

March 2008

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 4-10.1 of the North Dakota  
2 Century Code, relating to the North Dakota potato council; to amend and reenact sections  
3 4-10.1-03, 4-10.1-04, 4-10.1-05, 4-10.1-06, 4-10.1-07, 4-10.1-07, 4-10.1-08, 4-10.1-09,  
4 4-10.1-12, 4-10.1-13, 4-10.1-15, and 4-10.1-16 of the North Dakota Century Code, relating to  
5 the North Dakota potato council; to repeal sections 4-10.1-01, 4-10.1-02, 4-10.1-10, and  
6 4-10.1-14 of the North Dakota Century Code, relating to the titling and purpose of legislation  
7 promoting the potato industry, the appropriation of funds, the collection of assessments, and  
8 public records; to provide a penalty, and to provide a continuing appropriation.

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

10 **SECTION 1. AMENDMENT.** Section 4-10.1-03 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **4-10.1-03. Definitions.** ~~Whenever~~ As used in this chapter:

- 13 1. "Commissioner" means agriculture commissioner.
- 14 2. "Council" means the North Dakota potato council.
- 15 3. a. "Designated handler" means ~~any a~~ a person who initially places potatoes;  
16 ~~whether that person is an owner, agent, or otherwise,~~ into the channels of  
17 trade and commerce; or a person who is ~~engaged in the processing of~~  
18 processes potatoes into food for human consumption ~~in any form.~~ A. The  
19 term does not include a grower selling that grower's unharvested potatoes; or  
20 delivering that grower's potatoes from the farm on which they are produced to  
21 storage facilities, to a packing shed, or to a processing plant, within the state;  
22 ~~is not considered to be a designated handler.~~
- 23 4. "Grower" means any person who plants, raises, and harvests ~~fish~~ potatoes from  
24 more than ten acres [4.05 hectares].

**NOTE:** In similar situations, the interim committees opted to remove the minimum acreage requirement. If the requirement was initially added to avoid payments and refunds involving very small amounts of money that can be addressed by other means.

- 1        5.    ~~"Hundredweight" means a one hundred pound [45.36 kilogram] unit or combination~~  
2            ~~of packages making a one hundred pound [45.36 kilogram] unit or any shipment of~~  
3            ~~potatoes based on invoices or bills of lading records.~~

**NOTE:** In similar situations, the interim committee opted to remove the definition of a hundredweight because it was deemed to be self-evident.

- 4        6.    ~~"Participating grower" means a grower who has not gained exemption from the~~  
5            ~~payment of taxes on potato production under this chapter for a particular year, or a~~  
6            ~~grower who is not exempt from the payment of taxes on potato production under~~  
7            ~~the terms of this chapter.~~

- 8        7.    ~~"Person" means an individual, partnership, corporation, limited liability company,~~  
9            ~~association, grower, cooperative, or any other business unit.~~

**NOTE:** NDCC section 1-01-49 already 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, it is not necessary to include the definition in this chapter.

- 10      8.    6.    ~~"Potatoes Potato" means any and all varieties variety of Irish potatoes harvested~~  
11            ~~within the this state of ~~North Dakota~~.~~

- 12      9.    ~~"Processor" means a person who is actively engaged in the processing of potatoes~~  
13            ~~for human consumption.~~

**NOTE:** The word processor is not used elsewhere in this chapter.

- 14      **SECTION 2. AMENDMENT.** Section 4-10.1-04 of the North Dakota Century Code is  
15 amended and reenacted as follows:

- 16      **4-10.1-04. North Dakota potato council - Membership - Election - Term.** ~~There is~~  
17 ~~hereby established a~~

- 18      1.    ~~The North Dakota potato council. The council is composed of the agriculture~~  
19            ~~commissioner or the commissioner's designated representative, who is chairman~~  
20            ~~of the council, and one~~

- 21            a.    One participating grower elected from each of the five districts hereinafter  
22            established in section 4-10.1-05; and

- 23            b.    The commissioner of agriculture or the commissioner's designee.

- 1           2. Every elected council member must be a United States citizen ~~of the state~~ and a  
2           ~~bona fide~~ resident of and participating grower in the district that the member  
3           represents.
- 4           3. The term of each elected member is three years and begins on July first ~~of the~~  
5           ~~year of following the member's~~ election, ~~except that initially one member must be~~  
6           ~~elected for a three-year term, two members must be elected for two-year terms,~~  
7           ~~and two members must be elected for one-year terms as designated by the~~  
8           ~~commissioner~~ The terms must be staggered so that no more than two expire each  
9           year.
- 10          4. If at any time during a member's term that member ceases to possess any of the  
11          qualifications provided for in this chapter, that member's office is deemed vacant  
12          and the council shall appoint another qualified ~~participating~~ grower for the  
13          remainder of the term ~~of the office vacated.~~
- 14          5. ~~The~~ Each year, during the month of June the commissioner shall conduct ~~all~~  
15          ~~elections under this section~~ in each district, in such a manner as the commissioner  
16          deems fair and reasonable. ~~All such elections must be conducted in the month of~~  
17          ~~June.~~

**NOTE:** Because the potato council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to describe the election process in statute, so that anyone can determine what the process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated to one individual - i.e., the commissioner.

- 18          6. No elected member of the council is eligible to serve more than two consecutive  
19          three-year terms.

20           **SECTION 3. AMENDMENT.** Section 4-10.1-05 of the North Dakota Century Code is  
21          amended and reenacted as follows:

22           **4-10.1-05. Potato districts - Establishment:** ~~It being the intent of this chapter to divide~~  
23          ~~the state into districts containing as nearly equal potato acreage as practicable,~~ The state  
24          consists of the following five potato districts are established:

- 25           1. ~~District one consists of the counties of~~ Pembina and Cavalier counties.
- 26           2. ~~District two consists of all townships in~~ Walsh County in and west of range  
27          fifty-four.

- 1           3. District three consists of all those townships in Walsh County in and east of range  
2           fifty-three.
- 3           4. ~~District four consists of the counties of Grand Forks, Nelson, and Benson counties.~~
- 4           5. ~~District five consists of the counties of Traill, Cass, Richland, Steele, Barnes,~~  
5           ~~Griggs, Stutsman, Foster, Eddy, LaMoure, Dickey, Ransom, Sargent, Logan,~~  
6           ~~McIntosh, Burleigh, Kidder, Sheridan, Wells, Burke, Divide, Mountrail, Renville,~~  
7           ~~Ward, Williams, McHenry, Pierce, Dunn, McKenzie, McLean, Mercer, Oliver,~~  
8           ~~Adams, Billings, Bowman, Golden Valley, Hettinger, Slope, Stark, Emmons, Grant,~~  
9           ~~Morton, Sioux, Towner, Rolette, Bottineau, and Ramsey~~ All remaining counties in  
10          the state.

11           **SECTION 4. AMENDMENT.** Section 4-10.1-06 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13           **4-10.1-06. Meetings - Quorum - Compensation and expenses of council.** A  
14 ~~majority of the voting members of the council constitutes a quorum for the transaction of all~~  
15 ~~business in carrying out the duties of the council. All~~ The chairman shall call all meetings of the  
16 ~~council must be called by the chairman except special meetings which must be called by the~~  
17 ~~chairman on the petition of~~ and must call a special meeting of the council within seven days,  
18 when petitioned to do so by three council members ~~within seven days of receiving such a~~  
19 ~~petition. The council shall determine the amount of compensation payable to each member of~~  
20 ~~the council, except the chairman. The amount payable may not exceed seventy five dollars per~~  
21 ~~day plus reimbursement of expenses as provided by law for state officers, while attending~~  
22 ~~meetings or performing duties directed by the commissioner.~~

**NOTE:** NDCC Section 1-01-10 provides that a "majority of any board or commission" constitutes a quorum. This language is applicable to the entire Code. Therefore, unless the commissioner is a nonvoting member, and that does not appear to be the case, there is no need to include this verbiage.

**NOTE:** 2. The language governing the compensation of council members was placed in a separate section.

23           **SECTION 5.** A new section to chapter 4-10.1 of the North Dakota Century Code is  
24 created and enacted as follows:

25           **Council members - Compensation.** Each member of the council is entitled to receive  
26 compensation, in the amount established by the council, but not exceeding seventy-five dollars  
27 per day plus reimbursement for expenses, as provided by law for state officers, if the member is

1 attending meetings or performing duties directed by the council. The compensation provided  
2 for this section may not be paid to any member of the council who receives a salary or other  
3 compensation as an employee or official of this state.

**NOTE:** Source NDCC Section 4-10.1-06

4 **SECTION 6. AMENDMENT.** Section 4-10.1-07 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **4-10.1-07. ~~Expenditure of funds~~ Expenditures.** ~~Every~~ The council shall approve  
7 each expenditure of funds made pursuant to this chapter ~~must be approved by the council,~~  
8 ~~submitted upon~~ and shall submit an itemized voucher to the ~~office of the budget for approval,~~  
9 ~~and paid by warrant check issued by the office of management and budget~~ for payment.

10 **SECTION 7. AMENDMENT.** Section 4-10.1-08 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **4-10.1-08. ~~Potato council powers and duties - Powers.~~ Powers.** ~~In the administration of this~~  
13 ~~chapter, the~~ The council has the following powers and duties may:

14 1. ~~To contract and cooperate~~ Contract with any person, ~~firm, corporation, limited~~  
15 ~~liability company, or association, or with any local, state, or federal department or~~  
16 ~~agency~~ for any purpose related to this chapter, including research, education,  
17 ~~publicity, promotion, and transportation for the purposes of this chapter.~~

**NOTE:** In reviewing other commodity chapters, the committee opted to allow  
contracting for any reason related to the chapter, but elected to specifically mention  
some of the familiar purposes.

- 18 2. ~~To expend the funds~~ Expend monies collected pursuant to ~~the provisions of this~~  
19 ~~chapter and appropriated~~ for its administration.
- 20 3. ~~To appoint, employ~~ Employ, bond, discharge, ~~fix compensation for, and prescribe~~  
21 ~~the duties of such administrative, clerical, technical, and other~~ and compensate  
22 necessary personnel as it may deem necessary.
- 23 4. ~~To accept~~ Accept gifts, grants, and donations of ~~funds~~ moneys, property, and  
24 ~~services, or other assistance from public or private sources for the purpose of~~  
25 ~~furthering the objectives of the council to carry out this chapter.~~
- 26 5. ~~To investigate and prosecute in the name of the state of North Dakota any action~~  
27 ~~or suit~~ Sue and be sued.

1           6. Do all things necessary and proper to enforce the collection or ensure payment of  
2           the taxes authorized by the provisions of and administer this chapter, and to sue  
3           and be sued in the name of the council.

**NOTE:** A grant of power is the authority to act. A duty is a mandate to act. This section appears to reference only powers of the council.

4           **SECTION 8.** A new section to chapter 4-10.1 of the North Dakota Century Code is  
5 created and enacted as follows:

6           **Designated handler - Certification.**

- 7           1. Before a designated handler may sell, process, or ship potatoes, the designated  
8           handler shall obtain certification from the council. The certification is available  
9           upon submission to the council of an application containing the name under which  
10           the handler is transacting business within the state, the designated handlers place  
11           of business, and the location of loading and shipping places of the designated  
12           handler's agents.
- 13           2. a. If the designated handler is a corporation, the application must include the  
14           corporate name and the names and addresses of its principle officers and  
15           agents within the state.
- 16           b. If the designated handler is a partnership, the application must include names  
17           and addresses of the persons constituting the partnership.
- 18           c. If the designated handler is a limited liability company, the application must  
19           include the names and addresses of its principal managers and agents within  
20           the state.
- 21           3. The designated handler shall notify the council whenever there is a change of  
22           information required by this section.

**NOTE:** SOURCE - NDCC Section 4-10.1-09. Because the certification of designated handlers is not generic to the imposition of the assessment, the two topics were placed in separate sections. Under current law, once a designated handler files the required application, the handler is under no obligation to do anything else, even if there is a material change in the information. Therefore, in the rewrite, subsection 3 directs a designated handler to notify the council whenever there is a change in the information required for the certification.

23           **SECTION 9. AMENDMENT.** Section 4-10.1-09 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **4-10.1-09. Tax levied Assessment - Continuing appropriation.**



1           3. ~~Every~~ Each designated handler shall keep as a ~~part of its permanent records a~~  
2           record, documentation of all purchases, sales, and shipments of raw potatoes;  
3           ~~which~~ The records may be examined by the commissioner, or the commissioner's  
4           designee, ~~at all reasonable times upon request.~~

**NOTE:** Is it necessary to keep these records forever? Since the council has authority to enforce this chapter, it would seem that the council should have the ability to examine the records.

5           4. ~~Every~~ At the time and in the manner prescribed by the council, each designated  
6           handler shall file a report to the council stating the quantity of potatoes that the  
7           designated handler received, sold, or shipped by it. ~~The report must be made at~~  
8           ~~the times and in the manner prescribed by the council. The remittance of the~~  
9           ~~assessment as provided in this section must accompany the report. All~~

10          5. At the time and in the manner prescribed by the council, each designated handler  
11          shall forward to the council all assessments collected by the handler.

12          6. The council shall forward all moneys levied and collected received under this  
13          chapter ~~must be paid to the council for deposit in~~ to the state treasury to the credit  
14          ~~of a special revolving fund designated as~~ treasurer for deposit in the spud fund. All  
15          money in the spud fund is appropriated on a continuing basis to the council for  
16          carrying out the purposes of this chapter. ~~Regular audits of the council's accounts~~  
17          ~~must be conducted in accordance with chapter 54-10 and submitted to the~~  
18          ~~commissioner.~~

**NOTE:** Because the requirements for regular audits are already addressed in NDCC Chapter 54-10, it is not necessary to reiterate them in this chapter.

19          **SECTION 10. AMENDMENT.** Section 4-10.1-12 of the North Dakota Century Code is  
20          amended and reenacted as follows:

21                 **4-10.1-12. Nonparticipating growers - Refunds.** ~~Growers may become~~  
22          ~~nonparticipating growers and claim exemption from the provisions of this chapter. To claim~~  
23          ~~exemption, a nonparticipating grower shall notify the council, in writing, on or before July~~  
24          ~~fifteenth of each year, of the grower's intention not to participate under the program and to claim~~  
25          ~~a refund of the assessment herein levied on potatoes grown by the grower during that current~~  
26          ~~year. Such grower, if the grower has notified the council of the grower's intention not to~~  
27          ~~participate, as herein provided, is eligible between June first and June fifteenth of the following~~

1 ~~year, to claim a refund of the assessments paid on such crop pursuant to this chapter. The~~  
2 ~~claim for refund must be made in the manner and form prescribed by the council. Upon receipt~~  
3 ~~of a claim for refund from an eligible, nonparticipating grower, the council shall refund the~~  
4 ~~assessments paid on the crop grown during the year of the claimed exemption.~~

5 1. To receive a refund of any assessments paid in accordance with this chapter, a  
6 grower shall:

7 a. Between January 1 and 15th, submit a letter to the council indicating that the  
8 grower intends to request a refund of assessments paid on potatoes grown  
9 during that calendar year; and

10 b. Between June 1 and June 15th of the calendar year following the date of the  
11 letter required by subsection 1, the grower shall submit a letter to the council  
12 requesting the refund of assessments paid by the grower on potatoes during  
13 the previous calendar year.

14 2. Upon verification that the requirements of this section have been met, the council  
15 shall provide the requested refund to the grower.

16 **SECTION 11. AMENDMENT.** Section 4-10.1-13 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18 **4-10.1-13. Referendum by growers.**

19 1. a. ~~Whenever~~ When petitioned to do so by fifteen percent of the participating  
20 growers, but not more than fifty percent of the signatory parties from any one  
21 district, as disclosed by the records of the council for the preceding year,  
22 petition the council, the council shall conduct a referendum among the  
23 participating growers of the state to determine whether they wish the  
24 legislative assembly to raise or lower the tax imposed by section 4-10.1-09.  
25 Such referendum must be conducted only among participating growers who  
26 have paid all taxes assessed pursuant to this enactment for the preceding  
27 year, and the amount by which the assessment imposed by this chapter  
28 should be raised or lowered.

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

- 1           2. ~~The council shall prepare the ballots must be prepared by the council and mailed~~  
2           ~~and mail the ballots~~ to each participating grower at least thirty days ~~prior to~~ before  
3           the last date for filing ballots. ~~In addition, each~~  
4           2. ~~Each~~ ballot must be accompanied by a notice to each participating grower include  
5           a statement indicating:  
6           4. ~~Of the~~  
7           a. ~~The date of the filing of on which~~ the petition ~~by the growers for the~~  
8           referendum was filed and the number of signatures ~~contained thereon on the~~  
9           petition;.  
10          2. ~~Of the~~  
11          b. ~~The date and place where~~ time, and location at which the council will open  
12          and tabulate the ballots, ~~which date must be not less than five days after the~~  
13          last date for filing the ballots;.  
14          3. ~~Of the last date upon which ballots must be filed~~  
15          c. The last date by which the ballots must be postmarked or filed with the  
16          council, ~~or postmarked if delivered to the council by mail; and~~  
17          :4. d. That any participating grower may attend the meeting of the council be  
18          present at the time the ballots are opened and ~~the votes~~ 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 a the majority majority of the participating growers voting upon the question are  
23          in favor of the proposed change, the council shall ~~certify the result to the~~  
24          ~~emmissioner with the request that the department prepare a bill to submit a bill to~~ submit a bill to  
25          the legislative assembly ~~at the next legislative session to modify this chapter in~~  
26          conformity therewith. ~~The results of such referendum are advisory only and the~~  
27          legislative assembly is in no way obligated to adopt legislation enacting the  
28          proposals ~~contained in any referendum~~ to amend this chapter.

29           **SECTION 12. AMENDMENT.** Section 4-10.1-15 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **4-10.1-15. Misdemeanor to violate provisions of this chapter.** Any person who  
2 willfully violates ~~the provisions of~~ this chapter is guilty of a class B misdemeanor.

3           **SECTION 13. AMENDMENT.** Section 4-10.1-16 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **4-10.1-16. Penalty for nonpayment of assessment.** Any ~~designated handler who~~  
6 ~~fails to pay any~~ assessment levied by this chapter ~~on~~ and unpaid by the date that the ~~same~~  
7 assessment becomes due is delinquent and the council may levy a penalty ~~on the delinquent~~  
8 ~~payments of~~ equal to ten percent of the assessment amount due, plus interest at the rate of six  
9 percent per annum from the due date, ~~which penalty and interest must be collected in the~~  
10 ~~manner as prescribed by section 4-10.1-14.~~

11           **SECTION 14. AMENDMENT.** Section 4-10.1-17 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13           **4-10.1-17. Records of council - Inspection.** All of the records of the council, including  
14 acreage reports, tax returns, claims of exemption, and any other data, records, or information  
15 retained by the council are public information and must be available for the inspection of any  
16 person for any lawful purpose; provided, however, that the council is empowered to make rules  
17 and regulations concerning the inspection of such information or data, and the time or place of  
18 such inspection or the manner in which the information shall be made available.

**NOTE:** NDCC Chapter 44-04 addresses public records. Its provisions are applicable to the potato council and therefore do not need to be reiterated in this chapter. The second part of this section, however, empowers the council to make rules concerning the inspection of the "information or data..." it is not clear what is contemplated by this authorization and how it would affect or be affected by NDCC Chapter 44-04.

19           **SECTION 15. REPEAL.** Sections 4-10.1-01, 4-10.1-02, 4-10.1-10, and 4-10.1-14 of  
20 the North Dakota Century Code are repealed.

**NOTE:**

NDCC Section 4-10.1-01 entitles the chapter the "Potato Industry Promotion Act of North Dakota".

NDCC Section 4-10.1-02 sets forth legislative policy. In addition, however, it also precludes the council from engaging in competitive business enterprises.

NDCC Section 4-10.1-10 provides that NDCC Section 54-27-10 does not apply to appropriations from the spud fund. NDCC Section 54-27-10 would not apply under any circumstances because spud fund is a revolving fund.

NDCC Section 4-10.1-14 is duplicate of language already in section 4-10.1-08.