between growers of fresh table stock potatoes and those who raise potatoes for the fry industry. We are all potato growers. We plant potatoes and harvest potatoes, not french fries. The work of the Association is to benefit all growers, regardless of type of potatoes grown. In the area of research very little is conducted on the decades old potato research farm south of Grand Forks. Instead the Association purchased a plot of land near Tappen, ND to conduct research in the backyard of the very people who now want to refund their assessment dollars. This flies in the face of reason. Each segment of our production has added to the success of the industry. When fresh potatoes enjoyed the limelight as the number one segment of our production, infrastructure, developed and paid for by producers growing fresh potatoes gave way to the success of the chip potato industry, which now has been paved for the process frozen segment of our industry. While historically, our non-irrigated farm has made significant contributions, today the direction of research has moved to the irrigated research needs of the industry. We have played an important role in this development.

Some opponents indicate that the ability to refund allows them to voice their displeasure with the actions of the Association Board. A phone call to the Association and / or their Board Representative could accomplish the same result. However, the members of the North Dakota Potato Council and the Board of the NPPGA are elected positions. If growers are unhappy, they should seek to influence policy and spending decisions by becoming involved. Any of our growers have the ability to directly influence decisions before they were made rather than criticize decisions afterward and refund their check-off dollars.

An argument has been stated that there is concern that other commodity groups will attempt to remove the refund provision of their check-off if the potato industry is successful. We have contacted other organizations and none of them have passed a resolution indicating their intentions to move in this direction. None of the organizations are in the same financial position as the potato industry was two years ago when we began the planning for this change. If other groups do come forward in the future, it will be the job of the legislature to listen to their case and judge that case on its own merits. The legislature cannot control which groups come forward asking for legislation.

Another discussion point surrounding this legislation is that we have to protect the minority of growers who make up the refund pool. Protect them from what, I ask. The North Dakota check-off is the lowest in the country which supports an Association and the only one that is refundable. Both of these put our industry and our Association not only at a competitive disadvantage, but also causes limitations of our cooperative abilities. Several of our most vocal opponents manage to profitably raise potatoes in many other states that currently have mandatory assessments. It doesn't matter if you are raising fresh or processing potatoes. The assessment amounts to approximately  $\frac{1}{2}$  of 1% of gross sales.

Concern has also been stated that a method other than one person, one vote should be used in the referendum. As I look around the North Dakota Legislature, I see persons who were all elected on this very same basis. Each of you were elected by individuals, on at a time, regardless of their size or stature, wealth or importance. Meanwhile we will allow growers with multiple entities a vote for each of their operations. This bill allows each and every potato farmer the opportunity to vote on a critical issue to the potato industry.

Please support House Bill #1086 and give potato farmers the right to vote on this important issue.

John L. Galegher, Jr.  
P.O. Box 242  
Thompson, ND 58278  
701 599-2376  
[johnngjr@invisimax.com](mailto:johnngjr@invisimax.com)



Chairman Flakoll and members of the Senate Committee on Agriculture

For the record, my name is Duane Maatz. I am president of the Northern Plains Potato Growers Association. I am here today representing the North Dakota Potato Council in support of HB 1086.

House Bill 1086 has come to you after many years of discussion and the need for change became insurmountable. Discussions surrounding this legislative activity have been underway in earnest for the past four years. We have not taken this on lightly. We understand the risks, and we are now at a point where the change needs to occur if we are to have Association representation as part of our future.

Currently, our Association enjoys approximately 95% membership of the potato growers in North Dakota. Our issue with our current funding mechanism is that it allows for a refund of the assessment even though it benefits all growers. Currently two percent of the growers refund twenty-five percent of the ND Potato Council gross revenue, therefore reducing our funding levels and our capabilities.

We all want to be able to compete in this global economy. Of equal importance to our competitiveness is our ability to cooperate. North Dakota is coming up short in our ability fund, as well as participate in the work of the National Potato Council. The NPC is our nation wide voice made up of growers and Associations from each potato growing state. It represents our trade and legislative interests. Our current level of funding leaves us with a reduced number of votes and less operational capitol for the Council.

Each segment of our industry paved the road for the next segment. Fresh potatoes enjoyed being the largest segment for several decades giving way to chipping potatoes in the 1980's. During the 1990's the fry industry underwent expansion into irrigated production and became our largest segment of production, as it is nation wide. Our organization was founded on the common need to transport fresh table potatoes to market.

Those initial grower members funded our infrastructure giving us today's capabilities. They built our office building and purchased our first research farm. Today, revenues from our non-irrigated farm pay for the ownership and operational costs of our new research site near Tappen, ND, where irrigated research studies are conducted. This new site and its capabilities have been made possible by our initial stakeholders vision.

The potato industry in North Dakota has a farm gate value of roughly \$200 million annually. Under our current format our research funding capabilities are crippled. We have built infrastructure for research like no other state and we need to put in place a mechanism that would allow us to function at a higher level. A yes vote for HB 1086 will allow a vote of the growers in making a decision to remove the refund provision from the North Dakota Potato Industry Promotion Act.

I appreciate your time and attention in moving this forward to the Senate Floor with a "Do Pass" recommendation.

Mr. Chairman, Members of the Ag Committee,

My name is Mark Thompson. I am a seed potato grower from Park River, ND. I currently serve as the Research Committee Chairman of the Northern Plains Potato Growers Association. I am also a past chairman of our organization. I currently serve on the Board of Directors of the National Potato Council and have served two terms on the United State Potato Promotion Board. I am asking for you to support HB 1086.

Halting the ability of growers to refund is clearly a matter of fairness among our growers and between the members of our two states. As research committee chairman I have watched our research budget dwindle from nearly \$300,000 in 2003 to our current level of funding of just over \$100,000. Yet when I attend our educational activities I recognize that the refunding farm operations are present and receiving information which has been funded by our members in good standing.

A recent report written at the University of North Dakota indicates the economic development value of research funding. The study indicates a regional value of \$2.02 for each dollar invested in research. We encourage that our research funding be used as matching funds so researchers can acquire additional grants and build stronger programs. This helps stretch the value of our funding by doubling the value through the match and doubling it again by spending those dollars in our communities. By fulfilling our goal of funding \$200,000 in research annually it carries an economic development value of \$800,000. This is above and beyond any benefit or value that is realized by the potato industry. It is an important investment made by our industry.

The refund clause in our Industry Promotion Act was inserted to allow access to dollars when a grower had a particularly difficult financial year. It is now being used for personal reasons. These few farm operations requesting a refund are not indicating any discord with the association. They simply want to keep their money. As I mentioned, they recognize value in the research and tend to be early adaptors of technology so research results are applied more quickly on their operations.

Our goal for funding research is 33% of our check-off revenue. We reached that goal in 2001 and exceeded that goal in 2003. Under our current mechanism of funding that goal is unattainable.

During expansion of our fry industry in Kidder County, we recognized the increased number of irrigated acres in conjunction with the construction of a new fry plant. Our Association made every effort to address the needs of this emerging group of growers. We purchased land selected by growers in that area and developed it for conducting irrigation research on potatoes. Our committee gives needs based direction to our researchers and we have placed irrigated research as an area of great importance.

Our largest refunders tend to be heavily involved in the Bargaining Cooperative for negotiating fry contracts. This gives them an immediate benchmark of return on their investment in the Association. Price improvements in 2006 and 07 contracts range from 20 – 28 times the cost of their check-off fees. And they still receive the value of research, trade and legislative education and representation that is needed by all growers.

My research committee has worked hard to address the most important area of demand within our Association. Having all inclusive participation among all potato growers in our state is long overdue. Please support potatoes, economic development and our industry by voting yes on HB 1086.

February 14, 2007

Mr. Chairman & Members of the Senate Agriculture Committee:

My name is Bob Moe. I live in Fargo, ND and I raise potatoes for Fry Processors in ND. My potato production and warehouse / shipping facilities are located near Lisbon, ND. I am a director on the North Dakota Potato Council and a member of the North Dakota State Seed Commission.

Every potato producer in North Dakota benefits from the work done by and the representation of the Northern Plains Potato Growers Association. These benefits include, but are not limited to the following:

1. Research: Varietal development and breeding through all aspects of potato production and storage issues / education.
2. Production Contracts: Processor production contract improvements via unified grower negotiations with Fry Processors. For the 2007 crop, growers will realize a return of 20 to 28 times the State assessment as a direct result of these negotiation procedures.
3. National Representation: Input from and on behalf of the Northern Plains Potato Growers to numerous National potato interests ie: PMA, NPC, PMANA, Risk Management Federal Agencies.

North Dakota and Minnesota share in the funding of the Northern Plains Potato Growers Association. When the Minnesota growers pass non – refundable legislation, North Dakota was to do the same, but failed. This has caused an inequity in funding to Minnesota growers when 2 % of the North Dakota growers refund 25 % of the Northern Plains Potato Growers Association budget. This is EXTREMELY UNFAIR to the growers that do not refund. Why should they subsidize the larger growers that do refund, but still receive the same benefits from the Association as the growers who do not refund???

I respectfully urge you to vote “ Do Pass “ on HB #1086 and give all of the potato producers in North Dakota the opportunity to cast their vote to determine if the State assessments should be non – refundable.

In conclusion, this letter is being written to confirm my support for the passage of HB #1086.

Sincerely,

Bob Moe  
Valley View Farms  
P. O. Box 582  
West Fargo, ND 58078

March 3, 2007

Chairman Flokoll, members of the Senate Agriculture Committee:

My name is David Moquist. I am a farmer and potato grower from Crystal, ND. I farm with my cousin, his son and my son. Our family has been raising potatoes for over 50 years and have been very involved with the Northern Plains Potato Growers Association (NPPGA) originally the Red River Valley Potato Growers Assn. I am presently the chairman of the Advertising and Promotion Committee of the NPPGA and also serve on the US Potato Board. I have also served on the North Dakota Potato Council and also on the Board Of Directors of the NPPGA.

I feel that the work the NPPGA does is critical to us as potato growers. They represent us on political issues much more effectively then we could as individuals. They represent us on issues dealing with crop insurance, EPA regulations and other federal issues. Through the NPPGA we have access to our senators, congressman, governor and other state officials that we could never have as individuals. Collectively as an association we work together on research, promotion, advertising and support bargaining efforts as well. Many of the programs, research and researchers we support are respected on a national if not international level.

The potato industry in North Dakota is diverse with all facets of the potato industry being represented. In North Dakota we raise Process, Chip, Seed and Fresh potatoes. The NPPGA works hard to promote all areas of this diverse potato industry. They formed and support the Min-Dak Bargaining Coop which provides the legal framework to process growers so they can negotiate fair and equitable contracts with the potato processors. Min-Dak also provides a framework with in which the fresh growers can discuss markets legally with out repercussions. Min-Dak is a valuable tool, which the Association supports.

The Association also formed the Northern Market Development LLC, which provides a framework that given the opportunity, potato growers can help new potato processors get started in the Northern Plains Region. At present this project remains short of funds to get the job done.

The NPPGA also supports and provides opportunities for the seed growers with mailings and hosting reverse trade missions. The North Dakota Potato Seed program is second to none in the nation.

And of course the NPPGA promotes fresh potatoes. The NPPGA's programs piggybacks with the programs already put in place by the US Potato Board. The Red River Valley is one of the most unique fresh potato growing areas in the country. The growers grow high quality red potatoes without irrigation. The fresh potato growers believe in their message so strongly they basically support this part of the program themselves with an additional 2-cent assessment.

As you can see, with all these things going on, reliable funding is a necessity. That is why we are before you today. We are asking for the ability to conduct a referendum among potato growers to make the potato assesment mandatory. Without a change, all of what has been achieved over the years is at risk. There are presently about 2% of the growers refunding 25% of the budget. I understand that we are the only major potato growing state that has a refund provision and we are also the potato-growing region with the lowest check off. We could achieve so much more with reliable funding. Please put the destiny of the Potato Industry and the NPPGA in the hands of the majority of the potato growers by supporting HB1086 as amended.

Thank you very much for your consideration in this matter. .

Sincerely,

David Moquist



2001 North 6<sup>th</sup> Street  
Grand Forks, ND 58203

Date: 03/01/07

Mr. Chairman and members of the Senate Ag Committee,

My name is Paul Dolan. I work for potato growers within the fresh table potato segment of our industry as the manager of Associated Potato Growers located in Drayton, Grafton and Grand Forks. I am asking for your support of HB 1086.

I feel that this legislative action is long overdue. We need to make our assessments non-refundable so that all growers and concerned parties are treated equally. The monies collected from these assessments go towards the support of our growers association and towards valuable research in the potato industry within the state of ND. It is not fair to the majority of growers that a select few chose to refund and jeopardize the process for all. The same few may privately fund pet projects that they have that are more directly beneficial to their specific needs, and not to the group as a whole. It is crucial to the survival of our growers association to have these funds in place, and without this association we loose a very important part of our potato industry. Northern Plains Potato Growers is the Organizational arm of our industry, and without it we will loose much recognition that has taken years of hard work to build. It also is our contact for all research and political information, concerning of industry. Most everything that has been put in place for the benefit of the potato industry in North Dakota has started or put together by our Association.

All that we are asking for is the right to let the growers involved decide. Vote yes on HB1086 and let the growers decide the fate of valuable research, marketing and political dollars that are provided by this assessment and the future of Northern Plains Potato Growers. We are one of the last states in the potato industry that does not have their assessment non-refundable. Even our neighboring state of MN, passed legislation several years ago to have their assessments non-refundable. Its time to hold everyone accountable, and responsible for their portion of the fees. Please listen to what the majority of growers and concerned parties are saying about the assessment. Please support HB 1086 for the betterment of the potato industry in North Dakota.

Thank you for your interest in this initiative and for your support of HB 1086.

Thank you,

Paul Dolan

March 5, 2007

Hello, My name is Brad Nilson from Hoople,ND.

I raise seed potatoes in Walsh County and am writing to ask your support on HB1086. I feel HB1086 as amended for a grower vote is a way to let the potato growers of North Dakota voice their concerns for the Northern Plains Potato Growers Assn. and our future in the potato business in North Dakota. Our Association is vital in getting a new extension agent position filled in a joint agreement with NDSU and U of Minnesota.

Northern Plains Potato Growers Assn. serves many different types of potato growers- french fry growers, chip growers, fresh pack growers and seed growers. All growers have different needs and the growers association is our tool to help coordinate these efforts to benefit all growers in North Dakota.

Northern Plains Potato Growers Association changed it's name from Red River Valley Potato Growers Association several years ago to better reflect the changing geographical growing areas of potato production in North Dakota. Also, an irrigated research farm was purchased near Tappen, ND for additional research projects. A bargaining committee was formed to fairly negotiate potato contracts and has been very successful.

Several years ago when a similar bill was introduced to the legislative assembly my father told me, "Don't let anyone put their hand in your pocket with having a say in what is happening". Now I feel several growers are putting THEIR hands in MY pocket just because they can or just because it is easier not to be involved!

Again I ask for your consideration and your support on HB1086 to let us as potato growers decide our future by our own vote.

Thank you,  
Brad Nilson

March 5, 2007

Dear ND Senate member,

I am a young potato farmer as well as an owner of a chemical/fertilizer retail business in Northeastern North Dakota. The opposition to HB 1086 will not only affect all of us potatoes farmers, but many of the small businesses in the potato growing areas. Without potato farmers my business as well as others would not be able to survive. I am in the process of building a fertilizer storage/blending facility in Crystal, ND, and without the potato industry it would be impossible to hire full time employees and keep people in small towns.

If the programs that the NPPGA fund and support are short of funds, it will give North Dakota, North Dakota farmers, and North Dakota businesses a disadvantage compared to other states. I hope that you consider what will happen to many people indirectly if this bill does not pass.

Thank you,

Nick Otto  
Otto Potato Co.

Otto Ag  
P.O. Box 95  
Crystal, ND 58222  
701-657-2156  
701-520-0825

**A Letter of Testimony to the Senate Committee on Agriculture concerning HB 1086**

Chairman Flakoll, Vice-chair Wanzek, members on the Senate Committee on Agriculture;

My name is Dale Collette. I live and own a farm, southeast of Grafton, ND. I'm writing today asking for your support of HB 1086. I will not be able to attend your hearing today due to my fathers declining health condition.

The reason I ask for your support of HB 1086 is so that **everyone in our industry that grows potatoes** contributes equally and shares in the responsibility of providing funding for research, marketing and representing our area at a national level. We as an industry need everyone to contribute, and have no free rides, because everyone that grows potatoes benefits from the research and marketing that is being done.

If this is not done I believe that our industry, which was second to none years ago, will be doomed, because people will start refunding at a more rapid pace and we as an industry will not have the financial means to do the research necessary to compete on a national level. It will be a sad day when North Dakota is known as a growing area that doesn't believe in itself because a few people had the option not to support an industry that has supported them for many years.

Therefore I ask for your support on HB 1086 because I believe this bill is the last chance to correct a growing desperate situation that will get worse. **Our time is now and I urge you to vote in favor of the bill**

Thank you for your time.

**Dale M. Collette**



My name is Randy Hurtt and I am a potato grower from Hoople, ND. For the past three years I have served on the Board of Directors for the North Dakota Potato Council. In that time, I have seen the refunds grow and the marketing and research dollars dwindle.

I feel we are very fortunate to have such a great organization and staff at the Northern Plains Potato Growers Association and that they play an important part in the growth of the potato industry. Their knowledge and experience in marketing and research has been a huge asset.

I strongly believe that for the future of North Dakota potatoes, we need to keep this organization going!

Please vote yes on House Bill 1086.

Sincerely,

Randy Hurtt  
Hurtt Seed Farm  
7469 139th Avenue NE  
Hoople, ND 58243

State of North Dakota  
Ag Committee Members

I, Camburn Shephard, a fresh and process potato grower fully support the intent of HB 1086 for the purpose of stabilizing funding for research and development in the potato industry. The approval of this bill is very important for the future of the potato industry in the Midwest.

Camburn Shephard  
8533 Cty Rd 12  
Crystal, ND 58222

Mr. Chairman and Ag Committee Members.

My name is Kit Midgarden and I am a potato farmer in the Hoople, ND area. I served two three year terms on the ND Potato Council and know first hand the struggles the ND Potato Council has faced regarding the increase in refund dollars.

I am in full support of HB1086 and urge you to consider this legislation change as it is important to have everyone participating equally instead of a handful of growers refunding and still reaping the benefits of the Northern Plains Potato Growers Association.

Thank you.

To whom it may concern;

My name is Keith Bjorneby. I am a third generation potato grower from Minto, ND. This letter is being drafted to show our support of HB 1086 and SB 2117. Our family farm is now into the fourth generation of farmers growing, packing, and shipping our own red potatoes to customers all over the United States. We have always supported the Northern Plains Potato Growers Assn. and before that the Red River Valley Growers Assn.

Our concern at this time, is that as our potato industry continues to shrink in numbers of active growers, we are losing our voice. Our potato growers association has done a good job of serving our needs on potato promotion, transportation issues, legislative concerns, and many other areas. At this time, our association is struggling financially, due to a few large growers refunding their potato assessments.

Every other potato growing area in the country has a higher \$ assessment per cwt, as well as the fact that the assessment is non refundable. If we hope to maintain our hard earned status, as a major potato shipping area, we must have all funds available to be collected, be collected! We feel that the few large growers in question are riding on the coat tails of the smaller growers. We also feel that this provision would help foster unity in the association. We need to get all growers involved, not just the same people every year.

Thanks for your consideration on this very important bill!

Sincerely;

Keith Bjorneby  
Lone Wolf Farms

Mr. Chairman and Ag Committee Members:

The economic liability of the potato industry in North Dakota is currently threatened by a small number of growers (2%) who unfairly refuse to participate in the cost of research and promotion that are vital to the long term success of the industry.

Antiquated language in the current Potato Promotion Industry Act allows a small handful of producers to cripple the industry through the refund provision. The immediate removal of the refund provision will restore fairness to the potato industry in North Dakota by allowing all recipients of benefits of research and promotion to share in the costs.

Other successful growing regions in the United States have already figured this out and inacted legislation years ago. It is time for North Dakota to get on board or be left behind.

REMOVE THE REFUND PROVISION NOW.

Justin Dagen  
NPPGA

## **CHAPTER 4-10.2 OILSEED INDUSTRY PROMOTION**

**4-10.2-01. Legislative policy.** It is hereby declared that the production, development, marketing, and promotion of sunflower, safflower, rapeseed or canola, crambe, and flax is important to the general welfare of the people of this state; that it is in the public interest that better methods of production, processing, and marketing of sunflower, safflower, rapeseed or canola, crambe, and flax and that advertising and promoting of sunflower, safflower, rapeseed or canola, crambe, and flax be fostered, encouraged, developed, and improved so the sunflower, safflower, rapeseed or canola, crambe, and flax industries within the state, the people directly or indirectly employed by these industries and the people of this state should be benefited thereby, the accomplishment of which requires and demands the establishment of a 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; nor does this chapter authorize the council to engage in competitive business enterprises, it being the intended purpose of this chapter that the council, through research and advertising, shall promote sunflower, safflower, rapeseed or canola, crambe, and flax produced or marketed for sale in this state.

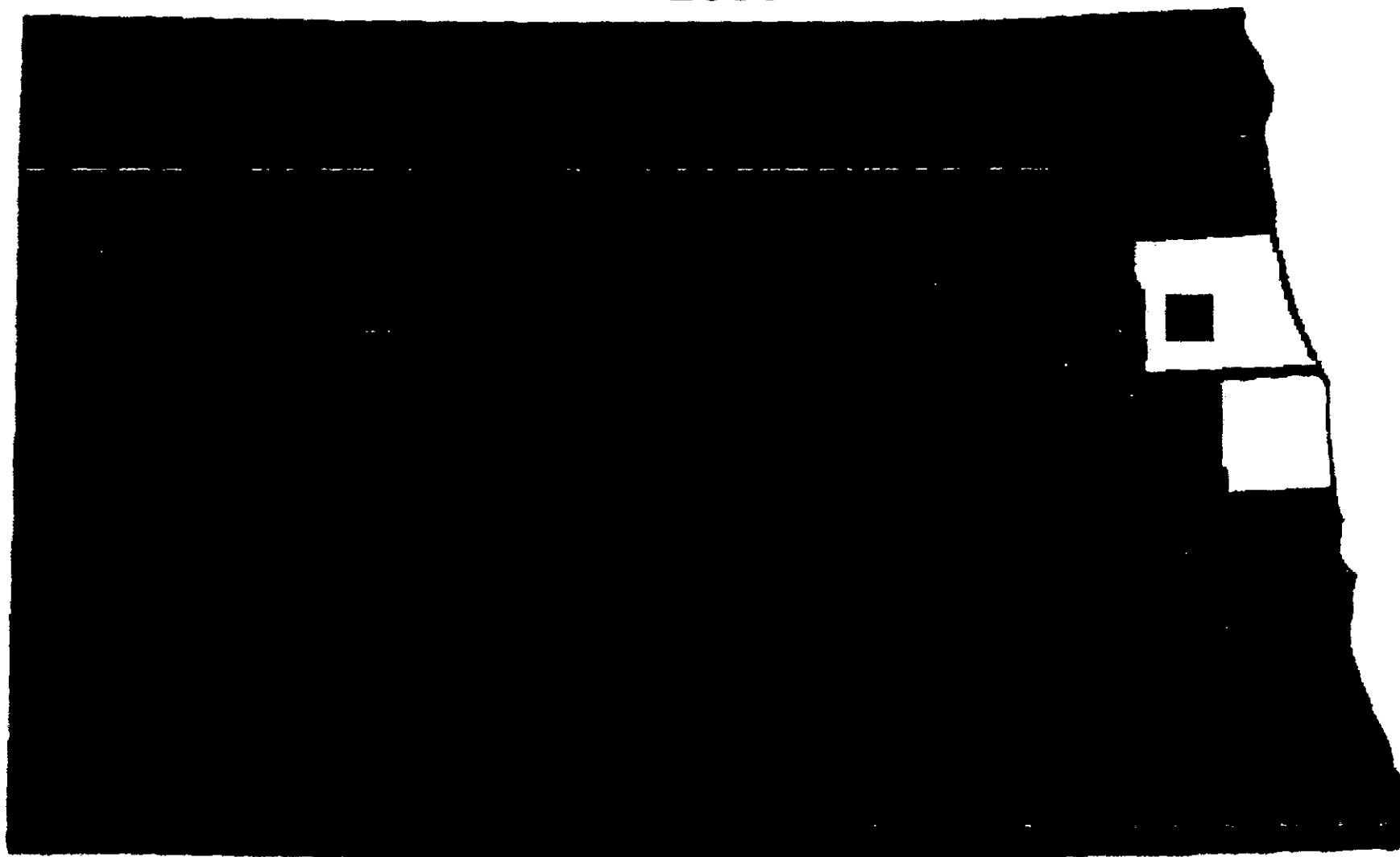
**4-10.2-02. Definitions.** Whenever used in this chapter:

1. "Commissioner" means agriculture commissioner or the commissioner's designated representative.

# POTATO PRODUCTION BY TYPE

## 2006

Keith McGovern



Reds (table)  
3.8 m Cwt



Russets (processed)  
16.1 m Cwt



Whites (chips)  
5.5 m Cwt



No potato  
production

HB 1086  
NORTH DAKOTA LEGISLATURE  
SENATE  
AGRICULTURE COMMITTEE

Tim Flakoll - Chairman

Chairman Flakoll and members of the committee for the record my name is Duaine C. Espegard and I am here today in opposition to HB 1086.

HB 1086 seeks to amend and reenact section 4-10.1 which is known as the "Potato Industry Promotion act of North Dakota". It is similar to other promotion groups in section 4 of the century code such as the barley, oilseed, dry bean, corn, wheat and is for the promotion of the crop. Each promotion group while allowed by legislation to collect a tax on the commodity, when sold it is also allows in the code for a grower to become a non participating grower and to request a refund of the tax collected. In other words it is a volunteer tax

HB 1086 intends to take this option away from potato growers. It takes away the definition of a Participating Grower and in reality rights of a grower to not participate. For the record all growers would become one.

The definition of a participating grower is one that has not requested a refund of the past years tax.

The bill also then repeals the entire section that allows for the refund of this tax to non participating growers.

The legislative intent of the original statues appears to say that only a grower has been participating in the program can vote to increase the tax on themselves but still allows a grower to not participate and elect a refund of the tax each year. In other words if a growers see's or does not see a benefit in the tax collected he or she can elect to participate or not each year.



The Potato industry is changing and revenue is decreasing from this tax on the growers. Revenue from this tax has decreased from over \$600,000 in 2003 to an estimated \$400,000 in 2007 with refunds increasing from a little over \$100,000 to \$175,000 in the same time period. This does not mean the refund should not be allowed.

It is said that this is an association which includes Eastern Minnesota as well as North Dakota and Minnesota does not allow for refunds. I can tell you that is correct but by far the growers are from North Dakota both in numbers and revenue.

Our opposition of is not about the growers association or its merits it is about the right to participate or not in the promotion of the commodity. The same as other commodities in this section. Let's not make this another forced tax on the grower.

I request you vote for a do -- not -- pass on HB 1086.

Mr. Chairman I would be happy to answer any question you or the committee may have in regard to my testimony.

Respectfully submitted,

Duaine C. Espegard  
Lobbyist # 478

HB 1086  
Senator Harvey Tallackson

Good Morning Mr. Chairman and Members of the Senate Ag Committee:

I am Senator Harvey Tallackson, District 16 of Grafton and Walsh County. Potatoes are an important crop to our area. North Dakota ranks 4<sup>th</sup> in the production of potatoes in the United States. To keep that position it is important to advertise and promote our potatoes. This is why House Bill 1086 is important.

HB 1086 means money to the Potato Association that is why this bill is in front of you today.

When I was asked to be a co-sponsor of HB 1086 I was glad to do that on behalf of the Potato Association Board.

It's important that all potato growers regardless of their size of operations contribute to the effort to advertise and promote our potato industry.

Mr. Chairman and Members of this Committee that is what this is all about.

There are many potato growers here today to support HB 1086. So with these comments I will leave the fate of this bill in your capable hands.

I suggest a DO PASS on HB 1086.

Thank you.

**Jack Scott  
Gilby, ND  
Testimony against HB 1086**

Mr. Chairman and members of the committee, my name is Jack Scott. I'm a potato farmer near Gilby N.D.

While we're not here today to make judgments on the performance of the Growers Association, they have opened that door with information they are providing. So I'd like to clarify some of that information.

The Growers Association has been saying that research is their single biggest expenditure. However, their own financial statements show otherwise.

In 2004 and 2005, according to their financial statements, their largest expenditure by far was administration. I bring this up to illustrate why it's so important to maintain the refund. It is the only tool we have as growers to hold the association accountable for its performance.

My family has never asked for a refund of the checkoff dollars we've contributed, but we believe maintaining the voluntary checkoff is very important from a philosophical standpoint. And we believe it's much better for the longterm health of the Grower's Organization to maintain this type of checks and balances.

If the future of the Growers Organization is in jeopardy then I argue it is not the Legislature's responsibility to save it. The Growers Organization needs to reach out to all its members -- dryland and irrigating farmers -- and ensure that their work is providing value to all the potato growers in the state.

Don't be mistaken, the issue you are considering is not whether or not you should let potato growers choose their own destiny. The issue is mandates -- should the checkoff be mandatory or not.

A yea vote on this bill is a vote for a mandate because, if this bill passes, the Growers Association knows they have the votes to make the checkoff mandatory.

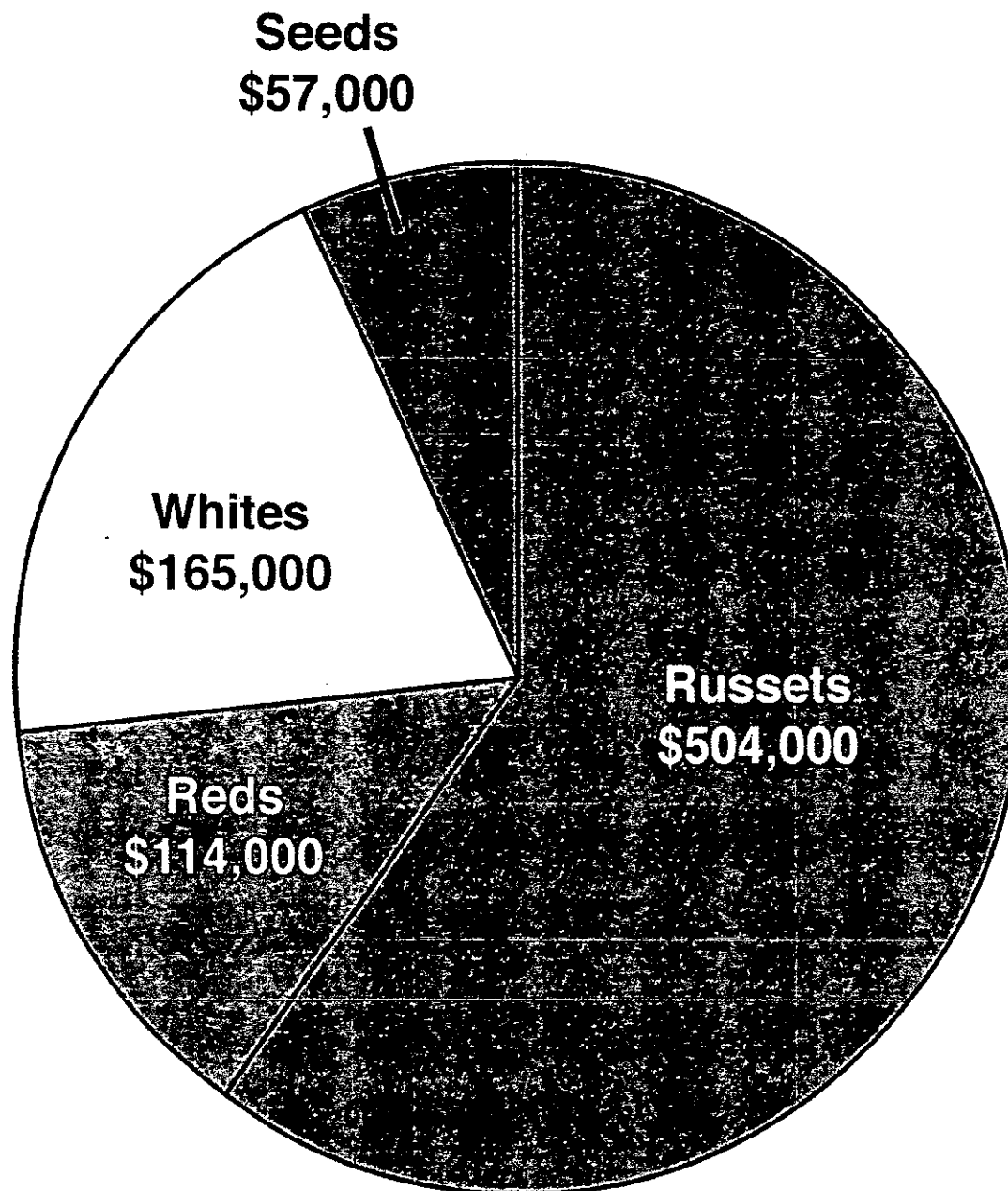
For this reason, I'd like you to consider amending the bill to eliminate Section 4 which provides for the referendum among potato growers. Section 4 muddies the issue. Legislators need to be clear what they are really deciding and that is should the potato checkoff be mandatory or not.

With a clean bill that makes it clear that a yea vote is a vote for a mandatory checkoff, I strongly urge you to vote NO and kill this ill-conceived idea.

Thank you.

# POTATO CHECKOFF DOLLARS BY CROP

## 2006



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#### MEMBERS

AmeriFlax

Milk Producers Association of  
North Dakota, Inc.

Minn-Dak Farmers Co-op

North Dakota Ag Aviation  
Association

North Dakota Ag Consultants

North Dakota Agricultural  
Association

North Dakota Agri-Women

North Dakota Association of Soil  
Conservation Districts

North Dakota Association of  
Agricultural Educators

North Dakota Barley Council

North Dakota Beef  
Association

North Dakota Corn Growers  
Association

North Dakota Corn Utilization  
Council

North Dakota Crop  
Improvement and Seed  
Association

North Dakota Department of  
Agriculture

North Dakota Dry Bean Council

North Dakota Elk Growers

North Dakota Farm Bureau

North Dakota Farm Credit Council

North Dakota Grain Dealers  
Association

North Dakota Grain Growers  
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North Dakota Lamb and Wool  
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North Dakota Pork Producers

North Dakota Soybean Growers  
Association

North Dakota State Seed  
Commission

North Dakota Wheat  
Commission

Northern Canola Growers  
Association

North Dakota Plains Potato Growers  
Association

North Dakota Pulse Growers  
Association

Red River Valley Sugarbeet  
Growers

Testimony of Kent Albers

North Dakota Ag Coalition

House Bill 1086

March 8, 2007

Chairman Flakoll, members of the Senate Agriculture Committee, I am Kent Albers. I farm and ranch near Center and am here today as the chairman of the North Dakota Ag Coalition. On behalf of the Ag Coalition, I encourage your support of HB 1086.

For more than 20 years, the North Dakota Ag Coalition has provided a unified voice for North Dakota agricultural interests. Today, the Coalition is made up of 30 statewide organizations or associations that represent specific commodities or have a direct interest in agriculture. Through the Ag Coalition, these members seek to enhance the business climate for North Dakota's agricultural producers.

The Ag Coalition takes a position on a limited number of issues that have a significant impact on North Dakota's ag industry. HB 1086 is one of these issues.

The Ag Coalition is in support of this bill as it seeks to create equality and fairness among growers within the potato industry by removing the checkoff refund provision. The Coalition supports the House amendment that would put the removal of the refund provision to a vote of the state's potato growers.

Commodity checkoff programs are an asset in that they allow producers to pool resources toward a unified goal. However, as it currently stands with a refund provision for potato growers, less than two percent of the growers refund more than 25 percent of the checkoff revenue. This two percent is still able to access the services enabled by the checkoff revenue, including research and promotion, even though they have chosen not to participate in the program. With North Dakota being the only major potato-producing state that still has a refund provision, the Coalition supports a change.

For these reasons, we encourage your support of HB 1086.

Senate Appropriations Committee  
HB 1086

My name is Duane Maatz. I am representing the North Dakota Potato Council supporting HB 1086.

HB 1086 carries a fiscal note indicating that the North Dakota Potato Council revenue will increase \$135,000 in the first year, and a trend-line estimated, \$150,000 in the second year of the upcoming biennium.

These dollars represent an assessment of three cents per hundred pounds of potatoes sold. It is the lowest cost assessment of any of the major potato growing states.

These funds are currently refunded to potato growing operations requesting a refund of their assessment. Should HB 1086 be signed into law it would allow a referendum of the growers. If that referendum vote passes, these dollars would be utilized for production research benefiting the producers within the potato industry.

Thank you for your support of the potato industry through supporting HB 1086.