

October 2008

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-11 of the North Dakota Century Code, relating  
2 to the North Dakota soybean council and assessment; to repeal chapter 4-10.5 of the North  
3 Dakota Century Code, relating to the soybean 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 4.1-11 of the North Dakota Century Code is created and enacted  
7 as follows:

8 **4.1-11-01. 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 soybean council.
- 12 3. "Designated handler" means any person who initially places soybeans into the  
13 channels of trade and commerce or any person who processes soybeans into food  
14 for human consumption.
- 15 4. "Producer" means any person who has an ownership interest in soybeans that the  
16 person has planted during four of the previous six calendar years or caused to be  
17 planted during four of the previous six calendar years. The term does not include  
18 an organic producer who has been exempted from the payment of assessments, in  
19 accordance with an order issued by the United States secretary of agriculture  
20 under the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C.  
21 6301 et seq.].

**NOTE:** Present law defines a grower (producer) as a person who plants, raises, and harvests soybeans. 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 soybeans. 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.)

Federal law defines a producer as "any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans."

By providing that the term "producer" does not include an organic producer exempted by federal law, and by virtue of the fact that refunds are not permitted, there is no need to maintain a separate definition of a "participating" producer.

**SOURCE:** Section 4-10.5-01.

**4.1-11-02. Soybean districts - Establishment.** The state consists of the following eight soybean districts:

1. Richland County;
2. Dickey, LaMoure, Ransom, and Sargent Counties;
3. Cass County;
4. Barnes, Griggs, and Steele Counties;
5. Traill County;
6. Grand Forks County;
7. Pembina, Nelson, and Walsh Counties; and
8. All other North Dakota counties in which soybeans are grown.

**SOURCE:** Section 4-10.5-03.

**4.1-11-03. North Dakota soybean council - Membership - Terms.**

1. The council consists of one producer elected from each of the eight districts established in section 4.1-11-02 and the commissioner.
2. Each member of the council, except the commissioner, must be a resident of and a producer in the district that the member represents.
3. The term of each elected member is three years and begins on April first following the member's election. The terms must be staggered so that no more than three expire each year.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant

1           and the council, by majority vote, shall appoint another qualified producer to serve  
2           for the remainder of the term.

- 3           5. An elected member of the council may not serve more than two consecutive terms.  
4           If an individual is appointed to complete a vacancy, that service is not counted as a  
5           term for purposes of this section unless the duration of that service exceeds one  
6           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 4-10.5-02.

7           **4.1-11-04. Election of county representative.**

- 8           1. No later than March first of the year in which the term of a council member is to  
9           expire, the extension agent for each county in that member's district shall hold a  
10           meeting of soybean producers for the purpose of electing a county representative.  
11           2. The county extension agent shall publish notice of the meeting in the official  
12           newspaper of the county for two consecutive weeks. The last notice must be  
13           published no fewer than five nor more than ten days before the meeting.  
14           3. The meeting must be held at a central location within the county.  
15           4. During the meeting, the county extension agent shall conduct the election.  
16           5. Any producer who resides in the county may vote in the election.  
17           6. The county extension agent shall canvass the votes, notify the director of the North  
18           Dakota state university extension service that the election has taken place, and  
19           provide to the director the name and address of the newly elected county  
20           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 soybean 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 4-10.5-02.

**4.1-11-05. Election of council member - District representative.**

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

**SOURCE:** Section 4-10.5-02.

**4.1-11-06. Election costs - Responsibility.** All costs of holding county and district 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.

**4.1-11-07. Election of chairman - Meetings.**

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

**SOURCE:** Section 4-10.5-04.

**4.1-11-08. Council members - Compensation.** Each member of the council is entitled to receive compensation in the amount established by the council, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officials if the member is attending meetings or performing duties directed by the council. The compensation provided for in this section may not be paid to any member of the council who 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 own time and independent of his state employment?

**SOURCE:** Section 4-10.5-04.

**4.1-11-09. Council powers.** The council may:

1. Expend moneys collected pursuant to this chapter for its administration;
2. Employ, bond, and compensate necessary personnel;
3. Accept gifts, grants, and donations of money, property, and services to carry out this chapter;
4. Contract with any person for any purpose permitted under this chapter;
5. Sue and be sued; and
6. Do all things necessary and proper to enforce and administer this chapter.

**SOURCE:** Section 4-10.5-06.

**4.1-11-10. Council duties.**

1. The council shall develop policies and initiate programs to promote the development of markets for and increase the utilization of soybeans grown in this state.
2. The council shall develop and disseminate information regarding the purpose of the soybean assessment and ways in which the assessment benefits soybean producers.
3. The council shall determine the uses for which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of national soybean promotion organizations.

**NOTE:** This section utilizes both language found in the current powers and duties section and language similar to that used by other commodity councils.

**SOURCE:** Section 4-10.5-06.

**4.1-11-11. Assessment.** An assessment equaling one-half of one percent of the value of the sale must be imposed upon:

1. All soybeans sold to a designated handler;
2. Any unharvested soybeans owned by the producer and sold by the producer to a purchaser outside of this state; and

1       3. Any soybeans owned by the producer and transported by the producer from the  
2       farm where the soybeans were grown to a storage facility, packaging shed, or  
3       processing plant located outside of the state.

**SOURCE:** Sections 4-10.5-01(3) and 4-10.5-07.

4       **4.1-11-12. Collection of assessment by designated handler - Records.**

5       1. Each designated handler shall collect the assessment from the seller by deducting  
6       the assessment from the purchase price of all soybeans subject to the  
7       assessment.

8       2. Each designated handler shall keep all records regarding the quantity of soybeans  
9       received and assessed for a period of three years.

10      3. All records required by this section may be examined by the council upon request.

**NOTE:** Current law requires that the records be kept permanently. Other groups have  
opted for three years. The federal law requires record retention for two years beyond  
the fiscal period of the records' applicability.

**SOURCE:** Section 4-10.5-07.

11      **4.1-11-13. Assessment by producer - Records.**

12      1. Each producer having soybeans subject to assessment under subsection 2 or 3 of  
13      section 4.1-11-11 shall keep all sale and transportation records regarding those  
14      soybeans for a period of three years.

15      2. All records required by this section may be examined by the council upon request.

**NOTE:** Current law requires that the records be kept permanently. Other groups have  
opted for three years. The federal law requires record retention for two years beyond  
the fiscal period of the records' applicability.

**SOURCE:** Sections 4-10.5-01(3) and 4-10.5-07.

16      **4.1-11-14. Quarterly report - Submission to council.**

17      1. At the time and in the manner prescribed by the council, each designated handler  
18      shall file with the council a quarterly report stating, in individual and total amounts,  
19      the quantity of all soybeans that the handler received and assessed.

20      2. At the time and in the manner prescribed by the council, each producer having  
21      soybeans subject to assessment under subsection 2 or 3 of section 4.1-11-11 shall  
22      file with the council a quarterly report stating, in individual and total amounts, the  
23      quantity of soybeans subject to that assessment.

**SOURCE:** Sections 4-10.5-01(3) and 4-10.5-07.

**4.1-11-15. Submission of assessments - Civil penalty.**

1. a. Each designated handler shall forward to the council all assessments collected by the handler within thirty days after the end of each calendar quarter.
- b. Each producer shall forward to the council all assessments imposed upon the producer under subsections 2 and 3 of section 4.1-11-11 within thirty days after the end of each calendar quarter.
2. If a designated handler or a producer fails to submit the assessments as required by this section, the council shall increase the amount owed by two percent each month, beginning with the day following that on which the assessments came due.

**SOURCE:** Sections 4-10.5-01(3), 4-10.5-07, and 4-10.5-11.

**4.1-11-16. Continuing appropriation.** The council shall forward all moneys received under this chapter to the state treasurer for deposit in the "soybean fund". All moneys in the soybean fund are appropriated on a continuing basis to the council to be used exclusively to carry out this chapter.

**SOURCE:** Section 4-10.5-07.

**4.1-11-17. Advisory referendum by producers.**

1. a. When petitioned to do so by fifteen percent of the producers, the council shall conduct an advisory referendum among the producers of the state to determine the amount by which the producers believe the assessment imposed by section 4.1-11-11 should be raised or lowered.
- b. To be considered a valid petition, no more than fifty percent of the producers who signed the petition may reside in one district.
2. The council shall prepare the referendum ballot and mail it to each producer at least thirty days before the last date for filing ballots. Each ballot must include a statement indicating:
  - a. The date on which the petition was filed and the number of signatures contained on the petition;
  - b. The date, time, and location at which the council will open and tabulate the ballots;

- 1           c.   The last date by which the ballots must be postmarked or filed with the  
2               council; and  
3           d.   That any producer may be present at the time the ballots are opened and  
4               tabulated.  
5       3.   The date selected by the council for the opening and tabulation of ballots must be  
6           at least five days after the last date by which ballots must be postmarked or filed  
7           with the council.  
8       4.   If a majority of the producers voting upon the question are in favor of the proposed  
9           change, the council shall notify the united soybean board of the referendum  
10          results.

**NOTE:** Current law provides that after a successful referendum, the council is to request that the commissioner prepare and submit a bill to the next legislative session. Because the soybean checkoff operates in accordance with the federal Soybean, Promotion, Research, and Consumer Information Act, the Legislative Assembly does not have the authority to amend the assessment. Therefore, the rewrite provides that the referendum results must be communicated to the United Soybean Board.

**SOURCE:** Section 4-10.5-09.

- 11       **4.1-11-18. Penalty.** Any person who willfully violates this chapter is guilty of a class B  
12       misdemeanor.

**SOURCE:** Section 4-10.5-14.

- 13       **SECTION 2. REPEAL.** Chapter 4-10.5 of the North Dakota Century Code is repealed.

**CHAPTER NOTE:** Section 4-10.5-12 was not included in the chapter rewrite. It provides that all records of the council are open. This is duplicative of provisions already found in Chapter 44-04.

**CHAPTER NOTE:** In accordance with a motion by the interim Agriculture Committee, provisions of Section 4-10.5-07 which require designated handlers to obtain certificates from the council prior to selling, processing, or shipping soybeans were not included in the rewrite. Representatives of the Soybean Council had indicated to the committee that these provisions were not necessary and therefore should not be maintained.