

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-07 of the North Dakota Century Code, relating
2 to the dry pea and lentil council and assessment; to repeal chapter 4-10.7 of the North Dakota
3 Century Code, relating to the dry pea and lentil council and assessment; to provide a penalty;
4 and to provide a continuing appropriation.

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

6 **SECTION 1.** Chapter 4.1-07 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-07-01. 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 pea and lentil council.
- 12 3. "Dry peas and lentils" include chickpeas, lupins, and fava beans.
- 13 4. "First purchaser" means any person accepting for sale or otherwise acquiring dry
14 peas and lentils from a grower after harvest. The term includes a mortgagee,
15 pledgee, lienor, and any person having a claim against the producer, when the
16 actual or constructive possession of dry peas and lentils is taken as partial
17 payment or in satisfaction of a mortgage, pledge, lien, or claim.
- 18 5. "Participating producer" means a producer who has not applied for a refund under
19 section 4.1-07-14 for at least three years.

NOTE: Present law references a person who has not applied for a refund during the previous or current year. Because this allows for a significant time variation, the rewrite specifies a period of three years. The committee may wish to determine if the three-year period is too long or too short.

- 20 6. "Producer" means any person who has an ownership interest in dry peas and
21 lentils that the person has:

- 1 a. Planted during four of the previous six calendar years; or
- 2 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, or harvests dry peas and lentils. This would include a custom combine operator. In a similar vein, sometimes crops are planted but because of weather conditions might not be harvested. The proposed definition, therefore, 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 4-10.7-01.

- 3 **4.1-07-02. Dry pea and lentil districts - Establishment.** The state consists of the
- 4 following five dry pea and lentil districts:

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

SOURCE: Section 4-10.7-04.

- 15 **4.1-07-03. Dry pea and lentil council - Membership - Term.**
- 16 1. The council consists of one participating producer elected from each district
- 17 established in section 4.1-07-02 and the commissioner.
- 18 2. Each member of the council must be a United States citizen.
- 19 3. Each member of the council, other than the commissioner, must be a resident of
- 20 and participating producer in the district that the member represents.
- 21 4. The term of each elected member is three years and begins on April first following
- 22 the member's election. The terms must be staggered so that no more than two
- 23 expire each year.

1 5. If at any time during a member's term the member ceases to possess any of the
2 qualifications provided for in this chapter, the member's office is deemed vacant
3 and the council, by majority vote, shall appoint another qualified producer for the
4 remainder of the term.

5 6. An elected member of the council may not serve more than three consecutive
6 terms. If an individual is appointed to complete a vacancy, that service is not
7 counted as a term for purposes of this section unless the duration of that service
8 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 4-10.7-02.

9 **4.1-07-04. Election of county representative.**

10 1. No later than March first of the year in which the term of a council member is to
11 expire, the extension agent for each county in that member's district shall hold a
12 meeting of dry pea and lentil producers for the purpose of electing a county
13 representative.

14 2. The county extension agent shall publish notice of the meeting in the official
15 newspaper of the county for two consecutive weeks. The last notice must be
16 published no fewer than five nor more than ten days before the meeting.

17 3. The meeting must be held at a central location within the county.

18 4. During the meeting the county extension agent shall conduct the election.

19 5. Any producer who resides in the county may vote in the election.

20 6. The county extension agent shall canvass the votes, notify the director of the North
21 Dakota state university extension service that the election has taken place, and
22 provide to the director the name and address of the newly elected county
23 representative.

NOTE: Current law provides that county and district elections must take place before April 1. 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 pea and lentil 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 4-10.7-03.

1 **4.1-07-05. Election of district representative - Council member.**

- 2 1. Upon receiving the notice required by section 4.1-07-04, 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 4-10.7-03.

13 **4.1-07-06. 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 **4.1-07-07. Election of chairman - Meetings.**

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

SOURCE: Section 4-10.7-05.

20 **4.1-07-08. Council members - Compensation.** Each member of the council is
21 entitled to receive compensation, in the amount established by the council, but not exceeding

1 seventy-five dollars per day plus reimbursement for expenses, as provided by law for state
2 officers, if the member is attending meetings or performing duties directed by the council. The
3 compensation provided for in this section may not be paid to any member of the council who
4 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 4-10.7-05.

5 **4.1-07-09. Council - Powers.** The council may:

- 6 1. Expend moneys collected pursuant to this chapter for its administration;
- 7 2. Employ, bond, and compensate necessary personnel;
- 8 3. Accept gifts, grants, and donations of money, property, and services, to carry out
9 this chapter;
- 10 4. a. Contract with the governmental entity that is responsible for administration of
11 the dry pea and lentil assessment in another state or province and provide for:
12 (1) The return by that governmental entity of any assessment charged on
13 dry peas and lentils grown in this state; and
14 (2) The return by the council of any assessment charged on dry peas and
15 lentils grown in another state or province; and
- 16 b. Contract with any person for any other purpose permitted under this chapter;
- 17 5. Sue and be sued; and
- 18 6. Do all things necessary and proper to enforce and administer this chapter.

SOURCE: Section 4-10.7-07.

19 **4.1-07-10. Council - Duties.**

- 20 1. The council shall determine the uses to which any moneys raised under this
21 chapter may be expended. The uses may include the funding of research,
22 education programs, and market development efforts, as well as participation in
23 programs under the auspices of the United States dry pea and lentil council.
- 24 2. The council shall develop and disseminate information regarding the purpose of
25 the dry pea and lentil assessment and ways in which the assessment benefits dry
26 pea and lentil producers.

NOTE: Current law provides that the council shall "formulate the general policies and programs of markets and industries for the utilization of dry peas and lentils grown within the state." Because this directive is not clear, language was crafted to better define the duties of the council.

SOURCE: Sections 4-10.7-07 and 4-10.7-11.

1 **4.1-07-11. First purchaser - Certificate.**

2 1. Before a first purchaser of dry peas and lentils may sell, process, or ship any dry
3 peas or lentils, the first purchaser shall obtain a certificate from the council.

4 2. The certificate is available upon submission to the council of an application
5 containing the name under which the first purchaser is transacting business within
6 this state, the first purchaser's place of business, and the location of loading and
7 shipping places of the first purchaser's agents.

8 a. If the first purchaser is a corporation, the application must include the
9 corporate name and the names and addresses of the principal officers and
10 agents within this state.

11 b. If the first purchaser is a partnership, the application must include the name of
12 the partnership and the names and addresses of the persons constituting the
13 partnership.

14 c. If the first purchaser is a limited liability company, the application must include
15 the name of the limited liability company and the names and addresses of its
16 principal managers and agents within this state.

17 3. The first purchaser shall notify the council whenever there is a change of
18 information required by this section.

NOTE: Other commodity groups having similar sections provided for the possibility that a limited liability company might be a first purchaser. Therefore, that concept was included in subsection 2(c). Although this section currently makes no requirement on the first purchaser, beyond the original filing of the application, subsection 3 of the rewrite requires that the first purchaser notify the council whenever there is a change of information required by this section. Without such a provision, the information on file could be inaccurate.

SOURCE: Section 4-10.7-08.

19 **4.1-07-12. Assessment.** An assessment at the rate of one percent of the net value of
20 dry peas and lentils is levied upon all dry peas and lentils grown in the state or sold to a first
21 purchaser.

SOURCE: Section 4-10.7-09.

1 **4.1-07-13. Collection of assessment - Records.**

- 2 1. A first purchaser shall collect the assessment from the producer by deducting the
3 assessment from the net purchase price of the dry peas and lentils being
4 purchased by the first purchaser.
5 2. Each first purchaser shall keep documents regarding all purchases, sales, and
6 shipments of dry peas and lentils for a period of three years. The records may be
7 examined by the council upon request.

NOTE: Current law requires that the documents be kept permanently.

- 8 3. At the time and in the manner prescribed by the council, each first purchaser shall
9 file a report with the council stating, in individual and total amounts, the quantity
10 and source of all dry peas and lentils that the first purchaser received, sold, or
11 shipped.

SOURCE: Section 4-10.7-10.

12 **4.1-07-14. Submission of assessment - Civil penalty.**

- 13 1. Each first purchaser shall forward to the council all assessments collected by the
14 first purchaser no later than the thirtieth day after the end of each calendar quarter.

NOTE: Current law requires that the assessments be forwarded at the time and in the manner directed by the council.

- 15 2. If a first purchaser fails to submit the assessments as required by this section, the
16 council may impose a penalty equal to ten percent of the assessment due, plus
17 interest at the rate of twelve percent per annum from the due date.

SOURCE: Sections 4-10.7-10 and 4-10.7-14.

18 **4.1-07-15. Refund of assessment.**

- 19 1. To receive a refund of any assessment paid in accordance with this chapter, a
20 producer shall submit to the council a written request for a refund application within
21 sixty days after the date of the assessment or final settlement.
22 2. The producer shall complete the refund application and return the application to the
23 council, together with a record of the assessment collected, within ninety days after
24 the date of the assessment or final settlement. The council then shall refund to the
25 producer the net amount of the assessment that had been collected from the
26 producer.

NOTE: In accordance with the committee's directive for consistency, growers are being given 60 days from the date of the assessment or final settlement within which to request a refund application and 90 days from the date of the assessment or final settlement within which to file the application.

- 1 3. If a request for refund is not submitted to the council within the prescribed time
2 period, the producer is presumed to have agreed to the assessment.

SOURCE: Section 4-10.7-11.

- 3 **4.1-07-16. Reimbursement for double payment.** Notwithstanding section 4.1-07-15,
4 if a producer documents to the council that the producer has paid the assessment more than
5 once on the same dry peas or lentils, the council shall reimburse the producer for the double
6 payment.

SOURCE: Section 4-10.7-11.

- 7 **4.1-07-17. Expenditure of funds.** The council shall approve all expenditures made
8 pursuant to this chapter. The expenditures must be recorded on itemized vouchers and the
9 records must be maintained as directed by the state records administrator.

SOURCE: Section 4-10.7-06.

- 10 **4.1-07-18. Continuing appropriation.** All moneys received by the council under this
11 chapter are appropriated on a continuing basis to the council to be used to carry out this
12 chapter.

SOURCE: Section 4-10.7-15.

- 13 **4.1-07-19. Advisory referendum.**

- 14 1. a. When petitioned to do so by fifteen percent of the participating producers, the
15 council shall conduct a referendum among the participating producers of the
16 state to determine the amount by which the assessment imposed by this
17 chapter should be raised or lowered.
18 b. To be considered a valid petition, no more than fifty percent of the
19 participating producers who signed the petition may reside in one district.
20 2. The council shall prepare the ballots and mail the ballots to each participating
21 producer at least thirty days before the last date for filing ballots.
22 3. Each ballot must include a statement indicating:
23 a. The date on which the petition was filed and the number of signatures on the
24 petition;

- 1 b. The date, time, and location at which the council will open and tabulate the
2 ballots;
- 3 c. The last date by which the ballots must be postmarked or filed with the
4 council; and
- 5 d. That any participating producer may be present at the time the ballots are
6 opened and tabulated.
- 7 4. The date selected by the council for the opening and tabulation of ballots must be
8 at least five days after the date by which ballots must be postmarked or filed with
9 the council.
- 10 5. If the majority of the participating producers voting upon the question are in favor of
11 the proposed change, the council shall submit proposed legislation to the next
12 regular session of the legislative assembly to amend this chapter.

SOURCE: Section 4-10.3-10.

- 13 **4.1-07-20. Penalty.** Any person who willfully violates this chapter is guilty of a class B
14 misdemeanor.

SOURCE: Section 4-10.7-17.

- 15 **SECTION 2. REPEAL.** Chapter 4-10.7 of the North Dakota Century Code is repealed.

CHAPTER NOTE: Sections 4-10.7-13 and 4-10.7-16 were not included in the chapter rewrite. Section 4-10.7-13 states that if a first purchaser fails to pay the required assessment, the council may enforce collection in any appropriate court within the state. This duplicates enforcement authority given to the council in proposed Section 4.1-07-09. Section 4-10.7-16 provides that all records of the council are public information and must be made available for inspection. This duplicates provisions in Chapter 44-04, which addresses public records.