

October 2008

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-09 of the North Dakota Century Code, relating
2 to the oilseed council and assessment; to repeal chapter 4-10.2 of the North Dakota Century
3 Code, relating to the oilseed 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 4.1-09 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-09-01. 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 oilseed council.
- 12 3. "First purchaser" means any person who buys, accepts for shipment, or otherwise
13 acquires oilseeds from a producer. The term includes a mortgagee, pledgee,
14 lienor, and any other person having a claim against a producer, if the actual or
15 constructive possession of the oilseed is taken as partial payment or in satisfaction
16 of the mortgage, pledge, lien, or claim.
- 17 4. "Oilseeds" include canola, crambe, flax, rapeseed, safflowers, and sunflowers.
- 18 5. "Participating producer" means a producer who has not gained exemption from the
19 payment of taxes on oilseed production under this chapter for a particular year or a
20 grower who is not exempt from the payment of an assessment on oilseed
21 production under this chapter.

NOTE: Could we say that a "participating producer" means a producer who has not applied for a refund under Section 4.1-09-?? for at least three years?

- 1 6. "Producer" means any person who has an ownership interest in oilseeds 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 oilseeds. 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 4-10.2-02.

- 5 **4.1-09-02. Sunflower districts - Establishment.** The state consists of the following
6 seven sunflower districts:

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

SOURCE: Section 4-10.2-04.

- 16 **4.1-09-03. Canola districts - Establishment.** The state consists of the following three
17 canola districts:

- 18 1. Adams, Billings, Bowman, Burke, Divide, Dunn, Golden Valley, Grant, Hettinger,
19 McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Renville, Sioux, Slope,
20 Stark, Ward, and Williams Counties.
21 2. Benson, Bottineau, Burleigh, Dickey, Eddy, Emmons, Foster, Kidder, LaMoure,
22 Logan, McHenry, McIntosh, Pierce, Rolette, Sheridan, Stutsman, and Wells
23 Counties.

- 1 3. Barnes, Cass, Cavalier, Grand Forks, Griggs, Nelson, Pembina, Ramsey, Ransom,
2 Richland, Sargent, Steele, Towner, Traill, and Walsh Counties.

3 **4.1-09-04. North Dakota oilseed council - Membership - Term.**

- 4 1. The council consists of:
- 5 a. One participating sunflower producer elected from each of the seven districts
6 established in section 4.1-09-02;
- 7 b. One participating canola producer elected from each of the three districts
8 established in section 4.1-09-03;
- 9 c. One participating safflower producer appointed by the governor;
- 10 d. One participating flax producer appointed by the governor;
- 11 e. (1) One participating producer of an oilseed other than sunflowers, canola,
12 safflowers, or crambe, appointed by the governor; or
- 13 (2) One participating producer of any oilseed, appointed by the governor, if
14 the governor is unable to appoint a participating producer who meets
15 the requirements of paragraph 1;
- 16 f. One individual appointed by the director of the agricultural experiment station;
17 and
- 18 g. The agriculture commissioner, who is a nonvoting member.
- 19 2. Each member of the council who represents a district must be a resident of and
20 participating producer in that district.
- 21 3. a. The term of each member who represents a sunflower district is three years
22 and begins on April first following the member's election. The terms of
23 members who represent sunflower districts must be staggered so that:
- 24 (1) No more than three expire in any one year; and
- 25 (2) The term of the member who represents Bottineau, Burke, Divide,
26 Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties is
27 identical to that of the member who represents Adams, Billings,
28 Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer,
29 Morton, Oliver, Sioux, Slope, and Stark Counties.
- 30 b. The term of each member who represents a canola district is three years and
31 begins on April first following the member's election. The terms of members

- 1 who represent canola districts must be staggered so that no more than one
2 term expires in any one year.
- 3 c. The term of each member who is appointed is three years and begins on April
4 first following the member's appointment. The terms of members who are
5 appointed must be staggered so that no more than two expire in any one
6 year.
- 7 4. If at any time a member of the council ceases to possess any of the qualifications
8 required by this section, the member's office is deemed vacant.
- 9 a. If the office was held by an elected member, the remaining members of the
10 council shall appoint another qualified producer for the remainder of the term.
- 11 b. If the office was held by a gubernatorial appointee, the governor shall appoint
12 another qualified producer.
- 13 c. If the office was held by an appointee of the director of the agricultural
14 experiment station, the director shall appoint another qualified individual.
- 15 5. A member of the council may not serve more than four consecutive terms. If an
16 individual is appointed to complete a vacancy, that service is not counted as a term
17 for purposes of this section unless the duration of that service exceeds one year.

NOTE: Subsection 5 contains 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.

18 **4.1-09-05. Election of county representative - Sunflower producers - Canola**
19 **producers.**

- 20 1. a. No later than March first of the year in which the term of a council member
21 who represents a sunflower district is to expire, the extension agent for each
22 county in that member's district shall hold a meeting of sunflower producers
23 for the purpose of electing a county representative.
- 24 b. The county extension agent shall publish notice of the meeting in the official
25 newspaper of the county for two consecutive weeks. The last notice must be
26 published no fewer than five nor more than ten days before the meeting.
- 27 c. The meeting must be held at a central location within the county.
- 28 d. During the meeting, the county extension agent shall conduct the election.
- 29 e. Any sunflower producer who resides in the county may vote in the election.

- 1 f. The county extension agent shall canvass the votes, notify the director of the
2 North Dakota state university extension service that the election has taken
3 place, and provide to the director the name and address of the newly elected
4 county representative.
- 5 2. a. No later than March first of the year in which the term of a council member
6 who represents a canola district is to expire, the extension agent for each
7 county in that member's district shall hold a meeting of canola producers for
8 the purpose of electing a county representative.
- 9 b. The county extension agent shall publish notice of the meeting in the official
10 newspaper of the county for two consecutive weeks. The last notice must be
11 published no fewer than five nor more than ten days before the meeting.
- 12 c. The meeting must be held at a central location within the county.
- 13 d. During the meeting, the county extension agent shall conduct the election.
- 14 e. Any canola producer who resides in the county may vote in the election.
- 15 f. The county extension agent shall canvass the votes, notify the director of the
16 North Dakota state university extension service that the election has taken
17 place, and provide to the director the name and address of the newly elected
18 county 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.

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 oilseed producers in a county, must the county extension agent still publish notice of and hold a meeting? Should there be a waiver in this instance?

SOURCE: Section 4-10.2-03(6).

19 **4.1-09-06. Election of council member - Sunflower district representative - Canola**
20 **district representative.**

- 21 1. a. Upon receiving the notice required by subdivision f of subsection 1 of section
22 4.1-09-05, the director of the North Dakota state university extension service

- 1 shall call a meeting of all county representatives in the sunflower district
2 represented by the member whose term is to expire.
- 3 b. The director shall notify each county representative in the sunflower district of
4 the meeting, by registered mail, at least five days before the meeting.
- 5 c. The meeting must be held at a central location within the district.
- 6 d. At the meeting, the county representatives shall elect one from among
7 themselves to serve as the council member from that district.
- 8 e. The director shall notify the governor that the election has taken place and
9 shall provide to the governor the name and address of the newly elected
10 council member.
- 11 2. a. Upon receiving the notice required by subdivision f of subsection 2 of section
12 4.1-09-05, the director of the North Dakota state university extension service
13 shall call a meeting of all county representatives in the canola district
14 represented by the member whose term is to expire.
- 15 b. The director shall notify each county representative in the canola district of the
16 meeting, by registered mail, at least five days before the meeting.
- 17 c. The meeting must be held at a central location within the district.
- 18 d. At the meeting, the county representatives shall elect one from among
19 themselves to serve as the council member from that district.
- 20 e. The director shall notify the governor that the election has taken place and
21 shall provide to the governor the name and address of the newly elected
22 council member.

SOURCE: Section 4-10.2-03(6).

23 **4.1-09-07. Election costs - Responsibility.** All costs of holding county and district
24 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.

25 **4.1-09-08. Quorum.** A majority of the council's voting members constitutes a quorum
26 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 4-10.2-05.

1 **4.1-09-09. 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 4-10.2-05.

6 **4.1-09-10. 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 for in 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 4-10.2-05.

12 **4.1-09-11. Council - Powers.**

- 13 1. The council may:
14 a. Expend moneys collected pursuant to this chapter for 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 1. Left without exception until changed by a future legislative assembly; or
- 2 2. Tempered by allowing the activity if approved by "a [super] majority of the council"
- 3 or by "a majority of the participating producers".

SOURCE: Sections 4-10.2-01 and 4-10.2-07.

4 **4.1-09-12. Council - Duties.**

- 5 1. The council shall determine the uses for which any moneys raised under this
- 6 chapter may be expended. The uses may include the funding of research,
- 7 education programs, and market development efforts, as well as participation in
- 8 programs under the auspices of other state and national oilseed promotion
- 9 councils.
- 10 2. The council shall develop and disseminate information regarding the purpose of
- 11 the oilseed assessment and ways in which the assessment benefits oilseed
- 12 producers.

NOTE: Subsection 1 attempts to summarize concepts included in the current statement of legislative policy (Section 4-10.2-01). It adds reference to participation in programs under the auspices of other state and national oilseed promotion councils. Is this an acceptable inclusion?

SOURCE: Sections 4-10.2-01 and 4-10.2-07.

13 **4.1-09-13. First purchaser - Certificate.**

- 14 1. Before a first purchaser may sell, process, or ship any oilseeds, the first purchaser
- 15 shall obtain a certificate from the council.
- 16 2. The certificate is available upon submission to the council of an application
- 17 containing the name under which the first purchaser is transacting business within
- 18 this state, the first purchaser's place of business, and the location of loading and
- 19 shipping places of the first purchaser's agents.
- 20 a. If the first purchaser is a corporation, the application must include the
- 21 corporate name and the names and addresses of the principal officers and
- 22 agents within this state.

- 1 b. If the first purchaser is a partnership, the application must include the names
2 and addresses of the persons constituting the partnership.
- 3 c. If the first purchaser is a limited liability company, the application must include
4 the name of the limited liability company and the names and addresses of its
5 principal managers and agents within this state.
- 6 3. The first purchaser shall notify the council whenever there is a change of
7 information required by this section.

SOURCE: Section 4-10.2-08.

8 **4.1-09-14. Assessment.**

- 9 1. An assessment at the rate of three cents per hundredweight [45.36 kilograms] is
10 imposed upon all oilseeds, other than flax, grown in this state or sold to a first
11 purchaser.
- 12 2. An assessment at the rate of two cents per bushel [35.24 liters] is imposed upon all
13 flax grown in this state or sold to a first purchaser.

SOURCE: Section 4-10.2-08.

14 **4.1-09-15. Collection of assessment - Records.**

- 15 1. The first purchaser shall collect the assessment from the seller by deducting the
16 assessment from the total price of the oilseeds being purchased by the first
17 purchaser.
- 18 2. Each first purchaser shall keep documents regarding all purchases, sales, and
19 shipments of oilseeds for a period of three years. The records may be examined
20 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?

- 21 3. At the time and in the manner prescribed by the council, each first purchaser shall
22 file a report stating, in individual and total amounts, the quantity of all oilseeds that
23 the first purchaser received, sold, or shipped and the source of all oilseeds that the
24 first purchaser received, sold, or shipped.

SOURCE: Section 4-10.2-08.

25 **4.1-09-16. Submission of assessments - Civil penalty.**

- 1 1. Each first purchaser shall forward to the council all assessments collected by the
2 first purchaser within thirty days after the end of each calendar quarter.

NOTE: Current law requires that the assessments be forwarded to the council at the same time as the (quarterly) report and the report is to be filed 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.

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

SOURCE: Sections 4-10.2-08 and 4-10.2-11.

6 **4.1-09-17. Refund of assessment.**

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

SOURCE: Section 4-10.2-09.

- 16 **4.1-09-18. Reimbursement for double payments.** Notwithstanding section
17 4.1-09-17, if a producer documents to the council that the producer has paid the assessment
18 more than once on the same oilseeds, the council shall reimburse the producer for the double
19 payment.

SOURCE: Section 4-10.2-09.

- 20 **4.1-09-19. Expenditure of funds.** The council shall approve all expenditures made
21 pursuant to this chapter and shall submit an itemized voucher to the office of management and
22 budget for payment.

SOURCE: Section 4-10.2-06.

1 **4.1-09-20. Continuing appropriation.** The council shall forward all moneys received
2 under this chapter to the state treasurer for deposit in the "oilseed fund". All moneys in the
3 oilseed fund are appropriated on a continuing basis to the council to carry out this chapter.

SOURCE: Section 4-10.2-08.

4 **4.1-09-21. Advisory referendum.**

- 5 1. a. When petitioned to do so by fifteen percent of the participating producers, the
6 council shall conduct a referendum among the participating producers of the
7 state to determine the amount by which the assessment imposed by this
8 chapter should be raised or lowered.
- 9 b. To be considered a valid petition, no more than fifty percent of the
10 participating producers who signed the petition may reside in one district.
- 11 2. The council shall prepare the ballots and mail the ballots to each participating
12 producer at least thirty days before the last date for filing ballots.
- 13 3. Each ballot must include a statement indicating:
- 14 a. The date on which the petition was filed and the number of signatures on the
15 petition;
- 16 b. The date, time, and location at which the council will open and tabulate the
17 ballots;
- 18 c. The last date by which the ballots must be postmarked or filed with the
19 council; and
- 20 d. That any participating producer may be present at the time the ballots are
21 opened and tabulated.
- 22 4. The date selected by the council for the opening and tabulation of ballots must be
23 at least five days after the date by which ballots must be postmarked or filed with
24 the council.
- 25 5. If the majority of the participating producers voting upon the question are in favor of
26 the proposed change, the council shall submit proposed legislation to the next
27 regular session of the legislative assembly.

SOURCE: Section 4-10.2-10.

28 **4.1-09-22. Penalty.** Any person who willfully violates this chapter is guilty of a class B
29 misdemeanor.

SOURCE: Section 4-10.2-11.

1 **SECTION 2. REPEAL.** Chapter 4-10.2 of the North Dakota Century Code is repealed.

CHAPTER NOTE: Section 4-10.2-13 was not included in the chapter rewrite because it duplicates open record provisions already found in Chapter 44-04.