

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-06 of the North Dakota Century Code, relating
2 to the dry bean council and assessment; to repeal chapter 4-10.3 of the North Dakota Century
3 Code, relating to the dry bean council and assessment; to provide a penalty; and to provide a
4 continuing appropriation.

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

6 **SECTION 1.** Chapter 4.1-06 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-06-01. Definitions.** As used in this chapter:

- 9 1. "Commissioner" means the agriculture commissioner or the commissioner's
10 designee.
- 11 2. "Council" means the North Dakota dry bean council.
- 12 3. "Designated handler" means any person who initially places dry beans into the
13 channels of trade and commerce or any person who is engaged in the processing
14 of beans into food for human consumption. The term does not include a producer
15 selling the producer's unharvested dry beans or delivering the producer's dry
16 beans from the farm on which they are produced to storage facilities, packing
17 sheds, or processing plants within the state.
- 18 4. "Dry beans" mean all varieties of dry beans harvested in this state. The term does
19 not include soybeans.
- 20 5. "Participating producer" means a producer who has not gained exemption from the
21 payment of taxes on dry bean production under this chapter for a particular year or
22 a producer who is not exempt from the payment of taxes on dry bean production
23 under this chapter.

NOTE: Could we say that a "participating producer" means a producer who has not applied for a refund under Section 4.1-06-16 for at least three years? The committee was told that the exemption language of this subsection was inserted so that the seed producers would not be required to pay the assessment. This has been noted in the rewrite of Section 4-10.3-08.

- 1 6. "Producer" means any person who has an ownership interest in dry beans that the
2 person has:
3 a. Planted during four of the previous six calendar years; or
4 b. Caused to be planted during four of the previous six calendar years.

NOTE: Present law defines a grower (producer) as a person who plants, raises, and harvests dry beans. Sometimes crops are planted but, because of weather conditions, they might not be harvested. Likewise, a person might engage in all the listed activities without having an ownership interest in the beans. The proposed definition specifies that there must be an ownership interest in the crop and that the producer must have planted the crop (or caused the crop to be planted) during four of the previous six calendar years. This latter provision is inserted because some commodity groups were concerned about the eligibility of producers who decided not to plant a specific crop during one or two growing seasons. (The committee is asked to determine an appropriate ratio.)

SOURCE: Section 4-10.3-02.

- 5 **4.1-06-02. Dry bean districts - Establishment.** The state consists of the following six
6 dry bean districts:
7 1. Cavalier, Pembina, and Towner Counties.
8 2. Ramsey and Walsh Counties.
9 3. Grand Forks and Nelson Counties.
10 4. Griggs, Steele, and Traill Counties.
11 5. Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland,
12 Sargent, and Stutsman Counties.
13 6. Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Eddy,
14 Emmons, Foster, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean,
15 Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux,
16 Slope, Stark, Ward, Wells, and Williams Counties.

SOURCE: Section 4-10.3-04.

- 17 **4.1-06-03. North Dakota dry bean council - Membership - Term.**
18 1. The council consists of one participating producer elected from each of the districts
19 established in section 4.1-06-02 and the commissioner, who is a nonvoting
20 member.

- 1 2. Each member of the council must be a United States citizen.
- 2 3. Each member of the council, other than the commissioner, must be a resident of
- 3 and participating producer in the district that the member represents.
- 4 4. The term of each elected member is three years and begins on April first following
- 5 the member's election. The terms must be staggered so that no more than two
- 6 expire each year.
- 7 5. If at any time during a member's term the member ceases to possess any of the
- 8 qualifications provided for in this chapter, the member's office is deemed vacant
- 9 and the council, by majority vote, shall appoint another qualified producer for the
- 10 remainder of the term.
- 11 6. An elected member of the council may not serve more than three consecutive
- 12 terms. If an individual is appointed to complete a vacancy, that service is not
- 13 counted as a term, for purposes of this section, unless the duration of that service
- 14 exceeds one year.

NOTE: This is new language that tries to clarify the length of service in the event an individual is appointed to complete a vacancy.

SOURCE: Section 4-10.3-03.

15 **4.1-06-04. Election of county representative.**

- 16 1. No later than March first of the year in which the term of a council member is to
- 17 expire, the extension agent for each county in that member's district shall hold a
- 18 meeting of dry bean producers for the purpose of electing a county representative.
- 19 2. The county extension agent shall publish notice of the meeting in the official
- 20 newspaper of the county for two consecutive weeks. The last notice must be
- 21 published no fewer than five nor more than ten days before the meeting.
- 22 3. The meeting must be held at a central location within the county.
- 23 4. During the meeting, the county extension agent shall conduct the election.
- 24 5. Any producer who resides in the county may vote in the election.
- 25 6. The county extension agent shall canvass the votes, notify the director of the North
- 26 Dakota state university extension service that the election has taken place, and
- 27 provide to the director the name and address of the newly elected county
- 28 representative.

NOTE: Current law provides that county and district elections must take place before April 1. In order to allow maximum flexibility for the Extension Service in scheduling the various meetings and elections, perhaps consideration could be given to requiring that the county elections be completed at least 60 days before the expiration of a council member's term, i.e., before March 1.

Current law does not clarify whether eligibility to vote for a county representative belongs to those who reside in the county or to those who farm in the county. (see subsection 5)

If the county extension agent (perhaps in consultation with the executive director of the county Farm Service Agency office) determines that there are no eligible dry bean producers in the county, must the county extension agent still publish notice of and hold a meeting? Should there be a waiver in this instance?

SOURCE: Section 4-10.3-03(5).

1 **4.1-06-05. Election of district representative - Council member.**

- 2 1. Upon receiving the notice required by section 4.1-06-04, the director of the North
3 Dakota state university extension service shall call a meeting of all county
4 representatives in the district represented by the member whose term is to expire.
5 2. The director shall notify each county representative in the district of the meeting, by
6 registered mail, at least five days before the meeting.
7 3. The meeting must be held at a central location within the district.
8 4. At the meeting, the county representatives shall elect one from among themselves
9 to serve as the council member from that district.
10 5. The director shall notify the governor that the election has taken place and shall
11 provide to the governor the name and address of the newly elected council
12 member.

SOURCE: Section 4-10.3-03(5).

13 **4.1-06-06. Election costs - Responsibility.** All costs of holding county and district
14 elections are the responsibility of the council.

NOTE: The current law does not address who is responsible for the cost of newspaper notices, ballots, hall rentals, or any other charges associated with the holding of elections.

SOURCE: New concept.

15 **4.1-06-07. Quorum.** A majority of the council's voting members constitutes a quorum
16 for the transaction of business.

NOTE: Section 1-01-10 provides that a "majority of any board or commission" constitutes a quorum. Because the Agriculture Commissioner is a nonvoting member, it

is appropriate to clarify that the commissioner is not to be counted in the determination of a quorum.

SOURCE: Section 4-10.3-05.

1 **4.1-06-08. Election of chairman - Meetings.**

- 2 1. Annually, the council shall elect one member to serve as the chairman.
3 2. The chairman shall call all meetings of the council and must call a special meeting
4 of the council within seven days, when petitioned to do so by three council
5 members.

SOURCE: Section 4-10.3-05.

6 **4.1-06-09. Council members - Compensation.** Each member of the council is
7 entitled to receive compensation in the amount established by the council, but not exceeding
8 seventy-five dollars per day plus reimbursement for expenses as provided by law for state
9 officers, if the member is attending meetings or performing duties directed by the council. The
10 compensation provided by this section may not be paid to any member of the council who
11 receives a salary or other compensation as an employee or official of this state.

NOTE: Should we just say the Agriculture Commissioner may not receive compensation under this section? What should be done about a council member who is a state trooper or a professor and does the council work on his or her own time and independent of his or her state employment?

SOURCE: Section 4-10.3-05.

12 **4.1-06-10. Council - Powers.**

- 13 1. The council may:
14 a. Expend moneys collected pursuant to this chapter for its administration;
15 b. Employ, bond, and compensate necessary personnel;
16 c. Accept gifts, grants, and donations of money, property, and services, to carry
17 out this chapter;
18 d. Contract with any person for any purpose permitted under this chapter;
19 e. Sue and be sued; and
20 f. Do all things necessary and proper to enforce and administer this chapter.
21 2. The council may not engage in a commercial business enterprise.

NOTE: Present law prohibits the council from participating in a "competitive business enterprise." (Is this intended to prohibit the council from forming a custom combining operation that might compete with a producer or is it intended to allow a business that is not financially successful (competitive) but preclude one that is successful?)

In the interest of clarifying exactly what is intended by this prohibition, the rewrite prohibits the council from engaging in a "commercial" business enterprise.

The committee may, however, want to determine whether this prohibition should be:

1. Left without exception until changed by a future Legislative Assembly; or
2. Tempered by allowing the activity if approved by "a supermajority of the council" or by "a majority of the participating producers."

SOURCE: Section 4-10.3-07.

1 **4.1-06-11. Council - Duties.**

- 2 1. The council shall determine the uses for which any moneys raised under this
3 chapter may be expended. The uses may include the funding of research,
4 education programs, and market development efforts, as well as participation in
5 programs under the auspices of the United States dry bean council.
6 2. The council shall develop and disseminate information regarding the purpose of
7 the dry bean assessment and ways in which the assessment benefits dry bean
8 producers.

NOTE: Subsection 1 authorizes the council to participate in programs under the auspices of the United States dry bean council. Should we instead authorize participation "in programs under the auspices of other state and national dry bean councils?"

SOURCE: Sections 4-10.3-01 and 4-10.3-09.

9 **4.1-06-12. Designated handler - Certificate.**

- 10 1. Before a designated handler may sell, process, or ship dry beans, the designated
11 handler shall obtain a certificate from the council.
12 2. The certificate is available upon submission to the council of an application
13 containing the name under which the designated handler is transacting business
14 within this state, the designated handler's place of business, and the location of
15 loading and shipping places of the designated handler's agents.
16 a. If the designated handler is a corporation, the application must include the
17 corporate name and the names and addresses of the principal officers and
18 agents within this state.
19 b. If the designated handler is a partnership, the application must include the
20 names and addresses of the persons constituting the partnership.

1 c. If the designated handler is a limited liability company, the application must
2 include the name of the limited liability company and the names and
3 addresses of its principal managers and agents within this state.

4 3. The designated handler shall notify the council whenever there is a change of
5 information required by this section.

SOURCE: Section 4-10.3-08.

6 **4.1-06-13. Assessment.**

7 1. An assessment at the rate of ten cents per hundredweight [45.36 kilograms] must
8 be imposed upon all dry beans grown in this state, delivered into this state, or sold
9 to a designated handler.

10 2. The assessment imposed by this section does not apply to dry bean seeds.

NOTE: In testimony, the committee was told it was intended that seed producers not be required to pay the assessment.

SOURCE: Section 4-10.3-08.

11 **4.1-06-14. Collection of assessment - Records.**

12 1. The designated handler shall collect the assessment from the seller by deducting
13 the assessment from the total price of the dry beans being purchased by the
14 designated handler.

15 2. Each designated handler shall keep documents regarding all purchases, sales, and
16 shipments of raw dry beans for a period of three years. The records may be
17 examined by the council upon request.

NOTE: Current law requires that the records be kept permanently. Other groups have opted for three years. Is this time period sufficient or should there be a longer period?

18 3. At the time and in the manner prescribed by the council, each designated handler
19 shall file a report stating, in individual and total amounts, the quantity of all dry
20 beans that the handler received, sold, or shipped, and the source of all dry beans
21 that the handler received, sold, or shipped.

SOURCE: Section 4-10.3-08.

22 **4.1-06-15. Submission of assessments - Civil penalty.**

23 1. Each designated handler shall forward to the council all assessments collected by
24 the handler no later than the thirtieth day after the end of each calendar quarter.

NOTE: Current law requires that the assessments be forwarded to the council at the time and in the manner prescribed by the council. Because a penalty could be assessed, it would be preferable to provide a specific date. Other commodity groups require the submissions no later than the 30th day after the end of each calendar quarter.

- 1 2. If a designated handler fails to submit the assessments as required by this section,
2 the council may impose a penalty equal to ten percent of the amount due, plus
3 interest at the rate of six percent per annum from the due date.

SOURCE: Sections 4-10.3-08 and 4-10.3-11.

4 **4.1-06-16. Refund of assessment.**

- 5 1. To receive a refund of any assessment paid in accordance with this chapter, a
6 producer shall submit to the council a written request for a refund application within
7 sixty days after the date of the assessment or final settlement.
8 2. The producer must complete the refund application and return the application to
9 the council, together with a record of the assessment collected, within ninety days
10 after the date of the assessment or final settlement. The council shall then refund
11 to the producer the net amount of the assessment that had been collected.
12 3. If a request for a refund is not submitted to the council within the prescribed time
13 period, the producer is presumed to have agreed to the assessment.

SOURCE: Section 4-10.3-09.

- 14 **4.1-06-17. Reimbursement for double payment.** Notwithstanding section 4.1-03-16,
15 if a producer documents to the council that the producer has paid the assessment more than
16 once on the same dry beans, the council shall reimburse the producer for the double payment.

SOURCE: Section 4-10.3-09.

- 17 **4.1-06-18. Expenditure of funds.** The council shall approve all expenditures made
18 pursuant to this chapter and shall submit an itemized voucher to the office of management and
19 budget for payment.

SOURCE: Section 4-10.3-06.

- 20 **4.1-06-19. Continuing appropriation.** The council shall forward all moneys received
21 under this chapter to the state treasurer for deposit in the "dry bean fund". All moneys in the
22 dry bean fund are appropriated on a continuing basis to the council to be used to carry out this
23 chapter.

SOURCE: Section 4-10.3-08.

1 **4.1-06-20. Advisory referendum.**

2 1. a. When petitioned to do so by fifteen percent of the participating producers, the
3 council shall conduct a referendum among the participating producers of the
4 state to determine the amount by which the assessment imposed by this
5 chapter should be raised or lowered.

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

8 2. The council shall prepare the ballots and mail the ballots to each participating
9 producer at least thirty days before the last date for filing ballots.

10 3. Each ballot must include a statement indicating:

11 a. The date on which the petition was filed and the number of signatures on the
12 petition;

13 b. The date, time, and location at which the council will open and tabulate the
14 ballots;

15 c. The last date by which the ballots must be postmarked or filed with the
16 council; and

17 d. That any participating producer may be present at the time the ballots are
18 opened and tabulated.

19 4. The date selected by the council for the opening and tabulation of ballots must be
20 at least five days after the date by which ballots must be postmarked or filed with
21 the council.

22 5. If the majority of the participating producers voting upon the question are in favor of
23 the proposed change, the council shall submit a bill to the next legislative assembly
24 to amend this chapter.

SOURCE: Section 4-10.3-10.

25 **4.1-06-21. Penalty.** Any person who willfully violates this chapter is guilty of a class B
26 misdemeanor.

SOURCE: Section 4-10.3-11.

27 **SECTION 2. REPEAL.** Chapter 4-10.3 of the North Dakota Century Code is repealed.

CHAPTER NOTE: Sections 4-10.3-01 and 4-10.3-13 were not included in the chapter
rewrite. Section 4-10.3-01 was not included because it is a statement of legislative

Sixty-first
Legislative Assembly

policy. Section 4-10.3-13 was not included because it duplicates open record provisions already found in Chapter 44-04.