

Introduced by

1 A BILL for an Act to create and enact two new sections to chapter 4-10.4 of the North Dakota  
2 Century Code, relating to barley districts and barley tax refunds; to amend and reenact sections  
3 4-10.4-01, 4-10.4-03, 4-10.4-05, 4-10.4-06, 4-10.4-07, 4-10.4-08, 4-10.4-09, 4-10.4-10,  
4 4-10.4-11, 4-10.4-12, and 4-10.4-13 of the North Dakota Century Code, relating to the barley  
5 council, barley taxes, and refunds; and to repeal sections 4-10.1-02 and 4-10.1-04 of the North  
6 Dakota Century Code, relating to a statement of public policy and barley districts.

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

8 **SECTION 1. AMENDMENT.** Section 4-10.4-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **4-10.4-01. Definitions.** ~~Whenever~~ As used in this chapter:

- 11 1. "Barley" means ~~any and~~ all varieties of barley harvested ~~within~~ in the state.
- 12 2. "Commissioner" means the agriculture commissioner or the commissioner's  
13 ~~designated representative~~ designee.
- 14 3. "Council" means the North Dakota barley council.
- 15 4. "First purchaser" means any person, ~~public or private corporation, limited liability~~  
16 ~~company, or partnership buying, accepting~~ that accepts for shipment or otherwise  
17 ~~acquiring~~ acquires barley from a grower, ~~and~~. The term includes a mortgagee,  
18 pledgee, lienor, or other person, ~~public or private~~, having a claim against the  
19 grower, ~~where~~ if the actual or constructive possession of ~~such~~ the barley is taken  
20 as part payment or in satisfaction of the mortgage, pledge, lien, or claim.
- 21 5. "Grower" means any person who plants, raises, or harvests barley, ~~and includes~~  
22 ~~both the owner and tenant jointly, a person, partnership, association, corporation,~~  
23 ~~limited liability company, cooperative, trust, sharecropper, and any other and all~~  
24 ~~business units, devices, and arrangements.~~

- 1           6. ~~"Participating grower" means a grower who has not claimed on that grower's own~~  
2           ~~behalf any refunds for the payment of taxes on barley production under this~~  
3           ~~chapter for a particular year, or a grower who is not exempt from the payment of~~  
4           ~~taxes on barley production under this chapter.~~
- 5           7. ~~"Person" means any individual, partnership, corporation, limited liability company,~~  
6           ~~association, grower, cooperative, or any other business unit.~~

**NOTE:** NDCC Section 1-01-49 defines a person as a human being, foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, any legal or commercial entity, government, political subdivision, or government agency or instrumentality. For this reason, a definition of person anywhere else in the Century Code is necessary only to exclude a specific type of entity.

The phrase "participating grower" occurs only twice in this chapter. In NDCC Section 4-10.4-03, the phrase is used as a requirement for council eligibility. It is proposed that the rewrite simply list the requirements in that section. In Section 4-10.4-10, the phrase is used as a requirement to vote in the referendum and is defined in that section. Therefore, it is recommended that the phrase "participating grower" be removed from Section 4-10.4-01.

7           **SECTION 2.** A new section to chapter 4-10.4 of the North Dakota Century Code is  
8 created and enacted as follows:

9           **Barley council - Districts.** The state consists of the following five barley council  
10 districts:

- 11           1. Benson, Cavalier, Pembina, Walsh, Towner, and Ramsey Counties.  
12           2. Grand Forks, McLean, Nelson, Traill, Sheridan, Steele, Wells, Eddy, Foster, and  
13           Griggs Counties.  
14           3. Cass, Barnes, Burleigh, Emmons, Kidder, Logan, McIntosh, Richland, Ransom,  
15           LaMoure, Dickey, Sargent, and Stutsman Counties.  
16           4. Bottineau, Rolette, McHenry, Pierce, and Renville Counties.  
17           5. Burke, Divide, Williams, Mountrail, Ward, McKenzie, Dunn, Mercer, Oliver, Sioux,  
18           Grant, Morton, Stark, Billings, Golden Valley, Slope, Hettinger, Adams, and  
19           Bowman Counties.

**NOTE:** NDCC Section 4-10.4-04. It is recommended that the establishment of the five Barley Council districts precede other sections pertaining to the election of council members.

20           **SECTION 3. AMENDMENT.** Section 4-10.4-03 of the North Dakota Century Code is  
21 amended and reenacted as follows:

1           **4-10.4-03. Council - Membership - Election - Term.**

- 2           1. ~~The council is composed of one participating grower individual elected from each~~  
3           ~~of the districts established in section 4-10.4-04. The chairman of the council must~~  
4           ~~be an elected member of the council elected by a majority vote of the council. The~~  
5           ~~commissioner is an ex officio member of the council and does not have a vote.~~  
6           ~~Every elected council member must be a citizen of the state and a bona fide~~  
7           ~~resident of and participating grower in the district the member represents. The~~  
8           ~~term of each elected member is three years and begins on April first of the year of~~  
9           ~~election, except that initially two members must be elected for a three year term;~~  
10           ~~two members must be elected for a two year term; and one member must be~~  
11           ~~elected for a one year term as designated by the commissioner. Notwithstanding~~  
12           ~~the terms provided for members elected before August 1, 1997, the board, before~~  
13           ~~December 31, 1997, shall determine by lot the order of subsequent elections for its~~  
14           ~~members so that two members are elected for a four year term during 1998, and~~  
15           ~~one member is elected for a four year term during each of the subsequent three~~  
16           ~~years. The term of each member elected after July 31, 1997, 2 of this Act.~~
- 17           2. To be a member of the council, an individual:
- 18           a. Must be a resident of and a qualified elector in the district the member  
19           represents;
- 20           b. May not have requested a refund during the twelve-month period before the  
21           date on which the individual's term begins unless the requested refund  
22           resulted from an overpayment; and
- 23           c. May not request a refund for any barley sold during the member's term unless  
24           the refund is the result of an overpayment.
- 25           3. If a member ceases to meet the qualifications provided in this section, the  
26           member's office is deemed vacant and the remaining members of the council shall  
27           appoint another qualified individual to serve for the remainder of the term.
- 28           4. The term of each elected member is four years and begins on April first of the year  
29           of following election. If at any time during a member's term a member ceases to  
30           ~~possess any of the qualifications provided for in this chapter, the member's office is~~  
31           ~~vacant and the remaining members of the council shall appoint another qualified~~

1 ~~participating grower for the remainder of the term of the office vacated. The terms~~  
2 ~~must be staggered so that no more than two terms expire each year. A member~~  
3 ~~may not serve more than three consecutive four-year terms.~~

4 5. The commissioner, or a county agent designated by the commissioner, in  
5 cooperation with the cooperative extension service, shall conduct all elections  
6 under this section in each district in the manner the commissioner deems fair and  
7 reasonable. All such elections must be completed ~~prior to~~ before expiration of the  
8 members' terms. ~~No member serving on the council before August 1, 1997, is~~  
9 ~~eligible to serve more than two consecutive four year terms. No member elected~~  
10 ~~to the council after July 31, 1997, is eligible to serve more than three consecutive~~  
11 ~~four year terms.~~

12 6. The commissioner is an ex-officio member of the council but does not have a vote.

**NOTE:** The rewrite proposes the removal of historical provisions regarding the terms of council members and the insertion of a reference to "staggered" terms.

Under current law, it is provided that 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." It is suggested that these provisions be examined to determine their sufficiency. Unaddressed issues include the qualifications required of electors, the date on which or range of time within which elections must be conducted, voting locations, the acceptability of absentee or mail ballots, ballot counting requirements, the determination of candidate eligibility, and the certification of winners.

Current law contains a sentence providing that the "chairman of the council must be an elected member of the council elected by a majority vote of the council." It is recommended that this concept be placed in some other section. It appears to require additional information regarding the time at which the election of a chairman takes place and the frequency of the election or term of the chairman.

13 **SECTION 4. AMENDMENT.** Section 4-10.4-05 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15 **4-10.4-05. Meetings - Quorum - Compensation and expenses of council. A**

16 ~~quorum is necessary for the transaction of all business in carrying out the duties of the council.~~

17 1. The chairman shall call all meetings of the council ~~except special meetings which~~  
18 ~~the chairman shall call on the petition of~~ and must call a special meeting within  
19 seven days, when petitioned to do so by two council members ~~within seven days of~~  
20 ~~receiving such a petition. The council shall determine the amount of compensation~~

1           ~~payable to each voting member of the council. The amount payable may not~~  
2           ~~exceed.~~  
3           2. Each member of the council is entitled to receive compensation in an amount  
4           established by the council, but not exceeding seventy-five dollars per day plus  
5           reimbursement of for expenses as provided by law for state officers, while if the  
6           member is attending council meetings or performing other duties as directed by the  
7           council. The compensation provided in this section may not be paid to any  
8           member of the council who receives salary or other compensation as a regular  
9           employee of the state.

**NOTE:** NDCC Section 1-01-10 provides that a majority of any board constitutes a quorum. Therefore, it is recommended that the first sentence be deleted.

In a future draft, it might be considered advisable to place issues of council member compensation in one section and issues regarding the role of the chairman in a separate section.

10           **SECTION 5. AMENDMENT.** Section 4-10.4-06 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **4-10.4-06. Expenditure of funds Expenditures.** ~~The council or its designated agent~~  
13 ~~shall authorize all expenditures of funds each expenditure made pursuant to this chapter which~~  
14 ~~must be submitted upon and shall submit an itemized vouchers voucher to the office of the~~  
15 ~~budget for approval to be paid by warrant check issued by the office of management and~~  
16 ~~budget for payment.~~

17           **SECTION 6. AMENDMENT.** Section 4-10.4-07 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **4-10.4-07. Council powers and duties - Powers.** ~~In the administration of this~~  
20 ~~chapter, the~~ The council may:

- 21           1. ~~Contract and cooperate with any person or with any governmental department or~~  
22           ~~agency for the provision of~~ research, education, publicity, promotion, and  
23           ~~transportation for the purposes of this chapter.~~
- 24           2. ~~Expend the funds moneys~~ collected pursuant to this chapter for its administration.
- 25           3. ~~Appoint, employ Employ, bond, discharge, fix compensation for, and prescribe the~~  
26           ~~duties of such administrative, clerical, technical, and other and compensate~~  
27           necessary personnel as it may deem necessary.

- 1           4.    Accept gifts, grants, and donations of funds money, property, and services, ~~or~~  
2            ~~other assistance from public or private sources for the purpose of furthering the~~  
3            ~~objectives of the council to carry out this chapter.~~
- 4           5.    ~~Investigate and prosecute in the name of the state any action or suit to enforce the~~  
5            ~~collection or ensure payment of taxes authorized by this chapter, and to sue~~ Sue  
6            ~~and be sued in the name of the council.~~
- 7           6.    ~~Formulate the general policies and programs of the state respecting the discovery;~~  
8            ~~promotion, and development of~~ Develop and promote markets and industries for  
9            the utilization of barley grown ~~within~~ in the state.

**NOTE:** Under current law, the council is authorized to contract for "research, education, publicity, promotion, and transportation." It is recommended that this language be reviewed to determine if the intent is still appropriate and if the terminology clearly reflects the intent.

It is also recommended that consideration be given to the insertion of a general provision authorizing the council to engage in all lawful activities or to do all things necessary to carry out the chapter, with the exception of engaging in competitive business enterprises, as referenced in NDCC Section 4-10.4-02. This would also serve to authorize activities that are not clearly articulated, e.g., maintaining an office.

NDCC Section 4-10.4-08(3) authorizes the council to examine the records of first purchasers to ensure compliance with this chapter. This section might constitute a more appropriate placement for that authorization.

10           **SECTION 7. AMENDMENT.** Section 4-10.4-08 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12           **4-10.4-08. Tax levied.**

- 13           1.    A tax at the rate of ten mills per bushel [35.24 liters] ~~must be~~ is levied and imposed  
14            upon all barley grown in the state, delivered into the state, or sold to a first  
15            purchaser in the state. ~~This tax is due upon any identifiable lot or quantity of~~  
16            ~~barley.~~
- 17           2.    Every first purchaser of barley shall ~~collect the tax imposed by this section by~~  
18            ~~charging and collecting from the seller the tax at the rate of ten mills per bushel~~  
19            ~~[35.24 liters] by deducting~~ deduct from the price paid the tax ~~from the purchase~~  
20            ~~price of all barley subject to the tax and purchased by the first purchaser~~ levied by  
21            this section.
- 22           3.    Every first purchaser shall keep ~~as a part of its permanent records~~ a permanent  
23            record of all purchases, sales, and shipments of barley, ~~which may be examined~~

- 1           ~~by the council.~~ The first purchaser shall make these records available to the  
2           council for examination at all reasonable times.
- 3           4. ~~Every~~ No later than thirty days after the conclusion of each calendar quarter, each  
4           first purchaser shall file a report ~~to~~ with the council ~~by the thirtieth day of each~~  
5           ~~calendar quarter~~ stating the quantity of barley received, sold, or shipped by ~~it~~ the  
6           first purchaser. The remittance of the tax as provided in this section must  
7           accompany the report.
- 8           5. ~~All~~ The council shall forward all moneys levied and collected received under this  
9           chapter ~~must be paid to the council~~ to the state treasurer for deposit in the state  
10          treasury to the credit of an account or accounts designated "barley fund" to. All  
11          moneys in the fund must be used exclusively to carry out the intent and purposes  
12          of this chapter. Regular audits of the council's accounts must be conducted in  
13          accordance with chapter 54-10 and submitted to the commissioner.
- 14          4. ~~6.~~ The tax provided for by this section must be deducted as provided by this chapter  
15          whether the barley is stored or sold in this or any other state, but if agreements  
16          have not been made with dealers and first purchasers outside ~~of~~ the state for  
17          collecting the tax, the grower shall remit the tax to the council on all barley sold by  
18          the grower outside the state.

**NOTE:** Subsection 1 provides that a tax must be levied and imposed upon "all" barley grown in the state and then it provides that the tax is due upon any identifiable lot or quantity of barley. Because the latter concept is redundant, its deletion is recommended.

Subsection 3 directs first purchasers to make certain records available to the council "at all reasonable times." In order to avoid any misperceptions regarding what constitutes "reasonable times," it is recommended that the records be available "upon request" or "during normal business hours."

Subsection 5 provides that regular audits of the council's accounts must be conducted in accordance with NDCC Chapter 54-10 and submitted to the commissioner. Because Chapter 54-10 sets forth the state's audit requirements, it is not necessary to repeat the provisions in this chapter.

Subsection 1 provides that the tax must be levied upon all "barley grown in the state, delivered into the state, or sold to a first purchaser in the state." Subsection 6 provides that the tax must be deducted regardless of whether the barley is stored or sold in this or any other state. Could the two provisions be combined so that all clarifications are grouped together? If this is done, then subsection 6 could focus solely on the collection of the tax by dealers and first purchasers who are out of state.

1           **SECTION 8. AMENDMENT.** Section 4-10.4-09 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **4-10.4-09. Nonparticipating growers - Refunds.**

- 4           1. ~~Any grower who sells barley to a first purchaser in this state and who is subject to~~  
5 ~~the tax provided in this chapter and who objects to the collection of the tax, within~~  
6 ~~sixty days following the collection, may make application by personal letter to the~~  
7 ~~council for a refund application blank. Upon return of this blank, properly executed~~  
8 ~~by the applicant and accompanied by a true copy of the invoice or invoices~~  
9 ~~delivered by the purchaser to the grower, the council shall refund to the grower To~~  
10 ~~receive a refund of any tax paid in accordance with section 4-10.4-08, a grower~~  
11 ~~shall submit to the council a written request for a refund application.~~
- 12           2. The grower shall file the completed refund application, with a record of the  
13 deduction, with the council no later than sixty days after the date of the deduction.  
14 The council then shall refund to the grower the net amount of the tax that had been  
15 collected.
- 16           3. ~~If no request for a grower does not file a refund is made within sixty days after the~~  
17 ~~collection of the tax, the grower is conclusively application with the council within~~  
18 ~~the prescribed time period, the grower is presumed to have agreed to the~~  
19 ~~deduction. However, a grower, for any reason, having paid the tax more than once~~  
20 ~~on the same barley, upon furnishing proof of this to the council, is entitled to a~~  
21 ~~refund of the overpayment.~~
- 22           2. 4. The council shall develop and disseminate information and instructions relating to  
23 the purpose of the barley tax and the manner in which refunds may be claimed ~~and~~  
24 ~~shall cooperate with state and federal governmental agencies and private~~  
25 ~~businesses engaged in the purchase of barley.~~

**NOTE:** Under current law, it appears as if the "request" for the refund application must be made within 60 days of the deduction. Current law is silent regarding the time within which the application must be completed and returned to the council. The rewrite reflects the intent of the section, which is that the request for a "refund," as opposed to the request for a refund "application," must be filed with the council within 60 days of the deduction.

Current law provides that if a grower has paid the tax more than once on the same barley, the grower is entitled to a refund of the overpayment. Because this deals with a different situation than the request for a refund, it has been placed in a separate section (See Section 9).

Current law also provides that the "council shall develop and disseminate information and instruction 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." Because there is no certainty regarding the intent of the second part of the quoted sentence, it is recommended that the language be deleted.

1       **SECTION 9.** A new section to chapter 4-10.4 of the North Dakota Century Code is  
2 created and enacted as follows:

3       **Barley tax - Double payment.** If a grower documents to the council that the grower  
4 has paid the tax more than once on the same barley, the council shall refund the overpayment.

**NOTE:** NDCC Section 4-10.4-09(1).

5       **SECTION 10. AMENDMENT.** Section 4-10.4-10 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7       **4-10.4-10. Referendum by growers.** ~~Whenever~~

8       1. a. When petitioned to do so by at least fifteen percent of the participating  
9 growers, with not more than fifty percent of the signatory parties from any one  
10 district, as disclosed by the records of the council for the preceding year  
11 petition the council, the council shall conduct a referendum among the  
12 participating growers of the state to determine whether they wish the  
13 legislative assembly to raise or lower the amount by which the growers  
14 believe the tax imposed by section 4-10.4-08 should be raised or lowered.

15       b. To be considered a valid petition, no more than fifty percent of the  
16 participating growers who signed the petition may reside in one district.

17       2. ~~The referendum must be conducted only among participating growers who have~~  
18 ~~paid all taxes assessed pursuant to this chapter for the preceding year and the~~  
19 ~~council shall prepare the referendum ballot and mail it to each participating grower~~  
20 ~~at least thirty days prior to before the last date for filing ballots. In addition, each~~  
21 Each ballot must be accompanied by a notice to each participating grower include  
22 a statement indicating:

23       4. ~~Of the date of the filing of the~~

24       a. The date on which the petition by the growers for the referendum was filed  
25 and the number of signatories: signatures on the petition;

26       2. ~~Of the date and place where the~~

- 1            b. The date, time, and location at which the council will open and tabulate the  
2            ballots which dates must be not less than five days after the last date for filing  
3            the ballots;  
4            ~~3. Of the last date upon which ballots may be filed~~  
5            c. The last date by which ballots must be postmarked or filed with the council, or  
6            postmarked if delivered to the council by mail; and  
7            ~~4. That~~  
8            d. A statement indicating that any participating grower may attend the meeting of  
9            the council be present at the time the ballots are opened and the votes  
10           tabulated.  
11           3. The date selected by the council for the opening and tabulation of ballots must be  
12           at least five days after the last date by which ballots must be postmarked or filed  
13           with the council.  
14           4. For the purposes of this section, a "participating grower" is a person who has paid  
15           all taxes on barley production levied by this chapter and has not filed a claim for a  
16           refund under section 4-10.1-09 during the preceding twelve months.

**NOTE:** NDCC Section 4-10.1-10 does not indicate how much time may pass between the filing of a referendum and the date of the vote; how frequently a referendum may be documented; and whether the cost of the referendum is to be borne by the council or the petition signers.

While the rewrite clarifies that the purpose of the referendum is to determine the amount by which the tax may be raised or lowered, it does not address whether the tax could be reduced to \$0.00.

The section is also not clear regarding the effects of the referendum. Is it the intent that the council introduce legislation proposing the change?

17           **SECTION 11. AMENDMENT.** Section 4-10.4-11 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **4-10.4-11. ~~Collection of unpaid~~ Failure to pay taxes - Enforcement.** If a first  
20 purchaser fails to pay the tax provided in this chapter, the council may enforce collection in any  
21 appropriate court.

**NOTE:** The concept is also found in NDCC Section 4-10.4-07(5). It does not need to be in both locations.

22           **SECTION 12. AMENDMENT.** Section 4-10.4-12 of the North Dakota Century Code is  
23 amended and reenacted as follows:

1           **4-10.4-12. Penalty for nonpayment of tax.** ~~Any~~ A payment is delinquent if not paid by  
2 a first purchaser who fails to pay any tax levied by this chapter on the date the tax becomes  
3 due is delinquent. The council may levy a penalty on the delinquent payments of ten percent of  
4 the tax due, plus interest at the rate of six percent per annum from the due date. The council  
5 shall collect any penalty and interest in the manner prescribed by section 4-10.4-11.

**NOTE:** This section authorizes but does not mandate a penalty. If the council determines that a penalty is to be assessed, must that penalty be in the amount of ten percent plus interest at the rate of six percent per annum, or may the penalty be for a lesser amount?

6           **SECTION 13. AMENDMENT.** Section 4-10.4-13 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **4-10.4-13. Records of council - Inspection - Retention.** All of the records of the  
9 council, including acreage reports, tax returns, claims of exemption, and any other data,  
10 records, or information retained by the council, are public information and are available for the  
11 inspection of any person for any lawful purpose. However, the council may ~~make~~ adopt rules  
12 concerning the inspection of the information or data, and the time or place of inspection or the  
13 manner in which the information is available for inspection. The council shall keep all records at  
14 least three years.

**NOTE:** It is recommended that this section be repealed. NDCC Chapter 44-04 addresses public records. Its provisions are applicable to the Barley Council and therefore do not need to be reiterated in this chapter. Similarly, because the Barley Council is an agency of the state, its record retention is covered by the record management program authorized under Chapter 54-46. It is not therefore necessary to include a reference to record retention in the barley chapter.

15           **SECTION 14. REPEAL.** Sections 4-10.4-02 and 4-10.4-04 of the North Dakota  
16 Century Code are repealed.

**NOTE:** Because NDCC Section 4-10.4-02 is a statement of public policy, it is recommended that it be repealed. However, the section also contains a prohibition against the Barley Commission engaging in competitive business enterprises. That prohibition is addressed in the note following the rewrite of Section 4-10.4-07.

NDCC Section 4-10.4-04 establishes the Barley Council districts. It is recommended that it precede the section pertaining to the council elections. In order to accomplish this, the section must be repealed and rewritten as new law.

NDCC Section 4-10.4-11 provides that any "person who willfully violates this chapter is guilty of a class B misdemeanor." The section was not included in this first draft because no change was made to it.