

AGRICULTURE

CHAPTER 67

HOUSE BILL NO. 1125

(Natural Resources Committee)

(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4-01-17.1 of the North Dakota Century Code, relating to control of predatory animals, destructive birds, and injurious field rodents.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-01-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-01-17.1. State to cooperate with the animal and plant health inspection service and other agencies in destruction of predatory animals, destructive birds, and injurious field rodents. The agriculture commissioner may cooperate with the United States department of agriculture, animal and plant health inspection service, or other appropriate federal agency, in the control and destruction of ~~coyotes, wolves, bobcats, and foxes~~ fur-bearers that are injurious to livestock, poultry, and big and small game; injurious field rodents ~~in rural areas; big game threatening human health or domestic livestock;~~ and ~~certain nongame species of~~ birds causing crop damage or substantial economic loss or threatening human health. This control and destruction must be approved by the director of the game and fish department. The agriculture commissioner may enter into written agreements with the animal and plant health inspection service or other appropriate federal agency, and the director of the game and fish department covering the methods and procedures for the control and destruction of these birds and animals, the extent of supervision by either or both the agriculture commissioner and the animal and plant health inspection service or other appropriate federal agency, and the use and expenditure of the funds appropriated therefor by the legislative assembly. The agriculture commissioner, in cooperation with the animal and plant health inspection service or other appropriate federal agency, may enter into agreements with other governmental agencies and with counties, associations, corporations, limited liability companies, or individuals when cooperation is deemed to be necessary to promote the control and destruction of these birds and animals.

Approved April 16, 2009

Filed April 17, 2009

CHAPTER 68**SENATE BILL NO. 2438**

(Senators Wanzek, Dotzenrod, Flakoll)
(Representatives Belter, Brandenburg, S. Meyer)

AN ACT to create and enact two new sections to chapter 4-01 of the North Dakota Century Code, relating to the promotion of sustainably grown agricultural commodities; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Sustainably grown in North Dakota - Application - Logo - Promotion of commodities.

1. The agriculture commissioner shall implement a program to promote agricultural commodities that are sustainably grown in North Dakota.
2. A producer may apply to the commissioner and upon demonstrating that the producer's growing practices with respect to a particular commodity meet the commissioner's established criteria for sustainability, the commissioner shall authorize the producer to label and market the commodity as being sustainably grown in North Dakota.
3. The commissioner shall develop and make available for the use of authorized producers a logo indicating that the commodity is sustainably grown in North Dakota. The commissioner shall actively support and promote the sale and use of products identified as sustainably grown in North Dakota.
4. The commissioner may establish and charge producers a fee for participating in the program. The commissioner shall forward all fees collected under this section to the state treasurer for deposit in the general fund.
5. For purposes of this section, "sustainably grown" means that a crop is grown using research-based practices that result in:
 - a. Increased efficiencies in soil and nutrient preservation;
 - b. Decreased reliance on tillage and other soil-depleting practices;
 - c. Increased efficiencies in the use of water;
 - d. Increased efficiencies in the use of other necessary and measurable agricultural inputs;
 - e. Increased yield efficiencies; and

- f. Greater economic benefit to producers.

SECTION 2. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Advisory committee on sustainable agriculture - Creation - Duties - Powers - Compensation - Continuing appropriation.

1. The agriculture commissioner shall appoint an advisory committee on sustainable agriculture.
 - a. The committee must include:
 - (1) The chairman of the house agriculture committee or the chairman's designee;
 - (2) The chairman of the senate agriculture committee or the chairman's designee;
 - (3) The commissioner of the department of commerce or the commissioner's designee;
 - (4) The director of the North Dakota state university agricultural experiment station;
 - (5) An agricultural producer who utilizes innovative research-based technologies in farming operations;
 - (6) A representative of an international agricultural corporation; and
 - (7) An individual specializing in the domestic and international marketing of agricultural products.
 - b. If both houses of the legislative assembly are controlled by the same party, the committee also must include one member of the legislative assembly from the minority party, appointed by the chairman of the legislative council.
2. The committee shall:
 - a. Examine the concept of sustainability with respect to conventional farming practices and modern technology-based production practices;
 - b. Examine production practices that are efficient and able to meet current and future global food and nutritional needs;
 - c. Examine production practices that promote increased efficiencies in resource use, improve human health through access to safe and nutritious food, and enhance economic opportunities for individual producers;
 - d. Explore metric evaluations to measure the attainment, maintenance, and certification of sustainability;

- e. Advise the commissioner regarding the development of a sustainability certification program and the marketing and packaging of products containing the certification;
 - f. Explore the standards held by international private sector certifying groups which have the potential to increase sales of North Dakota products; and
 - g. Report to the legislative council on the status of committee activities.
3. The committee may accept gifts, grants, and donations of money, property, and services. All moneys received as gifts, grants, or donations are appropriated on a continuing basis to the agriculture commissioner for the purpose of carrying out this section.
4. Each legislative member of the committee is entitled to receive per diem compensation in the amount established by subsection 1 of section 54-03-20 plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the committee.

SECTION 3. EFFECTIVE DATE. Section 1 of this Act becomes effective on July 1, 2011.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 69

SENATE BILL NO. 2373

(Senators Krebsbach, Grindberg, Robinson)
(Representatives Glasshiem, Klein, Wald)

AN ACT to provide for a grape and wine program committee; to provide a report to the legislative assembly; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. APPROPRIATION. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$250,000, or so much of the sum as may be necessary, to the grape and wine program committee for the purpose of providing matching funds for grape research, for the biennium beginning July 1, 2009, and ending June 30, 2011. The grape and wine program committee may spend funds appropriated under this section for grants only after consultation with the main research center and only to the extent of \$4 for each \$1 provided from other sources. The grape and wine program committee may spend additional funds from gifts, grants, or donations and those additional funds are appropriated to the grape and wine program committee.

SECTION 2. Grape and wine program committee.

1. The grape and wine program committee is a seven-member committee that shall advise the agriculture commissioner on the commissioner's efforts to provide producer education, marketing, and promotion of the grape and wine industry in this state. In addition, the committee shall advise the vice president for agriculture and university extension at North Dakota state university and the director of the North Dakota agricultural experiment station on priorities for research for the grape and wine industry in this state.
2. The committee consists of:
 - a. The agriculture commissioner or the commissioner's designee;
 - b. The vice president for agriculture at North Dakota state university or the vice president's designee;
 - c. An individual appointed by the governor representing the grape or wine industry in this state;
 - d. An individual appointed by the commissioner of the department of commerce;
 - e. An individual appointed by the state board of agricultural research and education; and
 - f. Two individuals appointed by the North Dakota grape growers association.

3. All members of the committee shall serve for a term of two years, beginning July first of each odd-numbered year, and may be reappointed for additional terms.
4. If any member of the committee resigns or ceases to be a member of the class the member represents, that individual's membership on the committee ceases and the appropriate appointing authority may appoint a new member for the remainder of the term.
5. The North Dakota grape growers association shall designate as chairman one of the two individuals the association appoints to the committee unless the committee elects a different chairman from the members on the committee. The committee shall meet at least once every two years and at the call of the chairman.
6. Members of the committee are entitled up to the per diem compensation provided to members of the legislative assembly under subsection 1 of section 54-03-20 and expense reimbursement.

SECTION 3. REPORT TO SIXTY-SECOND AND SIXTY-THIRD LEGISLATIVE ASSEMBLIES. The grape and wine program committee shall report to the sixty-second and sixty-third legislative assemblies on the progress of research, producer education, marketing, and promotion of the grape and wine industry in this state.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 2013, and after that date is ineffective.

Approved May 1, 2009
Filed May 5, 2009

CHAPTER 70**HOUSE BILL NO. 1109**

(Representatives Mueller, Hofstad)

(At the request of the Agriculture Commissioner)

AN ACT to create and enact a new section to chapter 4-01 of the North Dakota Century Code, relating to meetings of commodity groups; and to amend and reenact sections 4-10.1-04, 4-10.2-03, 4-10.3-03, 4-10.4-03, 4-10.5-02, 4-10.7-02, and 4-27-04 of the North Dakota Century Code, or in the alternative to amend and reenact sections 4.1-02-01, 4.1-02-03, 4.1-02-09, 4.1-06-03, 4.1-07-01, 4.1-07-03, 4.1-07-08, 4.1-09-01, 4.1-09-04, 4.1-09-12, 4.1-10-03, 4.1-10-05, 4.1-10-06, 4.1-11-01, 4.1-11-03, and 4.1-11-08 of the North Dakota Century Code, relating to removal of the agriculture commissioner from governing bodies of commodity groups.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-01 of the North Dakota Century Code is created and enacted as follows:

Commodity groups - Agriculture commissioner - Meetings.

1. The agriculture commissioner may participate, as a nonvoting member, in any regular or special meeting of a commodity group, including any executive session held by a commodity group.
2. Annually, the agriculture commissioner shall call a meeting of representatives from each commodity group for the purpose of engaging in collaborative efforts to promote and market agricultural commodities.
3. For purposes of this section, "commodity group" means the:
 - a. North Dakota barley council;
 - b. North Dakota beef commission;
 - c. North Dakota beekeepers association;
 - d. North Dakota corn utilization council;
 - e. North Dakota dairy promotion commission;
 - f. North Dakota dry bean council;
 - g. North Dakota dry pea and lentil council;
 - h. North Dakota oilseed council;
 - i. North Dakota potato council;
 - j. North Dakota soybean council;

- k. North Dakota turkey federation; and
- l. North Dakota wheat commission.

SECTION 2. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-04. North Dakota potato council - Membership - Election - Term.

1. There is ~~hereby~~ established a North Dakota potato council. The council is composed of ~~the agriculture commissioner or the commissioner's designated representative, who is chairman of the council, and one participating grower elected from each of the districts hereinafter established in this chapter. Annually, the members of the council shall elect one from among themselves to serve as the chairman.~~
2. Every elected council member must be a United States citizen of ~~the state~~ and a bona fide resident of and participating grower in the district that he represents. The term of each elected member is three years and begins on July first of the year of election, except that initially one member must be elected for a three-year term, two members must be elected for two-year terms, and two members must be elected for one-year terms as designated by the commissioner. An elected member of the council may not serve more than two consecutive three-year terms.
3. If at any time during a member's term ~~that the~~ member ceases to possess any of the qualifications provided for in this chapter, that member's office is deemed vacant and the council shall appoint another qualified participating grower for the remainder of the term of the office vacated.
4. The commissioner shall conduct all elections under this section in each district in ~~such a manner as the commissioner deems~~ determines fair and reasonable. All ~~such~~ elections must be conducted in the month of June. ~~No elected member of the council is eligible to serve more than two consecutive three-year terms.~~

SECTION 3. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.2-03 of the North Dakota Century Code is amended and reenacted as follows:

4-10.2-03. North Dakota oilseed council - Membership - Election - Term.

1. The North Dakota oilseed council is composed of:
 - a. One participating sunflower grower elected from each of the districts established in section 4-10.2-04;
 - b. One participating canola grower elected from each of the districts established in section 4-10.2-04.1;
 - c. One participating safflower grower appointed by the governor;
 - d. One participating crambe grower appointed by the governor;

- e. One participating flax grower appointed by the governor; and
 - f. One member appointed by the director of the agricultural experiment station.
2. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The commissioner is an ex officio member of the council.~~
3. a. Every elected and appointed council member must be a United States citizen ~~of the state~~.
- b. The elected member who is a sunflower grower must be a bona fide resident of and participating sunflower grower in the district the member represents.
- c. The elected member who is a canola grower must be a bona fide resident of and participating canola grower in the district the member represents.
4. a. The term of each elected member who is a sunflower grower is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and two members must be elected for a one-year term as designated by the commissioner.
- b. The term of each elected member who is a canola grower is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; one member must be elected for a two-year term; and one member must be elected for a one-year term as designated by the commissioner.
- c. The term of the elected member who is a sunflower grower from district seven must coincide with the term of the elected member who is a sunflower grower from district six.
- d. The term of each appointed member is three years and begins on April first of the year of the appointment. Initially, the term of the member who is a flax grower must be for three years, the term of the member appointed by the director of the agricultural experiment station must be for two years, and the term of the member who is a safflower grower must be for two years.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the vacated term.
6. The commissioner, or a county agent designated by the commissioner, in cooperation with the North Dakota state university extension service, shall conduct elections under this section in each district in the manner the commissioner determines fair and reasonable. All elections must be conducted before April first of each year.

7. No elected or appointed member of the council is eligible to serve more than four consecutive three-year terms.

SECTION 4. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.3-03 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-03. North Dakota dry bean council - Membership - Election - Term.

1. The North Dakota dry bean council is composed of one participating grower elected from each of the districts established in section 4-10.3-04. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The agriculture commissioner is an ex officio member of the council.~~
2. Every elected council member must be a United States citizen of ~~the~~ state and a bona fide resident of and participating grower in the district the member represents.
3. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two members must be elected for one-year terms as designated by the commissioner.
4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council ~~shall~~, by majority vote, shall appoint another qualified participating grower for the remainder of the term of the office vacated.
5. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner ~~deems~~ determines fair and reasonable. Elections must be held before April first of each year.
6. No elected member of the council is eligible to serve more than three consecutive three-year terms.

SECTION 5. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.4-03 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-03. Council - Membership - Election - Term. The council is composed of one participating grower elected from each of the districts established in section 4-10.4-04. The chairman of the council must be an elected member of the council elected by a majority vote of the council. ~~The commissioner is an ex officio member of the council and does not have a vote.~~ Every elected council member must be a United States citizen of ~~the~~ state and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially two members must be elected for a three-year term; two members must be elected for a two-year term; and one member must be elected for a one-year term as designated by the commissioner. Notwithstanding the terms provided for members

elected before August 1, 1997, the board, before December 31, 1997, shall determine by lot the order of subsequent elections for its members so that two members are elected for a four-year term during 1998, and one member is elected for a four-year term during each of the subsequent three years. The term of each member elected after July 31, 1997, is four years and begins on April first of the year of election. If at any time during a member's term a member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the remaining members of the council shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner ~~deems~~ determines fair and reasonable. All such elections must be completed ~~prior to~~ before expiration of the members' terms. No member serving on the council before August 1, 1997, is eligible to serve more than two consecutive four-year terms. No member elected to the council after July 31, 1997, is eligible to serve more than three consecutive four-year terms.

SECTION 6. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.5-02 of the North Dakota Century Code is amended and reenacted as follows:

4-10.5-02. North Dakota soybean council - Membership - Election - Term. The North Dakota soybean council ~~must be~~ is composed of one participating grower elected from each of the districts established in section 4-10.5-03. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The commissioner is an ex officio member of the council.~~ Every elected council member must be a resident of and participating grower in the district the member represents. The term of each elected member is three years, beginning on April first of the year of election, except that initially two members must be elected for three-year terms; three members must be elected for two-year terms; and three members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council ~~shall~~, by majority vote, shall appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner ~~deems~~ determines fair and reasonable. All elections must be conducted no later than April first of each year. No elected member of the council is eligible to serve more than two consecutive three-year terms.

SECTION 7. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.7-02 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-02. Dry pea and lentil council - Membership - Term. There is a North Dakota dry pea and lentil council. The council is composed of one participating grower elected from each of the districts established in section 4-10.7-04. The chairman of the council must be a member of the council elected by a majority vote of the council. ~~The agriculture commissioner is an ex officio member of the council.~~ Every elected member of the council must be a United States citizen ~~of the state~~ and a bona fide resident of and participating grower in the district the member represents. The term of each elected member is three years and begins on April first of the year of election, except that initially one member must be elected for a three-year term; two members must be elected for two-year terms; and two

members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified grower from the affected district for the remainder of the term of the office vacated. No elected member of the council is eligible to serve more than three consecutive three-year terms.

SECTION 8. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-27-04 of the North Dakota Century Code is amended and reenacted as follows:

4-27-04. North Dakota dairy promotion commission. There is hereby created a North Dakota dairy promotion commission ~~consisting of nine members.~~ The governor shall appoint two members who must be producers and one member who must be a processor. The governor shall appoint the producer members from a list of nominees supplied by the American dairy association of North Dakota and the processor member from a list of nominees supplied by the North Dakota dairy industries association. Each list of nominees must contain at least twice as many names as the number of appointments to be made therefrom. The term of office of each appointive member of the commission is two years, except that the initial appointment of one producer is for only one year, so that thereafter the term of one producer will expire each year. Terms of office commence on the first day of July. ~~In addition to the three appointive members there must be two ex officio, nonvoting members of the commission who must be the agriculture commissioner or the commissioner's designee and the head of the department of animal science department or the department's designee sciences at North Dakota state university, or the chairman's designee, is an ex officio nonvoting member.~~ In addition to the appointive and ex officio members there must be four elected members of the commission who must be the president of the American dairy association of North Dakota, the president of the dairy council of North Dakota, and two members of the milk producers association of North Dakota to be elected by that association. The elected members shall meet with the commission and shall have the same rights and duties as the appointive members, including the right to vote. The milk producers shall serve terms of two years, commencing on July first, except that initially one producer shall serve a term of one year as designated by the milk producers association of North Dakota.

¹⁸ **SECTION 9. AMENDMENT.** Section 4.1-02-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-02-01. Definitions. As used in this chapter:

1. "Barley" means all varieties of barley harvested in the state.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Council" means the North Dakota barley council.

¹⁸ Section 4.1-02-01 was created by section 2 of House Bill No. 1025, chapter 80.

- 4- 3. "First purchaser" means any person accepting for shipment or otherwise acquiring barley from a producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer, if the actual or constructive possession of the barley is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
- 5- 4. "Participating producer" means a producer that has not applied for a refund under section 4.1-02-16 during the preceding twelve months.
- 6- 5. "Producer" means any person that:
- a. Plants or causes to be planted a barley crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

¹⁹ **SECTION 10. AMENDMENT.** Section 4.1-02-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-02-03. Council - Membership - Election - Term.

1. The council consists of one individual elected from each district established in section 4.1-02-02 ~~and the commissioner, who is a nonvoting member.~~
2. Each member of the council; ~~other than the commissioner,~~ must be a resident of and a participating producer in the district that the member represents.
3. The term of each elected member is four years and begins on April first. The terms must be staggered so that no more than two terms 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 and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
5. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

¹⁹ Section 4.1-02-03 was created by section 2 of House Bill No. 1025, chapter 80.

²⁰ **SECTION 11. AMENDMENT.** Section 4.1-02-09 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-02-09. Council members - Compensation. Each member of the council, ~~except the commissioner,~~ 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 officers if the member is attending meetings or performing duties directed by the council.

²¹ **SECTION 12. AMENDMENT.** Section 4.1-06-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-06-03. North Dakota dry bean council - Membership - Term.

1. The council consists of one participating producer elected from each of the districts established in section 4.1-06-02 ~~and the commissioner, who is a nonvoting member.~~
2. Each member of the council must be a United States citizen.
3. Each member of the council, ~~other than the commissioner,~~ must be a resident of and participating producer in the district that the member represents.
4. 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 two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

²² **SECTION 13. AMENDMENT.** Section 4.1-07-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-07-01. Definitions. As used in this chapter:

²⁰ Section 4.1-02-09 was created by section 2 of House Bill No. 1025, chapter 80; was also amended by section 18 of Senate Bill No. 2242, chapter 72.

²¹ Section 4.1-06-03 was created by section 6 of House Bill No. 1025, chapter 80.

²² Section 4.1-07-01 was created by section 7 of House Bill No. 1025, chapter 80.

1. ~~"Commissioner"~~ means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry pea and lentil council.
3. ~~2.~~ "Dry peas and lentils" include chickpeas, lupins, and fava beans.
4. ~~3.~~ "First purchaser" means any person accepting for sale or otherwise acquiring dry peas and lentils from a grower after harvest. The term includes a mortgagee, pledgee, lienor, and any person having a claim against the producer, when the actual or constructive possession of dry peas and lentils is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
5. ~~4.~~ "Participating producer" means a producer that has not applied for a refund under section 4.1-07-15 for at least three years.
6. ~~5.~~ "Producer" means any person that:
 - a. Plants or causes to be planted a dry pea and lentil crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

²³ **SECTION 14. AMENDMENT.** Section 4.1-07-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-07-03. Dry pea and lentil council - Membership - Term.

1. The council consists of one participating producer elected from each district established in section 4.1-07-02 ~~and the commissioner.~~
2. Each member of the council must be a United States citizen.
3. Each member of the council, ~~other than the commissioner,~~ must be a resident of and participating producer in the district that the member represents.
4. 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 two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office

²³ Section 4.1-07-03 was created by section 7 of House Bill No. 1025, chapter 80.

is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.

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

²⁴ **SECTION 15. AMENDMENT.** Section 4.1-07-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-07-08. Council members - Compensation. ~~Except for the agriculture commissioner, each~~ 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 officers if the member is attending meetings or performing duties directed by the council.

²⁵ **SECTION 16. AMENDMENT.** Section 4.1-09-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-09-01. Definitions. As used in this chapter:

1. ~~"Commissioner" means the agriculture commissioner or the commissioner's designee.~~
2. "Council" means the North Dakota oilseed council.
- 3- 2. "First purchaser" means any person that buys, accepts for shipment, or otherwise acquires oilseeds from a producer. The term includes a mortgagee, pledgee, lienor, and any other person having a claim against a producer if the actual or constructive possession of the oilseed is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
- 4- 3. "Oilseeds" include canola, crambe, flax, rapeseed, safflowers, and sunflowers.
- 5- 4. "Participating producer" means a producer that has not applied for a refund under section 4.1-09-19 during the preceding twelve months.
- 6- 5. "Producer" means any person that:
 - a. Plants or causes to be planted an oilseed crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;

²⁴ Section 4.1-07-08 was created by section 7 of House Bill No. 1025, chapter 80, and was also amended by section 23 of Senate Bill No. 2242, chapter 72.

²⁵ Section 4.1-09-01 was created by section 9 of House Bill No. 1025, chapter 80.

- b. Will have met the requirements of subdivision a during the next available growing season; or
- c. Has met the requirements of subdivision a during the immediately preceding growing season.

²⁶ **SECTION 17. AMENDMENT.** Section 4.1-09-04 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

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

1. The council consists of:
 - a. One participating sunflower producer elected from each of the seven districts established in section 4.1-09-02;
 - b. One participating canola producer elected from each of the three districts established in section 4.1-09-03;
 - c. One participating safflower producer appointed by the governor;
 - d. One participating flax producer appointed by the governor;
 - e. (1) One participating producer of an oilseed other than sunflowers, canola, safflowers, or flax, appointed by the governor; or
 - (2) One participating producer of any oilseed, appointed by the governor, if the governor is unable to appoint a participating producer who meets the requirements of paragraph 1; and
 - f. One individual appointed by the director of the agricultural experiment station; ~~and~~
 - ~~g. The agriculture commissioner, who is a nonvoting member.~~
2. Each member of the council who represents a district must be a resident of and participating producer in that district.
3.
 - a. The term of each member who represents a sunflower district is three years and begins on April first following the member's election. The terms of members who represent sunflower districts must be staggered so that:
 - (1) No more than three expire in any one year; and
 - (2) The term of the member who represents Bottineau, Burke, Divide, Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties is identical to that of the member who represents Adams, Billings, Bowman, Dunn, Golden Valley,

²⁶ Section 4.1-09-04 was created by section 9 of House Bill No. 1025, chapter 80.

Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.

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

²⁷ **SECTION 18. AMENDMENT.** Section 4.1-09-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-09-12. Council members - Compensation. Each member of the council, except the ~~agriculture commissioner~~ and the individual appointed by the director of the agricultural experiment station, 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 officers if the member is attending meetings or performing duties directed by the council.

²⁸ **SECTION 19. AMENDMENT.** Section 4.1-10-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

²⁷ Section 4.1-09-12 was created by section 9 of House Bill No. 1025, chapter 80, and was also amended by section 24 of Senate Bill No. 2242, chapter 72.

²⁸ Section 4.1-10-03 was created by section 10 of House Bill No. 1025, chapter 80.

4.1-10-03. North Dakota potato council - Membership - Term.

1. The North Dakota potato council is composed of:
 - a. ~~One one~~ participating producer elected from each of the five districts established in section 4.1-10-02; ~~and~~
 - b. ~~The agriculture commissioner, who serves as the chairman.~~
2. Each member of the council must be a United States citizen.
3. Each member of the council; ~~other than the commissioner,~~ must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on July first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term that member ceases to possess any of the qualifications provided for in this chapter, that member's office is deemed vacant and the council shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than two consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

²⁹ **SECTION 20. AMENDMENT.** Section 4.1-10-05 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-10-05. Chairman - Meetings. Annually, the council shall elect one member to serve as the chairman. 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.

³⁰ **SECTION 21. AMENDMENT.** Section 4.1-10-06 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-10-06. Council members - Compensation. Each member of the council, ~~except the agriculture commissioner,~~ 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 officers if the member is attending meetings or performing duties directed by the council.

²⁹ Section 4.1-10-05 was created by section 10 of House Bill No. 1025, chapter 80.

³⁰ Section 4.1-10-06 was created by section 10 of House Bill No. 1025, chapter 80, and was also amended by section 25 of Senate Bill No. 2242, chapter 72.

³¹ **SECTION 22. AMENDMENT.** Section 4.1-11-01 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-11-01. Definitions. As used in this chapter:

1. ~~"Commissioner" means the agriculture commissioner or the commissioner's designee.~~
2. "Council" means the North Dakota soybean council.
3. ~~2.~~ "Designated handler" means any person that initially places soybeans into the channels of trade and commerce or any person that processes soybeans into food for human consumption.
4. ~~3.~~ a. "Producer" means any person that:
 - (1) Plants or causes to be planted a soybean crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - (2) Will have met the requirements of paragraph 1 during the next available growing season; or
 - (3) Has met the requirements of paragraph 1 during the immediately preceding growing season.
- b. The term does not include an organic producer that has been exempted from the payment of assessments, in accordance with federal law.

³² **SECTION 23. AMENDMENT.** Section 4.1-11-03 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

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

³¹ Section 4.1-11-01 was created by section 11 of House Bill No. 1025, chapter 80.

³² Section 4.1-11-03 was created by section 11 of House Bill No. 1025, chapter 80.

is deemed vacant and the council, by majority vote, shall appoint another qualified producer to serve for the remainder of the term.

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

³³ **SECTION 24. AMENDMENT.** Section 4.1-11-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-11-08. Council members - Compensation. Each member of the council, ~~except the agriculture commissioner,~~ 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 officers if the member is attending meetings or performing duties directed by the council.

Approved April 8, 2009
Filed April 9, 2009

³³ Section 4.1-11-08 was created by section 11 of House Bill No. 1025, chapter 80, and was also amended by section 26 of Senate Bill No. 2242, chapter 72.

CHAPTER 71**HOUSE BILL NO. 1459**

(Representatives Brandenburg, Froelich, Kerzman, Kretschmar)
(Senators Erbele, Krauter)

AN ACT to provide legislative findings and a declaration concerning lands around Lake Oahe managed by the army corps of engineers; to provide for the control or eradication of noxious weeds on publicly owned lands; and to provide for a legislative council study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**SECTION 1. LEGISLATIVE FINDINGS AND DECLARATION OF INTENT.**

The legislative assembly finds and declares that:

1. The economy and well-being of the residents of North Dakota are dependent upon agriculture.
2. The United States, through the army corps of engineers, has acquired certain lands around Lake Oahe.
3. The army corps of engineers has failed to control weeds and manage this land properly.
4. The failure to control weeds on land managed by the army corps of engineers is a public nuisance and jeopardizes the public health, safety, and general welfare of the citizens of North Dakota.

SECTION 2. CONGRESS URGED TO TRANSFER CERTAIN LANDS - DUTIES OF SECRETARY OF STATE. The legislative assembly urges the Congress of the United States to enact legislation to transfer lands around Lake Oahe, excluding lands adjoining the Standing Rock Reservation, owned by the United States, through the army corps of engineers, to the state of North Dakota. The secretary of state shall forward copies of this Act to each member of the North Dakota congressional delegation.

SECTION 3. Publicly owned land - Noxious weed control or eradication.

1. The commissioner shall attempt to arrange a noxious weed control or eradication program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state.
2. Each weed control officer shall attempt to arrange a noxious weed control or eradication program with political subdivisions owning or controlling public land within the weed control officer's jurisdiction.
3. If a federal agency does not control or eradicate noxious weeds on land under the jurisdiction of the agency and does not develop a management plan for controlling or eradicating the noxious weeds, the appropriate weed control office shall notify the agency of the failure to control or eradicate the noxious weeds. The federal agency shall provide a report to the weed control authorities detailing the methods

used by the federal agency and showing cause why the federal agency is not controlling or eradicating the noxious weeds. The commissioner may specify the forms on which the federal agency report must be submitted.

4. Upon being notified by a weed board of the federal agency's failure to control or eradicate noxious weeds, the commissioner may hold a public hearing to determine the reason for the failure.

SECTION 4. LEGISLATIVE COUNCIL STUDY - WEED CONTROL PROGRAMS. During the 2009-10 interim, the legislative council shall consider studying the weed control programs of the army corps of engineers on federal land under its control, including whether the army corps of engineers is in compliance with federal and any applicable state weed control laws, whether the army corps of engineers sufficiently budgets funds to address weed control on army corps of engineers' land, and whether Congress provides proper funding for weed control on army corps of engineers' land. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-second legislative assembly.

Approved April 24, 2009
Filed April 29, 2009

CHAPTER 72**SENATE BILL NO. 2242**

(Senators Taylor, Miller, Wanzek)
(Representatives DeKrey, Headland, Metcalf)

AN ACT to amend and reenact sections 4-02.1-05, 4-05.1-17, 4-09-03, 4-09-20.2, 4-10.1-06, 4-10.2-05, 4-10.3-05, 4-10.4-05, 4-10.5-04, 4-10.6-04, 4-10.7-05, 4-14.1-05, 4-18.1-04, 4-22-04, 4-27-05, 4-28-05, 4-34-07, 6-09.10-03, 36-01-04, and 36-14-25 of the North Dakota Century Code or in the alternative to amend and reenact sections 4.1-02-09, 4.1-03-08, 4.1-04-07, 4.1-05-05, 4.1-06-08, 4.1-07-08, 4.1-09-12, 4.1-10-06, 4.1-11-08, and 4.1-13-12 of the North Dakota Century Code, relating to per diem compensation for members of agriculture-related boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-02.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-02.1-05. Compensation of members. Each member of the board of directors is entitled to receive compensation in the amount of ~~seventy five one hundred thirty-five~~ seventy five one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers while attending meetings or performing duties directed by the board. The board of directors may pay to members rendering unusual or special services to the association special compensation appropriate to the value of the services.

³⁴ **SECTION 2. AMENDMENT.** Section 4-05.1-17 of the North Dakota Century Code is amended and reenacted as follows:

4-05.1-17. Compensation of board members - Expenses. Each appointed member of the state board of agricultural research and education is entitled to receive ~~seventy five one hundred thirty-five~~ seventy five one hundred thirty-five dollars per day as compensation for the time actually spent devoted to the duties of office and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other functions of office.

³⁵ **SECTION 3. AMENDMENT.** Section 4-09-03 of the North Dakota Century Code is amended and reenacted as follows:

4-09-03. State seed commission - Members - Meetings - Appointment and duties of commissioner.

1. The commission is the governing board of the department.

³⁴ Section 4.1-05-05 was created by section 5 of House Bill No. 1025, chapter 80.

³⁵ Section 4-09-03 was also amended by section 3 of Senate Bill No. 2125, chapter 73.

2. The commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association selected by the association's board of directors who operates a state-approved seed conditioning plant, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The associate dean and director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.
3. The commission shall meet a minimum of two times each calendar year and may hold special meetings at the call of the chairman or by request of any two members of the commission. Each member of the commission is entitled to receive compensation at the rate of ~~seventy-five~~ one hundred thirty-five dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings. Compensation under this section may not be paid to any member who receives compensation or salary as a regular state employee or official. A commission member unable to attend a meeting of the commission may be represented by a proxy who has written authorization from the absent commission member.
4. The commission shall appoint a qualified manager of the department who must be known as the state seed commissioner. The commission shall fix the salary of the commissioner within legislative appropriation. The commissioner's appointment must be reviewed annually by the commission, and the commissioner is subject to removal for cause. In the event of a vacancy in the office of the commissioner, the commission may appoint a temporary commissioner to serve until the appointment of a permanent commissioner. The commissioner has responsibility for preparing the biennial budget and annual salary schedules that must be approved by the commission before submission to the state budget director. The commissioner is directly responsible to the commission and shall make semiannual reports to the commission and any other reports as requested by the commission.

SECTION 4. AMENDMENT. Section 4-09-20.2 of the North Dakota Century Code is amended and reenacted as follows:

4-09-20.2. Seed arbitration board - Petition - Arbitration hearing.

1. The state seed arbitration board consists of the agriculture commissioner, the state seed commissioner, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chairman of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the agriculture commissioner or an authorized designee. Each board member is entitled to receive as per diem compensation ~~sixty-two~~ one hundred thirty-five dollars and ~~fifty~~

ents, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that compensation under this subsection may not be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.

2. A seed labeler, seed dealer, or seed customer may petition the agriculture commissioner in writing for a hearing to settle a dispute involving a seed transaction. The agriculture commissioner shall submit the dispute to the seed arbitration board, and the board shall arbitrate the dispute. The board, within thirty days after the hearing, shall make a nonbinding recommendation for the resolution of the dispute. Evidence presented to the board and any findings or recommendations by the board are admissible as evidence in any subsequent proceeding. The board shall adopt rules and procedures for arbitration proceedings, including a formula for reimbursement by the parties of the expenses of the arbitration process.

SECTION 5. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.1-06 of the North Dakota Century Code is amended and reenacted as follows:

4-10.1-06. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each member of the council, except the chairman. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the commissioner.

SECTION 6. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.2-05. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of two council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each member of the council. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

SECTION 7. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.3-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.3-05. Meetings - Quorum - Compensation and expenses of council.

A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. The chairman shall call meetings of the council. The chairman shall call all special meetings on the petition of three council members within seven days of receiving the petition. The council shall determine the amount of compensation payable to each member of the council. The amount payable may not exceed ~~seventy-five one hundred thirty-five~~ dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council. No compensation may be paid under this section to any member who receives compensation or salary as a regular state employee or official.

SECTION 8. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.4-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-05. Meetings - Quorum - Compensation and expenses of council.

A quorum is necessary for the transaction of all business in carrying out the duties of the council. The chairman shall call all meetings of the council except special meetings which the chairman shall call on the petition of two council members within seven days of receiving such a petition. The council shall determine the amount of compensation payable to each voting member of the council. The amount payable may not exceed ~~seventy-five one hundred thirty-five~~ dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council. The compensation provided in this section may not be paid to any member of the council who receives salary or other compensation as a regular employee of the state.

SECTION 9. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.5-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.5-04. Meetings - Quorum - Compensation and expenses of council.

All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. The council shall determine the amount of compensation payable to each member of the council, except the commissioner. The amount payable may not exceed ~~seventy-five one hundred thirty-five~~ dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council, except that no compensation may be paid to any council member who receives compensation or salary as a regular state employee or official.

SECTION 10. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.6-04 of the North Dakota Century Code is amended and reenacted as follows:

4-10.6-04. Meetings - Compensation and expenses of council.

The chairman shall call all meetings of the council. The chairman shall call special meetings on the petition of three council members, within seven days of receiving the petition. The council shall determine the amount of compensation payable to each council member. The amount payable may not exceed ~~seventy-five one hundred thirty-five~~ dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 11. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-10.7-05 of the North Dakota Century Code is amended and reenacted as follows:

4-10.7-05. Meetings - Quorum - Compensation of council members. A majority of the voting members of the council constitutes a quorum for the transaction of all business in carrying out the duties of the council. All meetings of the council must be called by the chairman except special meetings which must be called by the chairman on the petition of three council members within seven days of receiving the petition. The council shall determine the amount of compensation payable to each member of the council. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the council, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official.

SECTION 12. AMENDMENT. Section 4-14.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-14.1-05. Agricultural products utilization commission - Reimbursement - Compensation. All members of the agricultural products utilization commission must be reimbursed for their actual and necessary expenses incurred in the performance of their duties, in the same manner as other state officials are reimbursed, according to sections 44-08-04 and 54-06-09. If not otherwise employed by the state of North Dakota, members of the commission are entitled to receive as per diem compensation ~~sixty-two~~ one hundred thirty-five dollars ~~and fifty cents~~ for each day devoted to attending meetings and performing other duties relating to official business of the commission. The commission chairman, if not otherwise employed by the state of North Dakota, may receive an additional one hundred dollars for each day of a regular meeting attended as payment for reviewing and evaluating grant proposals.

SECTION 13. AMENDMENT. Section 4-18.1-04 of the North Dakota Century Code is amended and reenacted as follows:

4-18.1-04. Milk marketing board.

1. There is created a milk marketing board to consist of five members appointed by the governor. The board consists of one individual who is a dairy farmer selling to a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota milk producers association; one individual who is a processor, who must be selected by the governor from two names submitted to the governor by the North Dakota dairy industries association; one individual who is a retailer, who must be selected by the governor from two names submitted to the governor by the North Dakota association of food retailers; and two individuals must be selected by the governor who are consumers, and who are not otherwise engaged in the milk business. An appointee may not have held elective or appointive public office during the period of two years immediately preceding appointment and may not hold any other public office, either elective or appointive, during the term of office as a member of the board. Not more than three members of the board may, at the time of the appointment or thereafter during their respective terms of office, reside on the same side of a continuous line following the eastern boundaries of Bottineau, McHenry, Wells, Kidder, Logan, and McIntosh Counties.

2. The members of the board must be appointed within thirty days after passage and approval of this chapter. The term of office of one member expires on July 1, 1968; the term of office of one member expires on July 1, 1969; the term of office of one member expires on July 1, 1970; the term of office of one member expires on July 1, 1971; the term of office of one member expires on July 1, 1972; and each succeeding member holds office for a term of five years and until a successor has been appointed and qualified. Any vacancy must be filled by appointment by the governor.
3. Three members of the board constitute a quorum for the regular transaction of business. The board shall choose one of its members as the chairman, who shall hold office as a chairman for one year; provided, election as chairman does not interfere with the member's right to vote on all matters before the board.
4. The board shall determine the amount of compensation payable to each member of the board. The amount payable may not exceed ~~seventy five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers; while attending meetings or performing duties directed by the board. A member's per diem payments may not exceed fifteen hundred dollars in any one year.
5. Each member of the board shall give bond conditioned for the faithful performance of the member's duties. The board shall employ a director who serves under the direction and at the pleasure of the board and whose qualifications, duties, and compensation must be determined by the board. The director shall serve as financial officer of the board and is authorized to accept money paid to the board in accordance with this chapter.
6. The board shall employ, in addition to the director, such assistants and employees, permanent and temporary, as may be necessary to carry out the duties and responsibilities of the board under this chapter. The board shall determine the qualifications, duties, and compensation of such employees. The board may employ a licensed attorney of the state of North Dakota as its legal counsel, who shall serve on a full-time or a part-time basis, and the board may obtain the services of such additional attorneys as it deems necessary. The board may also contract for auditing, economic research, and other technical services, whenever it determines that such services are needed.
7. All expenditures under this chapter must be paid from the receipts under this chapter. Meetings of the board must be held at least every sixty days at the call of the chairman or a majority of the board.

SECTION 14. AMENDMENT. Section 4-22-04 of the North Dakota Century Code is amended and reenacted as follows:

4-22-04. Committee - Chairman - Quorum - Compensation. The committee shall meet annually and select its chairman. The chairman shall serve for a term of one year from the date of selection. An individual may be selected as chairman for a total of three terms. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. The chairman shall call special meetings upon written request of

any four members. The members of the committee are entitled to receive ~~forty five~~ one hundred thirty-five dollars per day as compensation for their services on the committee, and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials.

SECTION 15. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-27-05 of the North Dakota Century Code is amended and reenacted as follows:

4-27-05. Powers and duties of commission.

1. The commission shall administer and enforce the provisions of this chapter and has and may exercise any and all of the powers conferred upon it herein. A majority of the members of the commission constitutes a quorum for the transaction of business and the carrying out of the duties of the commission.
2. The commission shall elect a chairman, vice chairman, secretary-treasurer, and such other officers as may be deemed advisable and adopt such rules, regulations, recommendations, and orders for the exercise of its powers and performance of its duties as is deemed advisable.
3. The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed ~~seventy five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers; while attending meetings or performing duties directed by the commission.
4. The commission shall select a state manager, whose compensation must be fixed by the commission. The commission is also authorized to employ such additional personnel as are necessary, including an attorney, to fix their compensation and terms of employment, and to incur such expenses as the commission may deem necessary and proper to carry out its duties, to be paid from moneys collected as herein provided.
5. The commission shall plan and carry out dairy products research, education, public relations, advertising, sales promotion, and other programs for the purpose of promoting the sale and consumption of dairy products on both a state and national basis and may contract for any service in connection therewith.
6. The commission may accept and disburse voluntary contributions for the use and purposes of the commission.
7. To effectuate the declared purposes of this chapter, the commission shall collect the assessment on all milk produced in this state and to make disbursements from such funds as provided herein.

SECTION 16. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-28-05 of the North Dakota Century Code is amended and reenacted as follows:

4-28-05. Wheat commission - Meeting - Expenses - Legal adviser. Upon call of the governor, the commission shall first meet and organize by electing from the membership a chairman and vice chairman, who shall hold office for one year and until their successors are elected and have qualified. Thereafter, the commission shall meet at least once every calendar quarter at such times and places as determined by the commission and may meet in special meetings upon such call and notice as prescribed by rules adopted by the commission. The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing other official duties directed by the commission. The attorney general shall act as legal adviser to the commission or designate an assistant for that purpose and within the limit of the funds available to the commission it may employ other counsel to advise and represent the commission in its affairs and proceedings.

SECTION 17. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-34-07 of the North Dakota Century Code is amended and reenacted as follows:

4-34-07. Compensation - Expenses. The commission shall determine the amount of compensation payable to each member of the commission. The amount payable may not exceed ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing other official duties as directed by the commission. The members of the commission shall receive no other salary or compensation for their service on the commission.

³⁶ **SECTION 18. AMENDMENT.** Section 4.1-02-09 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-02-09. Council members - Compensation. Each member of the council, except the commissioner, is entitled to receive compensation in the amount established by the council, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

³⁷ **SECTION 19. AMENDMENT.** Section 4.1-03-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-03-08. Commission members - Compensation. Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties as directed by the commission.

³⁶ Section 4.1-02-09 was created by section 2 of House Bill No. 1025, chapter 80; was also amended by section 11 of House Bill No. 1109, chapter 70.

³⁷ Section 4.1-03-08 was created by section 3 of House Bill No. 1025, chapter 80.

³⁸ **SECTION 20. AMENDMENT.** Section 4.1-04-07 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-04-07. 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~~ one hundred thirty-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.

SECTION 21. AMENDMENT. Section 4.1-05-05 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-05-05. Commission members - Compensation. Each member of the commission is entitled to receive compensation, in the amount established by the commission, but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission. The compensation provided for in this section may not be paid to any member of the commission who receives a salary or other compensation as an employee or official of this state if the individual is serving on the commission by virtue of the individual's state office or state employment.

³⁹ **SECTION 22. AMENDMENT.** Section 4.1-06-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-06-08. 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~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

⁴⁰ **SECTION 23. AMENDMENT.** Section 4.1-07-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-07-08. Council members - Compensation. Except for the agriculture commissioner, each member of the council is entitled to receive compensation in the amount established by the council but not exceeding ~~seventy-five~~ one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

³⁸ Section 4.1-04-07 was created by section 4 of House Bill No. 1025, chapter 80.

³⁹ Section 4.1-06-08 was created by section 6 of House Bill No. 1025, chapter 80.

⁴⁰ Section 4.1-07-08 was created by section 7 of House Bill No. 1025, chapter 80, and was also amended by section 15 of House Bill No. 1109, chapter 70.

⁴¹ **SECTION 24. AMENDMENT.** Section 4.1-09-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-09-12. Council members - Compensation. Each member of the council, except the agriculture commissioner and the individual appointed by the director of the agricultural experiment station, is entitled to receive compensation in the amount established by the council but not exceeding seventy-five one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

⁴² **SECTION 25. AMENDMENT.** Section 4.1-10-06 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-10-06. Council members - Compensation. Each member of the council, except the agriculture commissioner, is entitled to receive compensation in the amount established by the council but not exceeding seventy-five one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

⁴³ **SECTION 26. AMENDMENT.** Section 4.1-11-08 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-11-08. Council members - Compensation. Each member of the council, except the agriculture commissioner, is entitled to receive compensation in the amount established by the council but not exceeding seventy-five one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the council.

⁴⁴ **SECTION 27. AMENDMENT.** Section 4.1-13-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-13-12. Commission members - Compensation. Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding seventy-five one hundred thirty-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission.

⁴¹ Section 4.1-09-12 was created by section 9 of House Bill No. 1025, chapter 80, and was also amended by section 18 of House Bill No. 1109, chapter 70.

⁴² Section 4.1-10-06 was created by section 10 of House Bill No. 1025, chapter 80, and was also amended by section 21 of House Bill No. 1109, chapter 70.

⁴³ Section 4.1-11-08 was created by section 11 of House Bill No. 1025, chapter 80, and was also amended by section 26 of House Bill No. 1109, chapter 70.

⁴⁴ Section 4.1-13-12 was created by section 13 of House Bill No. 1025, chapter 80.

SECTION 28. AMENDMENT. Section 6-09.10-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service. The commissioner shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers or other persons eligible for mediation with an agency of the United States department of agriculture. The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service. Fees charged to mediation participants are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive ~~seventy-five~~ one hundred thirty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 29. AMENDMENT. Section 36-01-04 of the North Dakota Century Code is amended and reenacted as follows:

36-01-04. Compensation and expenses of members of board. Each member of the board shall receive as compensation for services the sum of ~~fifty~~ one hundred thirty-five dollars per day for each day employed and actual expenses incurred in attending the meetings of the board. The sum must be paid out of the state treasury upon vouchers duly certified by the commissioner.

SECTION 30. AMENDMENT. Section 36-14-25 of the North Dakota Century Code is amended and reenacted as follows:

36-14-25. Fees of appraisers - How paid. Each member of the board of appraisers who is not an agent of the board is entitled to receive ~~fifty~~ one hundred thirty-five dollars per day as compensation for services rendered, plus reimbursement for expenses as provided by law for state officers. Fifty percent of the amount due under this section is payable by the state board of animal health and the other fifty percent is payable by the owner of the animal.

Approved April 28, 2009

Filed May 1, 2009

CHAPTER 73

SENATE BILL NO. 2125

(Agriculture Committee)

(At the request of the State Seed Department)

AN ACT to amend and reenact subsection 21 of section 4-09-01, subsection 1 of section 4-09-02, subsection 2 of section 4-09-03, and sections 4-09-13, 4-09-17.1, 4-09-25, and 4-11-21 of the North Dakota Century Code, relating to the seed department's revolving fund and to the functions and responsibilities of the seed commission and the seed department.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 21 of section 4-09-01 of the North Dakota Century Code is amended and reenacted as follows:

21. "Noxious weed seed" is divided into three classes defined as:
 - a. "Prohibited noxious weed seed" means a weed seed that is prohibited from being present in agricultural, vegetable, flower, tree, or shrub seed and is highly destructive and difficult to control by good cultural practices and the use of herbicides and includes a seed of leafy spurge (*euphorbia esula* L.), field bindweed (*convolvulus arvensis* L.), Canada thistle (*cirsium arvense* (L.) scop.), perennial sow thistle (*sonchus arvensis* L.), Russian knapweed (~~*centaurea rhaponticum*~~ *repens* L.), absinth wormwood (*artemisia absinthium* L.), hemp (*cannabis sativa* L.) having more than three-tenths of one percent tetrahydrocannabinol, musk thistle (*carduus nutans* L.), spotted knapweed (~~*centaurea maculosa*~~ *lam-stoebe* L. subsp. *micranthos*), hoary cress (~~*cardaria draba*~~ (~~+) *desv.*~~ *lepidium chalepense*), and yellow starthistle (*centaurea solstitialis* L.).
 - b. "Restricted noxious weed seed" means a seed that is objectionable in agricultural crops, lawns, and gardens in this state and can be controlled by good cultural practices or the use of herbicides and includes the seed of dodder (*cuscuta* species), hedge bindweed (~~*convolvulus calystegia*~~ *sepium* L.), wild oats (*avena fatua* L.), and quackgrass (~~*agropyron elymus*~~ *repens* (~~+) *beauv.*~~ subsp. *repens*).
 - c. "Undesirable grass seed" means a seed of grass species declared by the commissioner to be a restricted noxious weed seed when found in lawn or turf seed.

SECTION 2. AMENDMENT. Subsection 1 of section 4-09-02 of the North Dakota Century Code is amended and reenacted as follows:

1. There must be maintained a seed department of the state of North Dakota, which is designated as the official seed certification agency of the state. The department's headquarters, main offices, and other principal operating facilities and equipment must be located at the North

Dakota state university of agriculture and applied science. The commissioner, subject to the approval and supervision of the commission, shall provide and maintain necessary laboratories and facilities properly equipped to make analyses, tests, and variety and disease determinations of seeds and plants, and to do work and effect other results as may be necessary to carry out this chapter. For these purposes, the commissioner may utilize the premises, space, and equipment at North Dakota state university as may be assigned to the commissioner by the university. The commissioner shall permit the facilities and services of the official laboratories to be used by the university at convenient times.

⁴⁵ **SECTION 3. AMENDMENT.** Subsection 2 of section 4-09-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The commission consists of a representative of the North Dakota crop improvement association, a representative of the North Dakota certified seed potato growers association, a representative of the North Dakota dry edible bean seed growers association, a representative of the North Dakota agricultural association, an elected member of the North Dakota potato council selected by the North Dakota potato council, a representative of the Red River valley potato growers association who is a North Dakota resident, a representative of the North Dakota grain dealers association selected by the association's board of directors who operates a state-approved seed conditioning plant, and the agriculture commissioner, or the commissioner's designee, who shall serve as chairman. The ~~associate dean and~~ director of the experiment station, or the director's designee, of the college of agriculture of the North Dakota state university of agriculture and applied science is a voting member of the commission.

SECTION 4. AMENDMENT. Section 4-09-13 of the North Dakota Century Code is amended and reenacted as follows:

4-09-13. Tolerances. The tolerances used in determining correctness and accuracy in labeling seed as described in this chapter must be those tolerances used under the Federal Seed Act of August 9, 1939 [53 Stat. 1275; 7 U.S.C. 1551 et seq.], and subsequent amendments as of June 30, ~~2005~~ 2009, except that the tolerance for yellow starthistle must be zero and the commissioner may, by rule, establish tolerances that are more strict than the Federal Seed Act tolerances.

SECTION 5. AMENDMENT. Section 4-09-17.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-17.1. Plant Variety Protection Act. Any seed advertised, offered for sale, or sold by variety name and for which a certificate of plant variety protection has been issued under the Plant Variety Protection Act, as amended [Pub. L. 91-577; 84 Stat. 1551; 7 U.S.C. 2481 et seq., effective as of July 1, ~~2007~~ 2009], as being for sale only as a class of certified seed must be certified by an official seed certifying agency in order for the seed to be advertised, offered for sale, or sold by variety

⁴⁵ Section 4-09-03 was also amended by section 3 of Senate Bill No. 2242, chapter 72.

name in the state of North Dakota. Seed from a certified lot may be labeled as to variety name when used in a blend or mixture by or with approval of the owner of the variety.

SECTION 6. AMENDMENT. Section 4-09-25 of the North Dakota Century Code is amended and reenacted as follows:

4-09-25. Plant and seed records - Exempt. The following records of the state seed commission are exempt from section 44-04-18:

1. Records of any plant or seed inspection, analysis, or testing and germination, purity, variety, or disease determination determinations conducted by the state seed department on a fee-for-service basis for nonpublic entities or persons.
2. Information received by the seed commission under chapter 4-09, 4-10, or 4-42 from a nonpublic entity or person that the nonpublic entity or person determines is proprietary information or a trade secret.

SECTION 7. AMENDMENT. Section 4-11-21 of the North Dakota Century Code is amended and reenacted as follows:

4-11-21. Fees and collections - Revolving fund - ~~Continuing appropriation~~ Appropriation. The commissioner shall deposit all moneys arising from the collection of fees and other charges under this chapter with the state treasurer for credit to the seed department revolving fund. Moneys in this fund must be disbursed upon order of the commissioner, with the approval of the office of management and budget, and funds so approved by the office of management and budget ~~are appropriated on a continuing basis~~ must be disbursed within limits of legislative appropriations.

Approved April 30, 2009
Filed May 1, 2009

CHAPTER 74**SENATE BILL NO. 2368**

(Senators Olafson, Lindaas)

(Representatives Conklin, DeKrey, Kingsbury, Onstad)

AN ACT to amend and reenact subdivision a of subsection 17 of section 4-22-26 of the North Dakota Century Code, relating to the mill levy limit for soil conservation districts; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision a of subsection 17 of section 4-22-26 of the North Dakota Century Code is amended and reenacted as follows:

- a. The supervisors may make a tax levy, not exceeding ~~one mill~~ two mills, for the payment of the expenses of the district, including mileage and other expenses of the supervisors, and technical, administrative, clerical, and other operating expenses.

SECTION 2. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2008.

Approved April 10, 2009
Filed April 13, 2009

CHAPTER 75

HOUSE BILL NO. 1111

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to create and enact two new subsections to section 4-30-01 of the North Dakota Century Code, relating to dairy product definitions; and to amend and reenact sections 4-30-18, 4-30-20, 4-30-36, 4-30-36.2, 4-30-36.3, 4-30-36.4, 4-30-39, and 4-30-45.1 of the North Dakota Century Code, relating to dairy products regulations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 4-30-01 of the North Dakota Century Code are created and enacted as follows:

"Pasteurized Milk Ordinance" means the 2007 revision of the Grade "A" Pasteurized Ordinance issued by the United States food and drug administration and by the United States department of agriculture's public health service.

"Standard Methods" means the seventeenth edition of the Standard Methods for the Examination of Dairy Products published by the American public health association.

SECTION 2. AMENDMENT. Section 4-30-18 of the North Dakota Century Code is amended and reenacted as follows:

4-30-18. Sampling and testing procedures - Equipment - Supplies. The laboratory procedures, equipment, chemicals, and other apparatus or substances used in the sampling, hauling, or testing of milk or milk products must conform to ~~that~~ those described in the ~~eighteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" ~~published by the American public health association,~~ published by the American public health association, ~~incorporated,~~ a copy of which ~~shall~~ must be kept on file in the department. No equipment, chemicals, or other apparatus or substance used in the sampling, hauling, or testing of milk or milk products which is not in conformance with the requirements of this chapter may be sold or offered for sale. The commissioner through the adoption of rules may alter, amend, or prohibit any specific requirement of this section and may approve other sampling, hauling, or testing procedures or equipment. The commissioner, when appropriate, may check calibration of farm bulk milk tanks and equipment.

SECTION 3. AMENDMENT. Section 4-30-20 of the North Dakota Century Code is amended and reenacted as follows:

4-30-20. Sampling of milk. Every purchaser of milk from a dairy producer shall collect a minimum sample of two ounces [59.15 milliliters] from each bulk tank of milk received from a producer. Samples must be collected and maintained in accordance with those procedures contained in the ~~eighteenth~~ seventeenth edition of "Standard Methods for the Examination of Dairy Products" ~~published by the American public health association,~~ published by the American public health association, ~~incorporated.~~ Records must be kept which readily identify the

sample with those items used to determine payment for the milk. Such items must include weight, butterfat content, protein, solids-not-fat, and the total amount of money paid for the milk.

SECTION 4. AMENDMENT. Section 4-30-36 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same as the minimum requirements of the "~~Grade A Pasteurized Milk Ordinance, 2005 Revision, Public Health Service, Food and Drug Administration~~" which includes provisions from the "Grade A Condensed and Dry Milk Products and Condensed and Dry Whey - Supplement 1 to the Grade A PMO" ~~and all supplements added thereto.~~ The commissioner may adopt as ~~department~~ regulations other standards in addition to any amendments, supplements to, or new editions of the milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 5. AMENDMENT. Section 4-30-36.2 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.2. State milk sanitation rating and sampling surveillance officer - Duties - Guidelines. The state milk sanitation rating and sampling surveillance officer is responsible for the rating and certification of milk and dairy products. The rating and certification of milk and dairy products must be in accordance with the procedures outlined in the public health service/food and drug administration publication entitled "Methods of Making Sanitation Ratings of Milk Shippers - ~~2005~~ 2007 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines ~~recommended in the eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association.~~

SECTION 6. AMENDMENT. Section 4-30-36.3 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.3. Milk laboratory evaluations officer - Duties - Guidelines. The milk laboratory evaluations officer is responsible for the certification and evaluation of milk and dairy products laboratories within the state. Evaluations and certification of milk laboratories must be made in accordance with the ~~eighteenth edition of "Standard Methods for the Examination of Dairy Products" published by the American public health association~~ and the procedures outlined in the public health service/food and drug administration publication entitled "Evaluation of Milk Laboratories - 2005 Edition".

SECTION 7. AMENDMENT. Section 4-30-36.4 of the North Dakota Century Code is amended and reenacted as follows:

4-30-36.4. Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "~~Grade A Pasteurized Milk Ordinance, 2005 Revision, Public Health Service, Food and Drug Administration~~" and its supplements and follow the standards set by the "Procedures Governing the Cooperative State-Public Health Service Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, ~~2005~~ 2007 Revision".

SECTION 8. AMENDMENT. Section 4-30-39 of the North Dakota Century Code is amended and reenacted as follows:

4-30-39. Transportation, labeling, and distribution of processed and manufactured products - ~~Commissioner to adopt rules~~ Rulemaking - Violations. The commissioner may adopt rules governing the labeling, distribution, and transportation of processed and manufactured milk or milk products. ~~No facility or vehicle may be used or operated in violation of these rules.~~

SECTION 9. AMENDMENT. Section 4-30-45.1 of the North Dakota Century Code is amended and reenacted as follows:

4-30-45.1. Labeling and identity standards. ~~North Dakota labeling~~ All persons who sell at retail in this state milk or milk products must comply with the labeling standards and standards of identity are those set forth in the National Labeling and Education Act of 1990, all supplements, and rules and regulations promulgated thereunder 21 U.S.C. 343(q)(r) and in rules adopted by the commissioner. The commissioner shall adopt definitions consistent with federal law for, among other words, "milk", "butter", "cream", "cheese", and "ice cream". If state law conflicts with the National Labeling and Education Act of 1990, the National Labeling and Education Act of 1990 applies.

Approved April 16, 2009
Filed April 17, 2009

CHAPTER 76**HOUSE BILL NO. 1149**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4-33-02 of the North Dakota Century Code, relating to the state agricultural entomologist.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-33-02 of the North Dakota Century Code is amended and reenacted as follows:

4-33-02. Administration - Rulemaking authority - State agricultural entomologist. ~~The commissioner has the responsibility for administration of the provisions of shall administer this chapter. The commissioner shall employ a qualified entomologist to serve as state agricultural entomologist and to carry out the survey, control, and quarantine provisions of this chapter. The individual must be a graduate in agricultural entomology from an accredited college or university and must be stationed in Bismarck an individual who has a baccalaureate degree in entomology, plant pathology, or biological sciences. The commissioner may adopt such rules under chapter 28-32 as are necessary to carry out the purposes and provisions of this chapter.~~

Approved March 19, 2009
Filed March 24, 2009

CHAPTER 77

SENATE BILL NO. 2248

(Senators Klein, Miller, Taylor)
(Representatives Brandenburg, D. Johnson, Mueller)

AN ACT to amend and reenact sections 4-35-05, 4-35-08, 4-35-09, 4-35-09.1, 4-35-12, 4-35-14, 4-35-15, 4-35-16, 4-35-18, 4-35-19, 4-35-20, 4-35-22, 4-35-23, and 4-35-24 of the North Dakota Century Code, relating to pesticides; to repeal sections 4-35-17 and 4-35-29 of the North Dakota Century Code, relating to license plates for vehicles used in the application of certain pesticides and priority liability; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-35-05 of the North Dakota Century Code is amended and reenacted as follows:

4-35-05. Definitions. As used in this chapter:

1. "Animal" means all vertebrate and invertebrate species, including humans and other mammals, birds, fish, and shellfish.
2. "Antidote" means a practical treatment in case of poisoning and includes first-aid treatment.
3. "Applicator" means any person who applies a pesticide to land.
4. "Beneficial insects" means those insects that, during their life cycle, are effective pollinators of plants, are parasites, or predators of pests.
5. 3. "Certified applicator" means any individual who is certified under this chapter as authorized to purchase or use or supervise the use of any pesticide that is classified for a restricted use pesticide.
6. 4. "Commercial applicator" means a person who by contract or for hire engages in the business of applying pesticides for compensation to the land of another by aerial, ground, hand, or any other equipment. The term "commercial applicator" does not include a person using a pesticide for a private agricultural purpose unless that person is being compensated for the pesticide application.
7. "Dealer" means any person who sells a pesticide to an end user.
8. 5. "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission.
9. 6. "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue.
10. 7. "Device" means any instrument or contrivance, other than a firearm, which is intended for trapping, destroying, repelling, or mitigating any

pest or any other form of plant or animal life, other than human and other than bacteria, virus, or other micro-organism on or in living humans or other living animals, but not including equipment used for the application of pesticides when sold separately therefrom.

- ~~44.~~ 8. "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver, or supply pesticides in this state.
- ~~42.~~ 9. "Environment" includes water, air, land, and all plants and humans and other animals living therein, and the interrelationships which exist among these.
- ~~43.~~ 10. "Equipment" means any type of ground, water, or aerial equipment or contrivance using motorized, mechanical, or pressurized power and used to apply any pesticide on land and anything that may be growing, habitating, or stored on or in such land. The term does not include any pressurized hand-sized household apparatus used to apply any pesticide, or any equipment or contrivance of which the person who is applying the pesticide is the source of power or energy in making such pesticide application.
- ~~44.~~ 11. "Fungus" means any non-chlorophyll-bearing thallophytes, i.e., any non-chlorophyll-bearing plant of a lower order than mosses and liverworts as, for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living humans or other living animals, and except those on or in processed food, beverages, or pharmaceuticals.
- ~~45.~~ 12. "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class of insecta, comprising six-legged, usually winged forms, and to other allied classes of arthropods whose members are wingless and usually have more than six legs.
- ~~46.~~ 13. "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.
- ~~47.~~ 14. "Labeling" means the label and all other written, printed, or graphic matter:
- a. Accompanying the pesticide or device; and
 - b. To which reference is made on the label or in literature accompanying or referring to the pesticide, except when accurate nonmisleading references are made to current official publications of the board; the United States environmental protection agency; the United States departments of agriculture and interior; the United States department of health and human services; state agricultural colleges; and other similar federal or state institutions or agencies authorized by law to conduct research in the field of pesticides.
- ~~48.~~ 15. "Land" means all land and water areas, including airspace, and all plants, animals, structures, buildings, contrivances, and machinery, appurtenant thereto or situated thereon, fixed or mobile, including any used for transportation.

19. ~~"Mixture"~~ means a diluted pesticide combination.
20. 16. "Nematode" means invertebrate animals of the phylum nemathelminthes, and class nematoda, i.e., unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts, may also be called nemas or eelworms.
21. ~~"Person" means any individual, partnership, association, fiduciary, corporation, limited liability company, or any organized group of persons, whether or not incorporated.~~
22. 17. "Pest" means:
- a. ~~Any~~ any insect, ~~snail, slug,~~ rodent, nematode, fungus, or weed; or
 - b. ~~Any~~ any other form of terrestrial or aquatic plant or animal life ~~or virus, viruses,~~ bacteria, or other micro-organism, except viruses, bacteria, or other micro-organisms on or in living humans or other living animals ~~which are annoying or otherwise injurious or harmful to agriculture, health, and the environment.~~
23. 18. "Pesticide" means:
- a. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest; and
 - b. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.
24. 19. "Pesticide dealer" means any person ~~who distributes restricted use, other than a pesticide wholesaler, distributing pesticides.~~
25. 20. "Plant regulator" means any substance or mixture of substances intended, through physiological action, to accelerate or retard the rate of growth or rate of maturation, or to otherwise alter the behavior of plants or the produce thereof, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.
26. 21. "Private applicator" means ~~an individual who is required to be a certified applicator who uses or supervises the use of any pesticide that is classified for to buy or use a restricted use, to produce any agricultural commodity pesticide on property owned or rented by the applicator or the applicator's employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.~~
27. ~~"Protect health and the environment" means protection against any unreasonable adverse effects on public health and the environment.~~
28. 22. "Public applicator" means an applicator who applies pesticides, other than ready to use pesticides, as an employee of a state or federal;
- a. A governmental agency, municipal corporation, or public utility; or

- b. ~~A hospital, privately owned golf course, nursery, or greenhouse, or other governmental agency. Persons using only ready-to-use pesticides are exempt from this requirement.~~
- ~~20.~~ 23. "Ready-to-use pesticide" means a pesticide ~~that other than a restricted use pesticide which~~ is applied directly from its original container consistent with label directions, ~~such as an~~ and includes aerosol spray can, a cans, ready-to-use spray container containers, bait packs, ~~or~~ and other types of containers that do not require mixing or loading before application.
- ~~30.~~ 24. "Restricted use pesticide" means any pesticide formulation ~~which~~ that is classified ~~for as~~ restricted use by the United States environmental protection agency. ~~The term also includes a pesticide formulation classified for restricted use by~~ or the agriculture commissioner under section 19-18-05.
- ~~34.~~ 25. "Rinsate" means a diluted mixture of pesticide obtained from triple rinsing ~~or pressure rinsing~~ pesticide containers or from rinsing the inside and outside of spray equipment.
- ~~32.~~ "Snail" or "slug" includes every harmful mollusk.
- ~~33.~~ 26. "Tank mix" means any pesticidal formulation used alone or in combination with another pesticide and mixed with a liquid carrier prior to application.
- ~~34.~~ 27. "Unreasonable adverse effects on the environment" means any unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
- ~~35.~~ 28. "Weed" means any plant which grows where not wanted.
- ~~36.~~ 29. "Wildlife" means all living things that are neither human, domesticated, nor, as defined in this chapter, pests, including mammals, birds, and aquatic life.

SECTION 2. AMENDMENT. Section 4-35-08 of the North Dakota Century Code is amended and reenacted as follows:

4-35-08. Classification of commercial certificates. The board may classify commercial certificates to be issued under this chapter. The classifications may include pest control operators, wood treaters, ornamental or agricultural pesticide applicators, or right-of-way pesticide applicators. Separate classifications may be specified as to ground, aerial, or manual methods used by any applicator to apply pesticides or to the use of pesticides to control insects and plant diseases, rodents, or weeds. Each classification of certification may be subject to separate testing procedures and training requirements; provided that a person may be required to pay an additional fee if the person desires to be certified in one or more of the classifications provided for by the board under this section.

SECTION 3. AMENDMENT. Section 4-35-09 of the North Dakota Century Code is amended and reenacted as follows:

4-35-09. Commercial and public applicator's certification.

1. A commercial or public applicator may not purchase, use, or supervise the use of a pesticide without first complying with the certification standards and requirements of this chapter, or other restrictions as may be determined by the board.
2. An individual may be certified as a commercial or public applicator within a classification if the individual successfully completes an examination for the classification as prescribed by the board and administered by the North Dakota state university extension service or the service's designee. An application for certification must be on a form prescribed by the board and accompanied by a reasonable examination fee set by the board.
3. If the North Dakota state university extension service, or its designee, finds the applicant qualified to apply pesticides in the classifications for which the applicant has applied, after examination as the board requires, and the applicant meets all other requirements of this chapter, the North Dakota state university extension service shall issue a commercial or a public applicator's certificate limited to the classifications in which the applicant is qualified.
4. If certification is not to be issued as applied for, the North Dakota state university extension service, or its designee, shall inform the applicant in writing of the reasons for not issuing the certification. ~~Individuals certified pursuant to this section are deemed certified commercial or public applicators for the use of pesticides.~~

SECTION 4. AMENDMENT. Section 4-35-09.1 of the North Dakota Century Code is amended and reenacted as follows:

4-35-09.1. Proof of financial responsibility - Exceptions.

1. A commercial ~~pesticide~~ applicator certificate may not be issued ~~or renewed~~ unless the applicant furnishes proof of financial responsibility as provided in this section. ~~A commercial pesticide applicator shall furnish proof of financial responsibility on demand to the agriculture commissioner as provided in this section. Minimum financial.~~ Financial responsibility must be maintained in the amount of one hundred thousand dollars, and may be demonstrated by a notarized letter from an officer of a financial institution or from a certified public accountant attesting to the existence of net assets equal to at least one hundred thousand dollars, a performance bond, or a general liability insurance policy. The performance bond or insurance policy must contain a provision requiring the issuing company to notify the agriculture commissioner at least ten days before the effective date of cancellation, termination, or other modification of the bond or insurance policy. When requested by the agriculture commissioner, a commercial applicator immediately shall furnish proof of compliance with this section. If the applicator is unable to furnish the required proof, the commissioner may stop a pesticide application and not allow resumption until the applicator furnishes proof of compliance. The agriculture commissioner shall

immediately suspend the certification of a ~~person commercial applicator~~ who fails to maintain the ~~minimum~~ financial responsibility standards of this section. If there is any recovery against the ~~certificate holder commercial applicator~~, the ~~holder applicator~~ shall demonstrate continued compliance with the ~~minimum standards requirements~~ of this section. ~~An employee of a commercial pesticide application business is not required to meet these standards separately if the business documents compliance with the minimum financial responsibility standards of this section.~~ An application for reinstatement of a ~~suspended certificate suspended~~ under this section must be accompanied by proof of ~~satisfaction of that~~ any judgment previously rendered ~~against the applicant has been satisfied.~~

2. This section does not apply to:
 - a. A rancher who is ~~required to must~~ obtain a commercial ~~pesticide~~ applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - b. A grazing association and its members if either the association or any member is ~~required to must~~ obtain a commercial ~~pesticide~~ applicator certificate for controlling noxious weeds on the leased federal acreage as a condition of a federal grasslands lease.
 - c. A person ~~required to who must~~ be certified in the right-of-way category.
 - d. ~~An applicator who holds a~~ A commercial ~~pesticide certificate and is controlling applicator who controls~~ noxious weeds on grassland, land producing tame hay, or other lands not devoted to the production of an annual crop.
 - e. An employee of a commercial applicator if the commercial applicator complies with this section.

SECTION 5. AMENDMENT. Section 4-35-12 of the North Dakota Century Code is amended and reenacted as follows:

4-35-12. Pesticide dealer certification - Employees - Requirements for purchase.

1. It is unlawful for ~~any person a pesticide dealer~~ to distribute ~~or sell~~ restricted use pesticides or ~~assume to act as a restricted use pesticide dealer, at any time,~~ without first having obtained certification from the North Dakota state university extension service, or the service's designee ~~in the county in which the applicant operates the applicant's principal place of business.~~ A certified person is required ~~at each to be~~ at any location or outlet located within this state from which restricted use pesticides are distributed. Any manufacturer, ~~registrant,~~ or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.
2. Application for a certificate must be accompanied by an examination fee set by the board and must be on a form prescribed by the board. ~~The board shall adopt rules governing service of process on members of~~

corporations, limited liability companies, partnerships, or associations, and governing the listing of membership in such organizations. The application must also state the address of each outlet, the principal business address of the applicant, the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the board.

3. The board shall require each pesticide dealer to demonstrate to the North Dakota state university extension service or the service's designee knowledge of pesticide laws and regulations; pesticide hazards to humans, animals, and the environment; and the safe distribution, disposal, and use and application of pesticides by satisfactorily passing an examination or meeting other requirements within each classification for which certification is sought as prescribed by the board.
4. Each ~~restricted use~~ pesticide dealer is responsible for the acts of each person employed by the dealer in the solicitation and sale of restricted use pesticides and all claims and recommendations for use of such pesticides. The dealer's certification is subject to ~~denial~~, suspension, or revocation, after a hearing, for any violation of this chapter, whether committed by the dealer, or by the dealer's officer, agent, or employee.
5. A certificate issued under this section expires as of the first day of April following two years from the date of issuance. A certificate is renewable every three years on April first. A certificate may be renewed upon completion of a seminar approved by the board or upon successfully completing an examination required by the board, or both, if required by the board. The board may require any person holding a current valid certificate to take an examination within the three-year period if the board determines additional knowledge related to pesticides makes an additional examination necessary or that a new evaluation is necessary to assure a continuing level of competence and ability to distribute pesticides safely and properly.
6. Restricted use pesticides may be sold only to:
 - a. Persons certified as applicators by this state; and
 - b. Persons certified to use restricted use pesticides by another state, provided the pesticide control board determines that the certifying state's requirements are substantially similar to those of this state and further provided that the person does not use the restricted use pesticide in this state.

SECTION 6. AMENDMENT. Section 4-35-14 of the North Dakota Century Code is amended and reenacted as follows:

4-35-14. Private applicators - Certification.

1. a. ~~No person~~ An individual who would be a private applicator, if certified, may ~~not buy, use, or supervise the use of~~ any restricted use pesticide ~~classified for restricted use unless such person the individual~~ first complies with the certification requirements ~~as determined~~ established by the board as ~~necessary to prevent~~

~~unreasonable adverse effects on the environment, including injury to the applicator or other persons, for that specific pesticide use.~~

b. An individual who would be a private applicator, if certified, may not use any restricted use pesticide unless the individual:

(1) Complies with the certification requirements established by the board; or

(2) Is under the direct supervision of a certified applicator.

2. Certification standards to determine the individual's competency with respect to the use and handling of the pesticide or class of pesticides the private applicator is to be certified to use must be determined by the board. In determining these standards, the board shall take into consideration similar standards of the environmental protection agency.
- ~~3. The board shall determine by rule methods to evaluate the competence of private applicators and provisions for reevaluation as advances in technology warrant, or as necessary to assure a continuing level of competence and ability to use pesticides safely and properly.~~ The North Dakota state university extension service, or its designee, ~~in the county of the residence of the applicant~~ shall issue a certificate to any private applicator who has qualified as prescribed by the board. ~~However, the~~ The North Dakota state university extension service, or its designee, may require any applicant required to be certified under this ~~chapter section~~ to pay a reasonable ~~charge fee~~, not greater than the cost to the North Dakota state university extension service, for materials provided to the applicant for training and education.

SECTION 7. AMENDMENT. Section 4-35-15 of the North Dakota Century Code is amended and reenacted as follows:

4-35-15. Unlawful acts - Grounds for denial, suspension, or revocation of a certification. ~~The commissioner, after providing an opportunity for a hearing, may deny, suspend, revoke, or modify any provision of any certification issued under this chapter, if the commissioner finds that the applicant or the holder of the certification has committed any act listed in this section. Each of the following acts is a violation of this chapter, whether committed by an applicant, by the holder of the certification, or by any other person applying or using pesticides, if the~~ It is a violation of this chapter for any person to:

1. ~~Made~~ Make false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized, or advertised a pesticide without reference to its classification.
2. ~~Made~~ Make a pesticide recommendation, application, or use inconsistent with the labeling or other restrictions prescribed by the board.
3. ~~Applied~~ Apply materials known by that person to be ineffective or improper.
4. ~~Operated~~ Operate faulty or unsafe equipment.
5. ~~Operated~~ Operate in a faulty, careless, or negligent manner.

6. ~~Refused~~ Neglect, or, after notice, ~~refused~~ refuse to comply with this chapter, the rules adopted to implement this chapter, or any lawful order of the commissioner.
7. ~~Refused or neglected~~ Refuse or neglect to keep and maintain the records required by this chapter or to make reports when and as required.
8. ~~Made~~ Make false or fraudulent records, invoices, or reports.
9. ~~Operated unlicensed equipment in violation of section 4-35-17.~~ Apply pesticide to the property of another, without the permission of the owner or lessee, unless the application is made under the direction of a governmental entity.
10. ~~Used~~ Use fraud or misrepresentation in making an application for, or for renewal of, certification.
11. ~~Refused or neglected~~ Refuse or neglect to comply with any limitations or restrictions on or in a duly issued certification.
12. ~~Aided or abetted a certified or an uncertified~~ Aid or abet a person to evade the provisions of this chapter, conspired conspire with such a certified or an uncertified a person to evade the provisions of this chapter, or allowed allow the person's certification to be used by another person.
13. Knowingly ~~made~~ make false statements during or after an inspection or an investigation.
14. ~~Impersonated~~ Impersonate a federal, state, county, or city inspector or official.
15. ~~Distributed~~ Distribute any restricted use pesticide to any person who is required by law or rule to be certified to use or purchase the restricted use pesticide unless the person or agent to whom distribution is made is not properly certified to use or purchase that kind of restricted use the pesticide.
16. ~~Bought, used, or supervised~~ Buy, use, or supervise the use of any pesticide without first complying with the certification requirements of this chapter, unless otherwise exempted.
17. ~~Applied~~ Apply any ~~economic poison~~ pesticide that is not registered pursuant to chapter 19-18.

SECTION 8. AMENDMENT. Section 4-35-16 of the North Dakota Century Code is amended and reenacted as follows:

4-35-16. Commercial and public applicators to keep records - Duration Records - Retention - Submission to commissioner. The board shall require the holders of certificates to pesticide dealers, commercial applicators, and public applicators maintain records of sales and purchases of restricted use and special exemption pesticides and. The board shall require commercial applicators and public applicators to maintain records of all applications of pesticides by commercial or public applicators. The board may also require restricted use pesticide application

records of private applicators. ~~Such relevant information as the board may deem necessary may be specified by rule.~~ The records must be kept for a period of three years from the date of the application ~~of, sale, or purchase~~ of the pesticide ~~to which the records refer~~. Upon request, these records or pertinent parts thereof, must be submitted to the commissioner.

SECTION 9. AMENDMENT. Section 4-35-18 of the North Dakota Century Code is amended and reenacted as follows:

4-35-18. Reciprocal agreement. The North Dakota state university extension service, or its designee, may issue a certification on a reciprocal basis, without examination, to a nonresident who is certified to buy, distribute, or use restricted use pesticides under a plan substantially similar to this chapter and after the applicant has paid a fee, set by the board, not greater than the fee or charge authorized under section 4-35-09, 4-35-12, or 4-35-14 if the applicant would have taken the appropriate examination. Such a certification may be suspended or revoked in the same manner and on the same grounds as certifications pursuant to this chapter, and must be suspended or revoked if the nonresident's home state certification is suspended or revoked.

SECTION 10. AMENDMENT. Section 4-35-19 of the North Dakota Century Code is amended and reenacted as follows:

4-35-19. Certification requirements - Exemptions.

1. The certification requirements of this chapter do not apply to a ~~competent person~~ an individual applying ~~general non-restricted~~ use pesticides under the direct supervision of a commercial applicator, unless the pesticide label requires that a certified applicator personally apply the pesticide. A pesticide is ~~deemed to be~~ applied under the direct supervision of a commercial applicator if the pesticide is applied by a ~~competent person~~ an individual acting under the instruction and control of a certified applicator who is physically available if needed. The certified applicator need not be present when the pesticide is applied. Direct supervision with respect to applications using aircraft requires that the pilot of the aircraft be appropriately certified. The certification requirements of this chapter do not apply to a competent person applying restricted use pesticides under the direct supervision of a private applicator, unless the pesticide label requires that a certified applicator personally apply the particular pesticide. A pesticide is deemed to be applied under the direct supervision of a private applicator if it is applied by a competent person acting under the instruction and control of a private applicator who is available if and when needed, even though the private applicator is not physically present at the time and place that the pesticide is applied.
2. The certification requirements of this chapter do not apply to any person conducting laboratory-type research using restricted use pesticides or to a doctor of medicine or a doctor of veterinary medicine applying a pesticide as a drug or as medication during the course of normal practice.

SECTION 11. AMENDMENT. Section 4-35-20 of the North Dakota Century Code is amended and reenacted as follows:

4-35-20. Discarding and storing of pesticides, pesticide containers, and pesticide rinsate. No person may discard, store, display, or permit the disposal of surplus pesticides, empty pesticide containers and devices, or pesticide rinsate in such a manner as to endanger the environment or to endanger food, feed, or any other products that may be stored, displayed, or distributed with such pesticides. The board shall promulgate regulations governing the discarding, storage, display, or disposal of any pesticide, pesticide rinsate, pesticide containers, or devices.

SECTION 12. AMENDMENT. Section 4-35-22 of the North Dakota Century Code is amended and reenacted as follows:

4-35-22. Subpoenas. The commissioner may issue subpoenas to compel the attendance of witnesses or production of books, documents, and records pertaining to pesticide applications ~~and, sales, and purchases~~ in the state in any hearing ~~affecting the authority or privilege granted by a certification issued under the provisions of~~ to enforce this chapter.

SECTION 13. AMENDMENT. Section 4-35-23 of the North Dakota Century Code is amended and reenacted as follows:

4-35-23. Penalties.

1. Any ~~registrant; applicator, person other than a private applicator; wholesale dealer; retailer; or other distributor,~~ who knowingly violates ~~any provision of~~ this chapter ~~shall be~~ is guilty of a class A misdemeanor.
2. Any private applicator ~~or other person not included in subsection 4~~ who knowingly violates ~~any provision of~~ this chapter ~~shall be~~ is guilty of a class B misdemeanor.
3. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person must in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.
4. A person who violates ~~a provision of~~ this chapter or the rules adopted under this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation. The civil penalty may be imposed by a court in a civil proceeding or by the agriculture commissioner through an adjudicative proceeding pursuant to chapter 28-32. The assessment of a civil penalty does not preclude the imposition of other sanctions authorized by law, this chapter, or rules adopted under this chapter.
5. After providing an opportunity for a hearing, the commissioner may deny, suspend, revoke, or modify the provision of any certification issued under this chapter, if the commissioner determines that the applicant for certification or the holder of a certificate has violated this chapter or any rules adopted under this chapter.

SECTION 14. AMENDMENT. Section 4-35-24 of the North Dakota Century Code is amended and reenacted as follows:

4-35-24. Enforcement.

1. The commissioner ~~is charged with the duty of enforcing~~ shall enforce the requirements of this chapter and any rules ~~or regulations issued hereunder~~ adopted under this chapter.
2. The commissioner may bring an action to enjoin the violation or threatened violation of ~~any provision of this chapter, or any rule or regulation made pursuant to~~ adopted under this chapter, in the district court of the county in which such violation occurs or is about to occur.
3. ~~In the event~~ If any person violates ~~any provision of this chapter,~~ the commissioner may issue an order requiring ~~such~~ the person to cease and desist from the unlawful activity. ~~In the event~~ If the violator fails to obey, the commissioner will cause the appropriate criminal complaint to be filed.
4. ~~For the purpose of carrying out the provisions of this chapter, the~~ The commissioner may enter upon any public or private premises at reasonable times, in order to:
 - a. ~~Have access for the purpose of inspecting~~ Inspect any equipment subject to this chapter and the premises on which ~~such~~ the equipment is stored or used.
 - b. Inspect or sample lands actually or reported to be exposed to pesticides.
 - c. Inspect storage or disposal areas.
 - d. Inspect or investigate complaints of injury to humans or land.
 - e. Draw samples of a reasonable amount of tank mix pesticides and tank mixes without compensation to the ~~applicator~~ owner for values less than three dollars. ~~If the value of the sample is over three dollars, the applicator has the option of being given a receipt to be paid at a later date, or of not being reimbursed.~~
 - f. Observe the use and application of a pesticide.
 - g. ~~Have access for the purpose of inspecting~~ Inspect any premises or other place where pesticides or devices are stored or held for distribution, sale, or for use ~~or for the purpose of inspecting and obtaining, and obtain~~ samples of any pesticides packaged, labeled, and released for shipment and samples of any containers or labeling for ~~such~~ the pesticides.
5. a. The commissioner ~~shall,~~ at any reasonable time, ~~have~~ has access to the records pertaining to the pesticide application ~~and,~~ sales of, purchases, and repackaging by any person. The commissioner may copy or make copies of ~~such~~ the records for the purpose of ~~carrying out the provisions of this chapter.~~ Unless required for the enforcement of this chapter, such information is These records are

confidential. However, the commissioner may use these records in any way to enforce this chapter. Any record that the commissioner uses as an exhibit in an enforcement action is no longer a confidential record.

- b. If an individual alleges exposure to pesticides and if the individual's medical provider requests that the commissioner reveal the name of the pesticide, the commissioner may reveal the name of the pesticide to the individual making the request, together with the registration number assigned by the United States environmental protection agency. The commissioner may require that a request under this section be made in writing.
6. ~~When~~ If access is refused or in situations in which if the commissioner ~~feels~~ determines that critical enforcement documentation may be lost, the commissioner ~~or the commissioner's designated agent for the purposes set forth in this chapter,~~ may apply to any court of competent jurisdiction for a search warrant authorizing access to ~~such~~ land or records for said purposes. The court may, upon ~~such application and upon~~ compliance with the provisions of chapter 29-29.1, issue the search warrant for the purposes requested.
7. ~~If a civil penalty pursuant to section 4-35-23 is imposed by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil proceeding in any appropriate court. Additionally, the~~ The commissioner may suspend or revoke a certification issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed.

SECTION 15. REPEAL. Sections 4-35-17 and 4-35-29 of the North Dakota Century Code are repealed.

Approved May 1, 2009
Filed May 5, 2009

CHAPTER 78**HOUSE BILL NO. 1150**

(Agriculture Committee)

(At the request of the Agriculture Commissioner)

AN ACT to repeal chapter 4-38 of the North Dakota Century Code, relating to organic foods standards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 4-38 of the North Dakota Century Code is repealed.

Approved March 24, 2009

Filed March 24, 2009

CHAPTER 79

HOUSE BILL NO. 1549

(Representatives Monson, Porter, Uglem)
(Senators Dever, J. Lee, Lindaas)

AN ACT to amend and reenact section 4-41-02 of the North Dakota Century Code, relating to industrial hemp; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-41-02 of the North Dakota Century Code is amended and reenacted as follows:

4-41-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.

1. Any person desiring to grow or process industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history check. The nationwide criminal history check must be conducted in the manner provided in section 12-60-24. All costs associated with the background check are the responsibility of the applicant. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure. Any person with a prior criminal conviction is not eligible for licensure. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency. This subsection does not apply to any person licensed by the United States drug enforcement agency to conduct research.
2. Each licensee must file with the commissioner documentation indicating that the seeds planted were of a type and variety certified to have no more than three-tenths of one percent tetrahydrocannabinol and a copy of any contract to grow industrial hemp. Each licensee shall notify the commissioner of the sale or distribution of any industrial hemp grown by the licensee, and the names of the persons to whom the hemp was sold or distributed.
3. The commissioner shall adopt rules to allow the industrial hemp to be tested during growth for tetrahydrocannabinol levels and to allow for

supervision of the industrial hemp during its growing, harvesting, and processing. To provide sufficient funds to pay costs associated with monitoring and testing industrial hemp in the state, the commissioner shall assess each applicant a fee of five dollars per acre. The minimum fee assessed must be one hundred fifty dollars per applicant. Collections from this fee must be deposited in the commissioner's operating fund and are appropriated to the commissioner to be used to enforce this chapter.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 24, 2009
Filed April 29, 2009

AGRICULTURE

CHAPTER 80

HOUSE BILL NO. 1025

(Legislative Council)
(Agriculture Committee)

AN ACT to create and enact title 4.1 of the North Dakota Century Code, relating to agriculture; to amend and reenact sections 4-13.2-03, 36-04-10, 36-04-10.1, and 36-05-13.2 and subsection 1 of section 54-07-01.2 of the North Dakota Century Code, relating to agricultural commodity boards and commissions; to repeal chapters 4-10.1, 4-10.2, 4-10.3, 4-10.4, 4-10.5, 4-10.6, 4-10.7, 4-12.1, 4-13.1, 4-27, 4-28, and 4-34 of the North Dakota Century Code, relating to the North Dakota potato council and assessment, the North Dakota oilseed council and assessment, the North Dakota dry bean council and assessment, the North Dakota barley council and assessment, the North Dakota soybean council and assessment, the North Dakota corn utilization council and assessment, the North Dakota dry pea and lentil council and assessment, the North Dakota honey assessment, the North Dakota turkey assessment, the North Dakota dairy promotion commission and assessment, the North Dakota wheat commission and assessment, and the North Dakota beef commission and assessment; to provide a penalty; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-13.2-03 of the North Dakota Century Code is amended and reenacted as follows:

4-13.2-03. Purposes - Duties. The agriculture commissioner may adopt rules pursuant to chapter 28-32 to effectuate the purposes of this chapter, and the agriculture commissioner, or the commissioner's designee, shall enforce this chapter. The agriculture commissioner shall:

1. Work toward improving poultry breeding and cooperate with the board of animal health in controlling and eradicating communicable diseases of poultry.
2. Act as the official state agency for North Dakota in cooperation with the bureau of animal industry, United States department of agriculture, for the purpose of furthering the objectives and supervising the state's participation in the national poultry improvement plan.
3. Act as the state agency to cooperate with the United States department of agriculture, to provide federal-state grading service for poultry and poultry products offered for sale at the retail level, to supervise the federal-state poultry grading service, and to enforce regulations at the retail level as to identification by grade of all poultry sold.

4. Promote generally the welfare and improvement of the poultry industry and the marketing of poultry and poultry products within the state through such means and in such manner as may be deemed by the commissioner conducive to such improvement.
5. Enforce the licensing and bonding requirements provided by this chapter.
6. Administer chapter ~~4-13-4~~ 4.1-12, at the advice of the North Dakota turkey federation.

⁴⁶ **SECTION 2.** Chapter 4.1-02 of the North Dakota Century Code is created and enacted as follows:

4.1-02-01. Definitions. As used in this chapter:

1. "Barley" means all varieties of barley harvested in the state.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Council" means the North Dakota barley council.
4. "First purchaser" means any person accepting for shipment or otherwise acquiring barley from a producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer, if the actual or constructive possession of the barley is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-02-16 during the preceding twelve months.
6. "Producer" means any person that:
 - a. Plants or causes to be planted a barley crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

4.1-02-02. Barley council - Districts. The state consists of the following five barley districts:

⁴⁶ Section 4.1-02-01 was also amended by section 9 of House Bill No. 1109, chapter 70; section 4.1-02-03 was also amended by section 10 of House Bill No. 1109, chapter 70; section 4.1-02-09 was also amended by section 11 of House Bill No. 1109, chapter 70, and section 18 of Senate Bill No. 2242, chapter 72; section 4.1-02-12 was also amended by section 2 of Senate Bill No. 2203, chapter 81.

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

4.1-02-03. Council - Membership - Election - Term.

1. The council consists of one individual elected from each district established in section 4.1-02-02 and the commissioner, who is a nonvoting member.
2. Each member of the council, other than the commissioner, must be a resident of and a participating producer in the district that the member represents.
3. The term of each elected member is four years and begins on April first. The terms must be staggered so that no more than two terms 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 and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
5. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

4.1-02-04. Election of county representative.

1.
 - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of barley producers for the purpose of electing a county representative.
 - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
 - c. The meeting must be held within the county.
 - d. During the meeting, the county extension agent shall conduct the election.

- e. Any participating producer who resides in the county may vote in the election.
 - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the extension agent for a county, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no barley producers willing to serve as county representatives reside within the county.

4.1-02-05. Election of district representative - Council member.

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-02-04, 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 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 and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

4.1-02-06. Election costs - Responsibility. All costs of holding county and district elections are the responsibility of the council.

4.1-02-07. Quorum. A majority of the council's voting members constitutes a quorum for the transaction of business.

4.1-02-08. 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.

4.1-02-09. Council members - Compensation. Each member of the council, except the commissioner, 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 officers if the member is attending meetings or performing duties directed by the council.

4.1-02-10. Council - Powers.

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

4.1-02-11. Council - Duties.

1. The council shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include:
 - a. The funding of research, education programs, and market development efforts; and
 - b. The support of state, regional, national, and international entities that promote barley utilization.
2. The council shall develop and disseminate information regarding the purpose of the barley assessment and ways in which the assessment benefits barley producers.

4.1-02-12. Assessment. An assessment at the rate of ten mills per bushel [35.24 liters] is imposed upon all barley grown in this state, delivered to this state, or sold to a first purchaser in this state. The assessment does not apply to barley grown by a producer and used by the producer as livestock feed.

4.1-02-13. Collection of assessment - Records.

1. The first purchaser shall collect the assessment from the seller by deducting the assessment from the total price of the barley being purchased by the first purchaser.
2. The first purchaser shall keep documents regarding all purchases, sales, and shipments of barley for a period of three years. The first purchaser shall make these records available to the council for examination at all reasonable times.
3. No later than thirty days after the conclusion of each calendar quarter, each first purchaser shall file with the council a report stating the quantity of all barley received, sold, or shipped by the first purchaser.

4.1-02-14. Submission of assessments - Civil penalty.

1. The first purchaser shall forward to the council all assessments collected by the first purchaser within thirty days after the conclusion of each calendar quarter.
2. If a first purchaser fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-02-15. Out-of-state sale - Submission of assessment by producer - Civil penalty.

1. If a producer sells barley to a first purchaser located outside this state and if the first purchaser has not contracted with the barley council to collect and remit assessments in accordance with this chapter, the producer shall determine the assessment due and shall submit that amount to the council within thirty days after the conclusion of the calendar quarter. The producer shall keep a record of the transaction for a period of three years and shall make the record available to the council for examination upon request.
2. If a producer fails to submit an assessment as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-02-16. Refund of assessment.

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

4.1-02-17. Reimbursement for double payments. Notwithstanding section 4.1-02-16, if a producer documents to the council that the producer has paid the assessment more than once on the same barley, the council shall reimburse the producer for the double payment.

4.1-02-18. Expenditure of funds. The council shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

4.1-02-19. Continuing appropriation. The council shall forward all moneys received under this chapter to the state treasurer for deposit in the barley fund. All moneys in the barley fund are appropriated on a continuing basis to the council to carry out this chapter.

4.1-02-20. Advisory referendum.

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

4.1-02-21. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

⁴⁷ **SECTION 3.** Chapter 4.1-03 of the North Dakota Century Code is created and enacted as follows:

4.1-03-01. Definitions. As used in this chapter:

⁴⁷ Section 4.1-03-08 was also amended by section 19 of Senate Bill No. 2242, chapter 72.

1. "Beef producer" means any person that has an ownership interest in cattle.
2. "Cattle" means live domesticated bovine animals.
3. "Cattle feeder" means a person in the business of feeding cattle for the purpose of adding weight to the cattle prior to slaughter.
4. "Commission" means the North Dakota beef commission.
5. "Dairy producer" means any person in the business of producing and selling milk from cows.
6. "Livestock auction market" means a public market or private buying station in which livestock is offered for sale or sold.
7. "Livestock dealer" means a person that purchases cattle and is required to be licensed under chapter 36-04.
8. "Participating producer" means a producer that has not obtained a refund of any assessment paid on the sale of cattle under this chapter for the preceding three years.

4.1-03-02. North Dakota beef commission - Membership - Qualifications.

1. The North Dakota beef commission consists of:
 - a. Three beef producers;
 - b. One cattle feeder;
 - c. One dairy producer;
 - d. One representative of a public livestock market; and
 - e. Three at-large representatives.
2. The governor shall appoint:
 - a. Each beef producer from a list of at least two names submitted by the North Dakota stockmen's association;
 - b. The cattle feeder from a list of at least two names submitted by the North Dakota stockmen's association feeder council;
 - c. The dairy producer from a list of at least two names submitted by the milk producers association of North Dakota;
 - d. The representative of a public livestock market from a list of at least two names submitted by the North Dakota livestock marketing association; and
 - e. The three at-large representatives.
3. a. Each member of the commission must:

- (1) Be a United States citizen and a resident of this state;
 - (2) Be actively engaged in that phase of the cattle industry the member represents; and
 - (3) Have been actively engaged in that phase of the cattle industry for a period of five years.
- b. Each member of the commission, except the representative of a public livestock market, must be a participating producer.
- c. For purposes of this subsection, "actively engaged" means that the individual:
- (1) Has an ownership interest in an operation that is of sufficient scope and significance as to constitute a distinct activity; and
 - (2) Has and regularly exercises direct control of the operation.

4.1-03-03. Term of office.

1. The term of office for each member is three years and begins on July first. The terms must be staggered so that no more than three terms expire each year.
2. A member of the commission may not serve more than two consecutive terms. If an individual is appointed after August 1, 2009, to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

4.1-03-04. Vacancy. If a member's office is vacant, the position must be filled, for the remainder of the term, in the same manner as the original appointment. A member's office is vacant if:

1. At any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter;
2. Any event enumerated in section 44-02-01 occurs; or
3. The commission determines that a member has failed to attend three consecutive meetings of the commission without justification.

4.1-03-05. Nonvoting members - Appointment. The commission may appoint up to four nonvoting members. The term of office for a member appointed under this section is one year. The number of terms that may be served by a member under this section is not limited. The commission shall adopt policies governing the appointments and qualifications of nonvoting members.

4.1-03-06. Quorum. A majority of the commission's voting members constitutes a quorum for the transaction of business.

4.1-03-07. Chairman - Meetings.

1. Annually, the commission shall elect one member to serve as the chairman.

2. The chairman shall call all meetings of the commission and shall call a special meeting within seven days when petitioned to do so by three voting members of the commission.
3. The commission shall hold at least three regular meetings each year.

4.1-03-08. Commission members - Compensation. Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties as directed by the commission.

4.1-03-09. Commission - Powers. The commission 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 related to this chapter;
5. Borrow money, provided the total of all the commission's debt may not exceed its estimate of the current year's revenues;
6. Sue and be sued; and
7. Do all things necessary and proper to enforce and administer this chapter.

4.1-03-10. Commission - Duties. The commission shall:

1. Establish and maintain an office centrally located within this state;
2. Keep accurate records of all assessments and other financial transactions under this chapter; and
3. Determine the uses to 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 state, regional, national, and international organizations.

4.1-03-11. Assessment - Penalty.

1. Any person who sells cattle in this state or from this state must pay an assessment equal to the greater of:
 - a. Fifty cents for each animal sold; or
 - b. The amount set forth in federal law.
2. The assessment provided for in subsection 1 does not apply to cattle owned by a person who certifies to the commission, on forms provided by the commission, that:

- a. The person's only share in the proceeds of a sale is a sales commission, handling fee, or other service fee; or
- b.
 - (1) The person acquired ownership of the cattle to facilitate the transfer of ownership to a third party;
 - (2) The person resold the cattle within ten days from the date on which the person acquired ownership; and
 - (3) Any assessment that was levied upon the prior owner has been collected and remitted or will be remitted in a timely fashion.
3. Any person willfully providing false or misleading information to the commission under this section is guilty of a class B misdemeanor.

4.1-03-12. Collection of assessment.

1. Each livestock auction market and livestock dealer shall:
 - a. Collect the assessments due under this chapter by deducting the assessments from any credit given or payment made to the seller of the cattle, at the time of the transaction; and
 - b. Forward the assessments to the commission in accordance with section 4.1-03-13.
2.
 - a. If a person sells North Dakota cattle outside this state or if a person sells North Dakota cattle to an out-of-state buyer, the person shall forward any assessments due under this chapter to the commission in accordance with section 4.1-03-13.
 - b. This subsection does not apply if the assessment has been paid to a brand inspector in another state or to another qualified state beef council.
3. Any other person selling cattle in this state shall forward any assessments due under this chapter to the commission in accordance with section 4.1-03-13.

4.1-03-13. Submission of assessments - Penalty.

1. Any person required to forward assessments to the commission in accordance with section 4.1-03-12 shall do so no later than the fifteenth day of the month following that in which the cattle were sold.
2. Any unpaid assessments due pursuant to this chapter must be increased by two percent on the sixteenth day of each month.
3. Any person who fails to forward assessments as required by this chapter within thirty days following the month in which the cattle were sold is guilty of a class B misdemeanor.
4. For purposes of this section, an assessment is deemed to have been forwarded to the commission:

- a. On the date of its postmark if mailed;
- b. On the date of its verified shipment if sent by courier; or
- c. On the date of its receipt by the commission if delivered personally or electronically.

4.1-03-14. Transaction records - Inspection by commission.

1. Any person required to collect or submit an assessment under this chapter shall keep a record of:
 - a. The number of cattle:
 - (1) Purchased;
 - (2) Initially transferred; and
 - (3) Otherwise subject to assessment under this chapter;
 - b. The date of any transaction involving cattle referenced in subdivision a;
 - c. The name of the person who sold the cattle;
 - d. The number of cattle imported or the equivalent of beef or beef products;
 - e. The amount of any assessment forwarded;
 - f. The reason for any discrepancy between the amount forwarded and the dollar amount obtained when multiplying the number of cattle referenced in subdivision a by the per head assessment; and
 - g. The date on which any assessment was paid.
2. All records required by this section and any records required to verify other information provided to the commission in accordance with this chapter must be:
 - a. Maintained for a period of at least three years; and
 - b. Made available for inspection by the commission upon request.

4.1-03-15. Authorization to request records - Penalty.

1. The commission may require the purchaser of cattle subject to assessment under this chapter to furnish the commission with a list of persons from whom cattle were purchased.
2. Any person knowingly refusing to furnish the commission with required information is guilty of a class B misdemeanor.

4.1-03-16. Continuing appropriation. The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the North Dakota beef commission fund. All moneys in the North Dakota beef commission

fund are appropriated on a continuing basis to the commission to be used exclusively to carry out this chapter.

4.1-03-17. Refund of assessment - Required certification by attorney general.

1. When the attorney general certifies to the commission that refunds of assessments paid in accordance with this chapter are no longer precluded by federal law, the commission may provide refunds to producers.
2.
 - a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for a refund application within sixty days after the date of the sale.
 - b. The producer must complete the refund application and return the application to the commission, together with a record of the assessment paid, within ninety days after the date of the sale. The commission shall then refund the net amount of the assessment that had been collected.
 - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.

4.1-03-18. Open records exceptions.

1. The following are not public records subject to section 44-04-18 and section 6 of article XI of the Constitution of North Dakota:
 - a. Records furnished to the commission pursuant to section 4.1-03-14;
 - b. Records furnished to the commission pursuant to section 4.1-03-15; and
 - c. The identity of a person that applied for a refund under section 4.1-03-17 and the amount of the refund requested.
2. This section does not preclude the commission from:
 - a. Issuing general statements based upon the reports of persons subject to this chapter; or
 - b. Publishing the name of any person found guilty of violating this chapter and describing the offense committed.

⁴⁸ **SECTION 4.** Chapter 4.1-04 of the North Dakota Century Code is created and enacted as follows:

4.1-04-01. Definitions. As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Corn" means all varieties of corn, except sweet corn and popcorn.
3. "Council" means the North Dakota corn utilization council.
4. "Designated handler" means:
 - a. Any public warehouse, licensed grain buyer, roving grain buyer, processing plant, merchandising company, or ethanol plant that purchases corn from a producer; and
 - b. Any person having a claim against the producer if the actual or constructive possession of the corn is taken as security, partial payment, or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Producer" means any person that:
 - a. Plants or causes to be planted a corn crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

4.1-04-02. Corn districts - Establishment. The state consists of the following seven corn districts:

1. Richland County;
2. Cass, Steele, and Traill Counties;
3. Benson, Bottineau, Burke, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams Counties;
4. Barnes, Eddy, Foster, Griggs, and Stutsman Counties;
5. Sargent and Ransom Counties;

⁴⁸ Section 4.1-04-04 was also amended by section 4 of House Bill No. 1413, chapter 82; section 4.1-04-07 was also amended by section 20 of Senate Bill No. 2242, chapter 72; section 4.1-04-10 was also amended by section 6 of House Bill No. 1413, chapter 82.

6. Dickey and LaMoure Counties; and
7. All remaining counties in which corn is grown.

4.1-04-03. Corn council - Membership - Term.

1. The council consists of one producer elected from each of the seven districts established in section 4.1-04-02.
2. Each member of the council must be a resident of the district that the member represents.
3. A member of the council may not have requested a refund under section 4.1-04-13 during the preceding year.
4. The term of each member is four years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than two consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

4.1-04-04. Election of council member.

1. No later than January first of the year in which the term of a council member is to expire, the council shall appoint a nominating committee consisting of at least two producers who reside in the council member's district and who have not requested a refund under section 4.1-04-13 during the preceding year.
2. No later than February first, the committee shall nominate a qualified producer as a candidate for council membership.
3. Other qualified producers may become candidates for council membership by submitting to the council, no later than March first, a petition signed by at least five producers who reside in the district to be represented.
4. a. If a qualified producer submits a petition in accordance with subsection 3, the council shall:
 - (1) Determine the date, time, and place for the election;
 - (2) Publish that information in the official newspaper of each county in the district for two consecutive weeks;
 - (3) Prepare the ballots; and

(4) Conduct the election.

b. If a qualified producer does not submit a petition in accordance with subsection 3, and the only candidate for council membership is the individual recommended by the nominating committee, the council shall waive the election requirements and declare that the individual recommended by the nominating committee is the new council member.

5. Any producer who resides in the district and who did not request a refund under section 4.1-04-13 during the preceding year may vote in the election.

6. The council shall provide to the governor the name and address of the new council member.

4.1-04-05. Election costs - Responsibility. All costs of holding an election are the responsibility of the council.

4.1-04-06. 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.

4.1-04-07. 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.

4.1-04-08. 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 related to this chapter, including research, education, publicity, promotion, and transportation;

5. Sue and be sued; and

6. Do all things necessary and proper to enforce and administer this chapter.

4.1-04-09. Council - Duties.

1. 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 other state, regional, national, and international promotion groups.

2. The council shall develop and disseminate information regarding the purpose of the corn assessment and ways in which the assessment benefits corn producers.

4.1-04-10. Assessment. Until the commissioner certifies that a national corn checkoff is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel must be imposed upon all corn grown and sold in this state.

4.1-04-11. Collection of assessment - Records.

1. A designated handler shall collect the assessment from the producer by deducting the assessment from the purchase price of the corn.
2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of corn for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each designated handler shall file a report with the council. The report must state, in individual and total amounts, the quantity of all corn that the designated handler received, sold, or shipped, and the source of all corn that the designated handler received, sold, or shipped.

4.1-04-12. Submission of assessment by producer - Civil penalty.

1. If a producer sells corn to a person that is not a designated handler, the producer shall forward the assessment to the council within thirty days after the end of each calendar quarter.
2. If a producer fails to submit the assessments as required by this section, the council may levy a penalty equal to ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date.

4.1-04-13. Refund of assessment - Form.

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund to the producer the net amount of the assessment that had been collected from the producer.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

4.1-04-14. Reimbursement for double payments. Notwithstanding section 4.1-04-13, if a producer documents to the council that the producer has paid the assessment more than once on the same corn, the council shall reimburse the producer for the double payment.

4.1-04-15. Submission of assessments - Civil penalty.

1. Each designated handler shall forward to the council all assessments collected by the designated handler within thirty days after the end of each calendar quarter.
2. If a designated handler fails to submit the assessments as required by this section, the council may levy a penalty equal to ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date.

4.1-04-16. Expenditures - Approval - Records. The council shall approve all expenditures made pursuant to this chapter. The expenditures must be recorded on itemized vouchers and the records must be maintained as directed by the state records administrator.

4.1-04-17. Continuing appropriation. The council shall forward all moneys received under this chapter to the state treasurer for deposit in the corn fund. All moneys in the corn fund are appropriated on a continuing basis to the council to be used exclusively to carry out this chapter.

4.1-04-18. Advisory referendum.

1.
 - a. When petitioned to do so by fifteen percent of the producers, the council shall conduct a referendum among the producers of the state to determine the amount by which the assessment imposed by this chapter 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 determine the date on which in-person voting will take place.
3. The council shall prepare the ballots and make the ballots available to producers at each county extension office in the state.
4. Each ballot must include a statement indicating:
 - a. The date, time, and location at which the council will open and tabulate the ballots; and
 - b. That any producer may be present at the time the ballots are opened and tabulated.
5.
 - a. Beginning no sooner than thirty days before the date established for in-person voting in accordance with subsection 2, the council also shall provide absentee ballots upon request to producers who expect to be absent from their county of residence on the date established for in-person voting in accordance with subsection 2.

- a. Two producers appointed by the governor from a list of nominees submitted by the milk producers association of North Dakota;
 - b. The chairman of the North Dakota division of the midwest dairy association; and
 - c. Two individuals who are members of and elected by the North Dakota division of the midwest dairy association.
2. a. The term of each producer appointed by the governor is two years and must be staggered so that the term of only one producer expires each year.
 - b. The term of each individual who is a member of and elected by the North Dakota division of the midwest dairy association is two years and must be staggered so that the term of only one individual expires each year.
3. Each term of office begins July first.
 4. Whenever an association is required by subsection 1 to submit nominees to the governor, that association shall submit at least two nominees for each position to be filled.

4.1-05-03. Nonvoting members - Appointment. The commission may appoint up to four nonvoting members. The commission shall adopt policies governing the appointments and qualifications of nonvoting members.

4.1-05-04. Election of chairman and officers - Meetings.

1. Annually, the commission shall elect one member to serve as the chairman.
2. The chairman shall call all meetings of the commission and shall call a special meeting of the commission within seven days when petitioned to do so by three commission members.
3. Annually, the commission shall elect other officers, including a vice chairman and a secretary-treasurer.

4.1-05-05. Commission members - Compensation. Each member of the commission is entitled to receive compensation, in the amount established by the commission, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission. The compensation provided for in this section may not be paid to any member of the commission who receives a salary or other compensation as an employee or official of this state if the individual is serving on the commission by virtue of the individual's state office or state employment.

4.1-05-06. Commission - Powers. The commission 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.

4.1-05-07. Commission - Duties. The commission shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include the funding of research, education programs, and market development efforts, to promote the increased sale and consumption of dairy products, as well as participation in programs under the auspices of state, regional, national, and international dairy promotion groups.

4.1-05-08. Assessment - Collection.

1. Each producer must pay an assessment of ten cents per hundredweight [45.36 kilograms] on all milk sold by the producer and on any milk used by the producer to manufacture other products.
2. All assessments imposed by this section:
 - a. Must be collected by the first dealer or processor by deducting the amount of the assessment from the producer's gross receipts; or
 - b. Are payable by the producer upon sale of the milk products by the producer directly to the consumer.

4.1-05-09. Submission of assessments - Civil penalty.

1. Any person in possession of assessments required by this section shall forward the assessments to the commission on or before the final day of the month following the month in which the milk or milk products were marketed.
2. If a person fails to submit the assessments imposed by this chapter to the commission as required by this section, the commission may assess a one-time penalty equal to one and one-half percent of the amount of the assessment.

4.1-05-10. Record retention. Any person responsible for the collection and submission of assessments under this chapter shall keep a record of all gross receipts subject to the assessment. These records must be retained for a period of three years from the date of the transaction and are subject to inspection by the commission.

4.1-05-11. Reports.

1. Any person required by section 4.1-05-10 to keep a record shall:
 - a. Submit to the commission a form indicating:

- (1) The amount of milk that was subject to the assessment during the preceding month; and
 - (2) Any other information that the commission requests; and
- b. Retain a copy of the form for a period of three years from the date of the submission.
2. Any dealer or processor required to submit a form under this section shall make the form available upon request to any producer who sold milk to the dealer or processor.

4.1-05-12. Refund of assessment - Required certification by attorney general.

1. When the attorney general certifies to the commission that refunds of assessments paid in accordance with this chapter are no longer precluded by the Dairy Research and Promotion Act [7 U.S.C. 4501 et seq.] or by any other applicable law, the commission may provide refunds to producers.
2.
 - a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for refund application within sixty days after the date of the assessment or final settlement.
 - b. The producer shall complete the refund application and return the application to the commission, together with a record of the assessment paid, within ninety days after the date of the assessment or final settlement. The commission shall then refund the net amount of the assessment that had been collected.
 - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.

4.1-05-13. Expenditure of funds. The commission shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

4.1-05-14. Continuing appropriation. The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the North Dakota dairy promotion commission fund. All moneys in the North Dakota dairy promotion commission fund are appropriated on a continuing basis to the commission to be used exclusively to carry out this chapter.

4.1-05-15. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

⁵⁰ **SECTION 6.** Chapter 4.1-06 of the North Dakota Century Code is created and enacted as follows:

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

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry bean council.
3. "Designated handler" means any person that initially places dry beans into the channels of trade and commerce or any person that is engaged in the processing of beans into food for human consumption. The term does not include a producer selling the producer's unharvested dry beans or delivering the producer's dry beans from the farm on which they are produced to storage facilities, packing sheds, or processing plants within the state.
4. "Dry beans" mean all varieties of dry beans harvested in this state. The term does not include soybeans.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-06-15 during the preceding twelve months.
6. "Producer" means any person that:
 - a. Plants or causes to be planted a dry bean crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

4.1-06-02. Dry bean districts - Establishment. The state consists of the following six dry bean districts:

1. Cavalier, Pembina, and Towner Counties.
2. Ramsey and Walsh Counties.
3. Grand Forks and Nelson Counties.
4. Griggs, Steele, and Traill Counties.
5. Barnes, Cass, Dickey, Kidder, LaMoure, Logan, McIntosh, Ransom, Richland, Sargent, and Stutsman Counties.

⁵⁰ Section 4.1-06-03 was also amended by section 12 of House Bill No. 1109, chapter 70; section 4.1-06-08 was also amended by section 22 of Senate Bill No. 2242, chapter 72.

6. Adams, Benson, Billings, Bottineau, Bowman, Burke, Burleigh, Divide, Dunn, Eddy, Emmons, Foster, Golden Valley, Grant, Hettinger, McHenry, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Rolette, Sheridan, Sioux, Slope, Stark, Ward, Wells, and Williams Counties.

4.1-06-03. North Dakota dry bean council - Membership - Term.

1. The council consists of one participating producer elected from each of the districts established in section 4.1-06-02 and the commissioner, who is a nonvoting member.
2. Each member of the council must be a United States citizen.
3. Each member of the council, other than the commissioner, must be a resident of and participating producer in the district that the member represents.
4. 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 two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than three consecutive terms. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

4.1-06-04. Election of council member.

1. Each year during the month of February the commissioner shall identify the districts represented by council members whose terms are about to expire.
2.
 - a. The commissioner shall forward to each producer residing in the district a letter inviting the producer to place the producer's own name or the name of another producer into nomination for election to the council.
 - b. The commissioner shall include a statement of eligibility to be completed by the producer seeking election and a nomination petition to be signed by ten other producers.
3. For a name to be placed on the ballot, the statement of eligibility and the nomination petition must be received by the council on the date specified by the commissioner which may not be later than March tenth.
4. The commissioner shall prepare election ballots and mail the ballots to the producers in the district together with a statement indicating:
 - a. The last date by which the ballots must be postmarked or filed with the council;

4.1-06-10. Council - Duties.

1. 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 other state, regional, national, and international commodity councils.
2. The council shall develop and disseminate information regarding the purpose of the dry bean assessment and ways in which the assessment benefits dry bean producers.

4.1-06-11. Designated handler - Certificate.

1. Before a designated handler may sell, process, or ship dry beans, the designated handler shall obtain a certificate from the council.
2. The certificate is available upon submission to the council of an application containing the name under which the designated handler is transacting business within this state, the designated handler's place of business, and the location of loading and shipping places of the designated handler's agents.
 - a. If the designated handler is a corporation, the application must include the corporate name and the names and addresses of the principal officers and agents within this state.
 - b. If the designated handler is a partnership, the application must include the names and addresses of the persons constituting the partnership.
 - c. If the designated handler is a limited liability company, the application must include the name of the limited liability company and the names and addresses of its principal managers and agents within this state.
3. The designated handler shall notify the council whenever there is a change of information required by this section.

4.1-06-12. Assessment.

1. An assessment at the rate of ten cents per hundredweight [45.36 kilograms] must be imposed upon all dry beans grown in this state, delivered into this state, or sold to a designated handler.
2. The assessment imposed by this section does not apply to dry bean seeds nor to dry beans used for purposes other than human consumption.

4.1-06-13. Collection of assessment - Records.

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

2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of raw dry beans for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each designated handler shall file a report stating, in individual and total amounts, the quantity of all dry beans that the handler received, sold, or shipped, and the source of all dry beans that the handler received, sold, or shipped.

4.1-06-14. Submission of assessments - Civil penalty.

1. Each designated handler shall forward to the council all assessments collected by the handler no later than the thirtieth day after the end of each calendar quarter.
2. If a designated handler fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-06-15. Refund of assessment.

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund to the producer the net amount of the assessment that had been collected.
3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

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

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

4.1-06-18. Continuing appropriation. The council shall forward all moneys received under this chapter to the state treasurer for deposit in the dry bean fund. All moneys in the dry bean fund are appropriated on a continuing basis to the council to be used to carry out this chapter.

4.1-06-19. Advisory referendum.

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

4.1-06-20. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

⁵¹ **SECTION 7.** Chapter 4.1-07 of the North Dakota Century Code is created and enacted as follows:

4.1-07-01. Definitions. As used in this chapter:

⁵¹ Section 4.1-07-01 was also amended by section 13 of House Bill No. 1109, chapter 70; section 4.1-07-03 was also amended by section 14 of House Bill No. 1109, chapter 70; section 4.1-07-08 was also amended by section 15 of House Bill No. 1109, chapter 70, and section 23 of Senate Bill No. 2242, chapter 72.

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota dry pea and lentil council.
3. "Dry peas and lentils" include chickpeas, lupins, and fava beans.
4. "First purchaser" means any person accepting for sale or otherwise acquiring dry peas and lentils from a grower after harvest. The term includes a mortgagee, pledgee, lienor, and any person having a claim against the producer, when the actual or constructive possession of dry peas and lentils is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-07-15 for at least three years.
6. "Producer" means any person that:
 - a. Plants or causes to be planted a dry pea and lentil crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

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

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

4.1-07-03. Dry pea and lentil council - Membership - Term.

1. The council consists of one participating producer elected from each district established in section 4.1-07-02 and the commissioner.
2. Each member of the council must be a United States citizen.

3. Each member of the council, other than the commissioner, must be a resident of and participating producer in the district that the member represents.
4. 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 two expire each year.
5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than three consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

4.1-07-04. Election of county representative.

1.
 - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of dry pea and lentil producers for the purpose of electing a county representative.
 - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
 - c. The meeting must be held within the county.
 - d. During the meeting the county extension agent shall conduct the election.
 - e. Any producer who resides in the county may vote in the election.
 - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no dry pea and lentil producers willing to serve as county representatives reside within the county.

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

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-07-04, 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 mail, at least five days before the meeting.
3. The meeting must be held 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 and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

4.1-07-06. Election costs - Responsibility. All costs of holding county and district elections are the responsibility of the council.

4.1-07-07. 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.

4.1-07-08. Council members - Compensation. Except for the agriculture commissioner, 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 officers if the member is attending meetings or performing duties directed by the council.

4.1-07-09. 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. a. Contract with the governmental entity that is responsible for administration of the dry pea and lentil assessment in another state or province and provide for:
 - (1) The return by that governmental entity of any assessment charged on dry peas and lentils grown in this state; and
 - (2) The return by the council of any assessment charged on dry peas and lentils grown in another state or province; and
- b. Contract with any person for any other purpose permitted under this chapter;
5. Sue and be sued; and

6. Do all things necessary and proper to enforce and administer this chapter.

4.1-07-10. Council - Duties.

1. The council shall determine the uses to 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 the United States dry pea and lentil council.
2. The council shall develop and disseminate information regarding the purpose of the dry pea and lentil assessment and ways in which the assessment benefits dry pea and lentil producers.

4.1-07-11. First purchaser - Certificate.

1. Before a first purchaser of dry peas and lentils may sell, process, or ship any dry peas or lentils, the first purchaser shall obtain a certificate from the council.
2. The certificate is available upon submission to the council of an application containing the name under which the first purchaser is transacting business within this state, the first purchaser's place of business, and the location of loading and shipping places of the first purchaser's agents.
 - a. If the first purchaser is a corporation, the application must include the corporate name and the names and addresses of the principal officers and agents within this state.
 - b. If the first purchaser is a partnership, the application must include the name of the partnership and the names and addresses of the persons constituting the partnership.
 - c. If the first purchaser is a limited liability company, the application must include the name of the limited liability company and the names and addresses of its principal managers and agents within this state.
3. The first purchaser shall notify the council whenever there is a change of information required by this section.

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

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

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

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

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

1. Each first purchaser shall forward to the council all assessments collected by the first purchaser no later than the thirtieth day after the end of each calendar quarter.
2. If a first purchaser fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the assessment due, plus interest at the rate of twelve percent per annum from the due date.

4.1-07-15. Refund of assessment.

1. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the council a written request for a refund application within sixty days after the date of the assessment or final settlement.
2. The producer shall complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council then shall refund to the producer the net amount of the assessment that had been collected from the producer.
3. If a request for refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

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

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

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

4.1-07-19. Advisory referendum.

1. a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by

2. If a beekeeper fails to submit the assessment as required by this section, the commissioner may impose a penalty equal to five percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-08-04. Refunds.

1. To receive a refund of any assessment paid in accordance with this chapter, a beekeeper shall obtain an application form from the commissioner within sixty days from the date the commissioner received the assessment required by section 4.1-08-02.
2. The beekeeper shall return the completed form to the commissioner within ninety days from the date the commissioner received the assessment required by section 4.1-08-02.
3. A beekeeper is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

4.1-08-05. Continuing appropriation. The commissioner shall forward all moneys received under this chapter to the state treasurer for deposit in a special fund known as the honey fund. All moneys in the honey fund are appropriated on a continuing basis to the commissioner to carry out this chapter.

4.1-08-06. Assessment - Authorized expenditures. The assessment required by this chapter may be used to fund research, education programs, and market development efforts, as well as promotional efforts such as the North Dakota honey queen program.

4.1-08-07. Commissioner - Powers. The commissioner may:

1. Expend moneys appropriated under this chapter for the purposes set forth in section 4.1-08-06, provided the commissioner first consults with a committee appointed by the North Dakota beekeepers' association; and
2. Do all things necessary and proper to enforce and administer this chapter.

4.1-08-08. Biennial report - Information regarding honey assessments. When compiling the biennial report required by section 54-06-04, the commissioner shall provide information regarding activities under this chapter, including the amount of assessments collected and the manner in which the moneys were expended.

4.1-08-09. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

⁵² **SECTION 9.** Chapter 4.1-09 of the North Dakota Century Code is created and enacted as follows:

4.1-09-01. Definitions. As used in this chapter:

1. "Commissioner" means the agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota oilseed council.
3. "First purchaser" means any person that buys, accepts for shipment, or otherwise acquires oilseeds from a producer. The term includes a mortgagee, pledgee, lienor, and any other person having a claim against a producer if the actual or constructive possession of the oilseed is taken as partial payment or in satisfaction of the mortgage, pledge, lien, or claim.
4. "Oilseeds" include canola, crambe, flax, rapeseed, safflowers, and sunflowers.
5. "Participating producer" means a producer that has not applied for a refund under section 4.1-09-19 during the preceding twelve months.
6. "Producer" means any person that:
 - a. Plants or causes to be planted an oilseed crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

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

1. Cavalier, Grand Forks, Nelson, Pembina, Ramsey, and Walsh Counties.
2. Barnes, Cass, Griggs, Steele, and Traill Counties.
3. Dickey, LaMoure, Ransom, Richland, and Sargent Counties.
4. Burleigh, Emmons, Kidder, Logan, McIntosh, and Stutsman Counties.

⁵² Section 4.1-09-01 was also amended by section 16 of House Bill No. 1109, chapter 70; section 4.1-09-04 was also amended by section 17 of House Bill No. 1109, chapter 70; section 4.1-09-12 was also amended by section 18 of House Bill No. 1109, chapter 70, and section 24 of Senate Bill No. 2242, chapter 72; section 4.1-09-16 was also amended by section 2 of Senate Bill No. 2208, chapter 83.

5. Benson, Eddy, Foster, Pierce, Rolette, Sheridan, Towner, and Wells Counties.
6. Bottineau, Burke, Divide, Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties.
7. Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.

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

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

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

1. The council consists of:
 - a. One participating sunflower producer elected from each of the seven districts established in section 4.1-09-02;
 - b. One participating canola producer elected from each of the three districts established in section 4.1-09-03;
 - c. One participating safflower producer appointed by the governor;
 - d. One participating flax producer appointed by the governor;
 - e. (1) One participating producer of an oilseed other than sunflowers, canola, safflowers, or flax, appointed by the governor; or
(2) One participating producer of any oilseed, appointed by the governor, if the governor is unable to appoint a participating producer who meets the requirements of paragraph 1;
 - f. One individual appointed by the director of the agricultural experiment station; and
 - g. The agriculture commissioner, who is a nonvoting member.
2. Each member of the council who represents a district must be a resident of and participating producer in that district.
3. a. The term of each member who represents a sunflower district is three years and begins on April first following the member's

election. The terms of members who represent sunflower districts must be staggered so that:

- (1) No more than three expire in any one year; and
 - (2) The term of the member who represents Bottineau, Burke, Divide, Renville, McHenry, McLean, Mountrail, Ward, and Williams Counties is identical to that of the member who represents Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Morton, Oliver, Sioux, Slope, and Stark Counties.
- b. The term of each member who represents a canola district is three years and begins on April first following the member's election. The terms of members who represent canola districts must be staggered so that no more than one term expires in any one year.
 - c. The term of each member who is appointed is three years and begins on April first following the member's appointment. The terms of members who are appointed must be staggered so that no more than two expire in any one year.
4. If at any time a member of the council ceases to possess any of the qualifications required by this section, the member's office is deemed vacant.
 - a. If the office was held by an elected member, the remaining members of the council shall appoint another qualified producer for the remainder of the term.
 - b. If the office was held by a gubernatorial appointee, the governor shall appoint another qualified producer.
 - c. If the office was held by an appointee of the director of the agricultural experiment station, the director shall appoint another qualified individual.
 5. A member of the council may not serve more than four consecutive terms.
 6. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

4.1-09-05. Election of county representative - Sunflower producers - Waiver.

1. a. No later than March first of the year in which the term of a council member who represents a sunflower district is to expire, the extension agent for each county in that member's district shall hold a meeting of sunflower producers for the purpose of electing a county representative.
- b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks.

- The last notice must be published no fewer than five nor more than ten days before the meeting.
- c. The meeting must be held within the county.
 - d. During the meeting, the county extension agent shall conduct the election.
 - e. Any participating sunflower producer who resides in the county may vote in the election.
 - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no sunflower producers willing to serve as county representatives reside within the county.

4.1-09-06. Election of county representative - Canola producers - Waiver.

- 1. a. No later than March first of the year in which the term of a council member who represents a canola district is to expire, the extension agent for each county in that member's district shall hold a meeting of canola producers for the purpose of electing a county representative.
 - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
 - c. The meeting must be held within the county.
 - d. During the meeting, the county extension agent shall conduct the election.
 - e. Any participating canola producer who resides in the county may vote in the election.
 - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no canola producers willing to serve as county representatives reside within the county.

4.1-09-07. Election of council member - Sunflower district representative.

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-09-05, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the sunflower district represented by the member whose term is to expire.
2. The director shall notify each county representative in the sunflower district of the meeting, by mail, at least five days before the meeting.
3. The meeting must be held 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 and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

4.1-09-08. Election of council member - Canola district representative.

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-09-06, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the canola district represented by the member whose term is to expire.
2. The director shall notify each county representative in the canola district of the meeting, by mail, at least five days before the meeting.
3. The meeting must be held 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 and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

4.1-09-09. Election costs - Responsibility. All costs of holding county and district elections are the responsibility of the council.

4.1-09-10. Quorum. A majority of the council's voting members constitutes a quorum for the transaction of business.

4.1-09-11. 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.

4.1-09-12. Council members - Compensation. Each member of the council, except the agriculture commissioner and the individual appointed by the director of the agricultural experiment station, 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 officers if the member is attending meetings or performing duties directed by the council.

4.1-09-13. Council - Powers.

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

4.1-09-14. Council - Duties.

1. 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 other state, regional, national, and international oilseed promotion councils.
2. The council shall develop and disseminate information regarding the purpose of the oilseed assessment and ways in which the assessment benefits oilseed producers.

4.1-09-15. First purchaser - Certificate.

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

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

4.1-09-16. Assessment.

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

4.1-09-17. Collection of assessment - Records.

1. The first purchaser shall collect the assessment from the producer by deducting the assessment from the total price of the oilseeds being purchased by the first purchaser.
2. Each first purchaser shall keep documents regarding all purchases, sales, and shipments of oilseeds for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each first purchaser shall file a report stating, in individual and total amounts, the quantity of all oilseeds that the first purchaser received, sold, or shipped.

4.1-09-18. Submission of assessments - Civil penalty.

1. Each first purchaser shall forward to the council all assessments collected by the first purchaser within thirty days after the end of each calendar quarter.
2. If a first purchaser fails to submit the assessments as required by this section, the council may impose a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-09-19. Refund of assessment.

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

3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.
4. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

4.1-09-20. Reimbursement for double payments. Notwithstanding section 4.1-09-19, if a producer documents to the council that the producer has paid the assessment more than once on the same oilseeds, the council shall reimburse the producer for the double payment.

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

4.1-09-22. Continuing appropriation. The council shall forward all moneys received under this chapter to the state treasurer for deposit in the oilseed fund. All moneys in the oilseed fund are appropriated on a continuing basis to the council to carry out this chapter.

4.1-09-23. Advisory referendum.

1.
 - a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by which the assessment imposed by this chapter should be raised or lowered.
 - b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.
2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.
3. Each ballot must include a statement indicating:
 - a. The date on which the petition was filed and the number of signatures on the petition;
 - b. The date, time, and location at which the council will open and tabulate the ballots;
 - c. The last date by which the ballots must be postmarked or filed with the council; and
 - d. That any participating producer may be present at the time the ballots are opened and tabulated.
4. The date selected by the council for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.

5. If the majority of the participating producers voting upon the question are in favor of the proposed change, the council shall submit proposed legislation to the next regular session of the legislative assembly.

4.1-09-24. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

⁵³ **SECTION 10.** Chapter 4.1-10 of the North Dakota Century Code is created and enacted as follows:

4.1-10-01. Definitions. As used in this chapter:

1. "Commissioner" means agriculture commissioner or the commissioner's designee.
2. "Council" means the North Dakota potato council.
3. "Designated handler" means a person that initially places potatoes into the channels of trade and commerce or a person who processes potatoes into food for human consumption.
4. "Participating producer" means a producer that has not gained exemption from the payment of an assessment under this chapter for a particular year or a producer that is not exempt from the payment of an assessment under the terms of this chapter.
5. "Potato" means any variety of Irish potatoes harvested within this state.
6. "Producer" means a person that:
 - a. Plants or causes to be planted, on at least ten acres [4.05 hectares], a potato crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.

4.1-10-02. Potato districts - Establishment. The state consists of the following five potato districts:

1. Cavalier and Pembina Counties;
2. Walsh County in and west of range fifty-four;

⁵³ Section 4.1-10-03 was also amended by section 19 of House Bill No. 1109, chapter 70; section 4.1-10-05 was also amended by section 20 of House Bill No. 1109, chapter 70; section 4.1-10-06 was also amended by section 21 of House Bill No. 1109, chapter 70, and section 25 of Senate Bill No. 2242, chapter 72.

3. Walsh County in and east of range fifty-three;
4. Benson, Grand Forks, and Nelson Counties; and
5. All remaining counties in the state.

4.1-10-03. North Dakota potato council - Membership - Term.

1. The North Dakota potato council is composed of:
 - a. One participating producer elected from each of the five districts established in section 4.1-10-02; and
 - b. The agriculture commissioner, who serves as the chairman.
2. Each member of the council must be a United States citizen.
3. Each member of the council, other than the commissioner, must be a resident of and participating producer in the district that the member represents.
4. The term of each elected member is three years and begins on July first following the member's election. The terms must be staggered so that no more than two expire each year.
5. If at any time during a member's term that member ceases to possess any of the qualifications provided for in this chapter, that member's office is deemed vacant and the council shall appoint another qualified producer for the remainder of the term.
6. An elected member of the council may not serve more than two consecutive terms.
7. If an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

4.1-10-04. Election of council members.

1. Each year during the month of May, the commissioner shall identify the districts represented by council members whose terms are about to expire.
2.
 - a. The commissioner shall forward to each producer residing in the district a letter inviting the producer to place the producer's own name or the name of another producer into nomination for election to the council.
 - b. The commissioner shall include a statement of eligibility to be completed by the producer seeking election and a nomination petition to be signed by five other producers.
3. In order for a name to be placed on the ballot, the statement of eligibility and the nomination petition must be received by the council on the date specified by the commissioner. That date may not be later than May thirty-first.

4. The commissioner shall prepare election ballots and mail the ballots to the participating producers in the district, together with a statement indicating:
 - a. The last date by which the ballots must be postmarked or filed with the council;
 - b. The date, time, and location at which the council will open and tabulate the ballots; and
 - c. That any participating producer may be present at the time the ballots are opened and tabulated.
5. The date selected for the opening and tabulation of ballots must be at least five days after the date by which ballots must be postmarked or filed with the council.
6. After the election, the council 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.

4.1-10-05. Meetings. 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.

4.1-10-06. Council members - Compensation. Each member of the council, except the agriculture commissioner, 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 officers if the member is attending meetings or performing duties directed by the council.

4.1-10-07. Council - Powers.

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

4.1-10-08. Council - Duties.

1. The council shall determine the uses to which any moneys raised under this chapter may be expended. The uses may include funding for research, education programs, transportation issues, and market development efforts, as well as participation in programs under the auspices of state, regional, national, and international promotion groups.
2. The council shall develop and disseminate information regarding the purpose of the potato assessment and ways in which the assessment benefits potato producers.

4.1-10-09. Designated handler - Certification.

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

4.1-10-10. Assessment.

1. Except as otherwise provided, an assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all potatoes grown in this state or sold to a designated handler.
2. The council may increase the assessment by no more than one-half cent per hundredweight [45.36 kilograms] annually until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached.
3. This assessment is not imposed on any potatoes retained by producers for seed or for consumption by the producer, the producer's family, and nonpaying guests.

4.1-10-11. Collection of assessment - Records.

1. Each designated handler shall collect the assessment from the seller by deducting the assessment from the total price of the potatoes purchased by the designated handler.

2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of raw potatoes for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each designated handler shall file a report stating the quantity of potatoes that the designated handler received, sold, or shipped.

4.1-10-12. Submission of assessments - Civil penalty.

1. Each designated handler shall forward to the council all assessments collected by the handler no later than the thirtieth day after the end of each calendar quarter.
2. If a designated handler fails to submit the assessments as required by this section, the council may levy a penalty equal to ten percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-10-13. Refund of assessment - Letters of request.

1. To receive a refund of any assessments paid in accordance with this chapter, a producer shall:
 - a. Between January first and July fifteenth, submit a letter to the council indicating that the producer intends to request a refund of assessments paid on potatoes grown during that calendar year; and
 - b. Between June first and June fifteenth of the calendar year following the date of the letter required by subdivision a, submit a letter to the council requesting the refund of assessments paid by the producer on potatoes grown during the previous calendar year.
2. Upon verification that the requirements of this section have been met, the council shall provide the requested refund to the producer.
3. Notwithstanding subsections 1 and 2, a producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

4.1-10-14. Expenditures. The council shall approve all expenditures made pursuant to this chapter and shall submit an itemized voucher to the office of management and budget for payment.

4.1-10-15. Continuing appropriation. The council shall forward all moneys received under this chapter to the state treasurer for deposit in the potato fund. All moneys in the potato fund are appropriated on a continuing basis to the council for purposes of carrying out this chapter.

4.1-10-16. Advisory referendum.

1. a. When petitioned to do so by fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by

3. "Designated handler" means any person that initially places soybeans into the channels of trade and commerce or any person that processes soybeans into food for human consumption.
4. a. "Producer" means any person that:
 - (1) Plants or causes to be planted a soybean crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - (2) Will have met the requirements of paragraph 1 during the next available growing season; or
 - (3) Has met the requirements of paragraph 1 during the immediately preceding growing season.
- b. The term does not include an organic producer that has been exempted from the payment of assessments, in accordance with federal law.

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.

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

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

4.1-11-04. Election of county representative.

1.
 - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of soybean producers for the purpose of electing a county representative.
 - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
 - c. The meeting must be held within the county.
 - d. During the meeting, the county extension agent shall conduct the election.
 - e. Any producer who resides in the county may vote in the election.
 - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the county extension agent, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no soybean producers willing to serve as county representatives reside within the county.

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

1. Upon receiving the notice required by subdivision f of subsection 1 of 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 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 and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

4.1-11-06. Election costs - Responsibility. All costs of holding county and district elections are the responsibility of the council.

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.

4.1-11-08. Council members - Compensation. Each member of the council, except the agriculture commissioner, 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 officers if the member is attending meetings or performing duties directed by the council.

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.

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.

4.1-11-11. Assessment. An assessment equaling one-half of one percent of the value of the sale must be imposed upon all soybeans sold to a designated handler.

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

1. Each designated handler shall collect the assessment from the seller by deducting the assessment from the purchase price of all soybeans subject to the assessment.
2. Each designated handler shall keep all records regarding the quantity of soybeans received and assessed for a period of three years.
3. All records required by this section may be examined by the council upon request.

4.1-11-13. Quarterly report - Submission to council. At the time and in the manner prescribed by the council, each designated handler shall file with the council a quarterly report stating the quantity of all soybeans that the handler purchased and assessed.

4.1-11-14. Submission of assessments - Civil penalty. Each designated handler shall forward to the council all assessments collected by the handler within thirty days after the end of each calendar quarter. If a designated handler 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.

4.1-11-15. 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.

4.1-11-16. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

SECTION 12. Chapter 4.1-12 of the North Dakota Century Code is created and enacted as follows:

4.1-12-01. Definitions.

1. "Commissioner" means the agriculture commissioner.
2. "Processor" means any person that purchases more than one thousand turkeys each year for slaughter.
3. "Producer" means any person that does business within this state and raises turkeys for slaughter each year.

4.1-12-02. Assessment - Determination.

1. The assessment required by this chapter is determined by:
 - a. Calculating the flock average live weight at the time of delivery to a processor; and
 - b. Calculating the actual number of turkeys in that flock after processing.
2. a. If the actual number of turkeys in a flock after processing had an average live weight of less than eighteen pounds, the assessment is equal to one cent per turkey.

- b. If the actual number of turkeys in a flock after processing had an average live weight of at least eighteen pounds but less than twenty-eight pounds, the assessment is equal to one and one-half cents per turkey.
- c. If the actual number of turkeys in a flock after processing had an average live weight of at least twenty-eight pounds, the assessment is equal to one and three-quarter cents per turkey.

4.1-12-03. Assessment - Collection - Remittance by processor. The processor shall collect the assessment required by this chapter at the time the turkeys are delivered to a processing plant, by deducting the amount required under section 4.1-12-02 from the price paid to the producer.

4.1-12-04. Invoice - Contents - Preparation by processor. At the time turkeys are delivered to a processor, the processor shall prepare and sign an invoice documenting:

1. The name and address of the producer;
2. The name and address of the seller, if the producer is not the seller;
3. The name and address of the processor;
4. The number of turkeys sold in that particular transaction;
5. The assessment collected on that particular transaction; and
6. The date.

4.1-12-05. Submission of assessments - Civil penalty.

1. A processor shall submit all assessments collected under this chapter to the commissioner within thirty days after the conclusion of each calendar quarter.
2. If a processor fails to submit the assessments as required by this section, the commissioner may impose a penalty equal to five percent of the amount due, plus interest at the rate of six percent per annum from the due date.

4.1-12-06. Out-of-state processors. The commissioner may contract with out-of-state processors for the collection and remittance of the assessment required by section 4.1-12-02.

4.1-12-07. Refund of assessment - Form. To receive a refund of any assessment paid in accordance with this chapter, a producer shall obtain an application form from the commissioner within sixty days from the date the producer's turkeys were delivered to a processor. The producer shall return the completed form to the commissioner within ninety days from the date the producer's turkeys were delivered to a processor. The producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.

4.1-12-08. Continuing appropriation. The commissioner shall forward all moneys received under this chapter to the state treasurer for deposit in a special

fund known as the turkey fund. All moneys in the turkey fund are appropriated on a continuing basis to the commissioner to carry out this chapter.

4.1-12-09. Authorized expenditures. The assessment required by this chapter may be used to fund research, education programs, and market development efforts, as well as participation in programs under the auspices of the national turkey federation.

4.1-12-10. Powers of the commissioner. The commissioner may:

1. Expend moneys raised under this chapter for the purposes set forth in section 4.1-12-09, provided the commissioner first consults with a committee appointed by the North Dakota turkey federation;
2. Require a processor to prepare and submit additional information and documents if necessary for the enforcement and administration of this chapter; and
3. Do all other things necessary and proper to enforce and administer this chapter.

4.1-12-11. Biennial report - Information regarding turkey assessments. When compiling the biennial report required by section 54-06-04, the commissioner shall provide information regarding activities under this chapter, including the amount of assessments collected and the manner in which the moneys were expended.

4.1-12-12. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

⁵⁵ **SECTION 13.** Chapter 4.1-13 of the North Dakota Century Code is created and enacted as follows:

4.1-13-01. Definitions. As used in this chapter:

1. "Commercial channels" means the sale of wheat by a producer to any person who resells wheat or any product produced from wheat.
2. "Commission" means the North Dakota state wheat commission.
3. "Final settlement" means:
 - a. The date that wheat upon which a loan was obtained is:
 - (1) Sold to a person other than a governmental entity; or
 - (2) Assigned or transferred to a United States government agency; or

⁵⁵ Section 4.1-13-12 was also amended by section 27 of Senate Bill No. 2242, chapter 72; section 4.1-13-15 was also amended by section 2 of House Bill No. 1402, chapter 84.

- b. The date upon which payment for the wheat is actually made if the wheat is sold in accordance with the terms of a deferred payment contract.
- 4. "First purchaser" means any person buying, accepting for sale, or otherwise acquiring, after harvest, the property in or to wheat, from the producer. The term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer if the actual or constructive possession of wheat is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.
- 5. "Producer" means any person that:
 - a. Plants or causes to be planted a wheat crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested;
 - b. Will have met the requirements of subdivision a during the next available growing season; or
 - c. Has met the requirements of subdivision a during the immediately preceding growing season.
- 6. "Sale" includes any pledge or mortgage of wheat, after harvest, to any person.
- 7. "Wheat" includes all classes of wheat.

4.1-13-02. Wheat districts - Establishment. The state consists of the following six wheat districts:

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

4.1-13-03. Wheat commission - Membership - Eligibility.

- 1. The wheat commission consists of:
 - a. One individual elected from each of the six districts established in section 4.1-13-02; and
 - b. One individual appointed to represent the state at large.

2. Each elected member of the wheat commission must be a resident of the district that the member represents, a qualified elector, and a producer.
3. The member at large must be a resident of this state, a qualified elector, and a producer.
4. Any individual who requested a refund under section 4.1-13-18 during the twelve months preceding the date on which the term being sought would begin is not eligible to serve as a member of the commission.

4.1-13-04. Terms of office.

1. The term of each commission member is four years.
2. The term of an elected member begins on July first following the date of the member's election and continues until the member's successor has been elected and qualified. The term of the member at large begins on July first of the year in which the member is appointed and continues until the member's successor has been appointed.
3. The terms must be staggered so that no more than two expire each year.
4. An individual may not serve more than three terms as a commission member.
5. If an individual is appointed to complete a vacancy, that service is not counted as a term for purposes of this section unless the duration of that service exceeds one year.

4.1-13-05. Election of county representative.

1. No later than May first of the year in which the term of an elected commission member is to expire, the extension agent for each county in that member's district shall hold a meeting of producers for the purpose of electing a county representative.
2. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
3. The meeting must be held within the county.
4. During the meeting, the county extension agent shall conduct the election.
5. Any participating producer who resides in the county may vote in the election.
6. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the commission that the election has taken place, and provide to the director and the commission the name and address of the newly elected county representative.

7. Only those individuals who would be qualified to serve as elected commission members may be elected as county representatives after July 31, 2009.
8. If an individual is unable or unwilling to continue serving as a county representative, the county extension agent may appoint another qualified producer to serve in that capacity, until the next county representative is elected in accordance with this section.

4.1-13-06. Election of district representative - Commission member.

1. Upon receiving the notice required by subsection 6 of section 4.1-13-05, 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 within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the commission member from that district.
5. The director shall notify the governor and the commission that the election has taken place and shall provide to the governor and the commission the name and address of the newly elected commission member.

4.1-13-07. County representative - Additional duties - Reimbursement of expenses. In addition to any other duties established in section 4.1-13-06, the commission may require county representatives to attend meetings for the purpose of promoting commission programs and to perform other duties as directed by the commission. The commission shall reimburse the expenses of county representatives who perform such additional duties in the same manner as that provided by law for state officials.

4.1-13-08. Election costs - Responsibility. All costs of holding county and district meetings and elections are the responsibility of the commission.

4.1-13-09. Member at large - Nominating commission - Appointment by governor.

1. No sooner than sixty days before the term of the commission's member at large is to expire, the agriculture commissioner, serving as the chairman, shall convene a nominating committee consisting of the following individuals:
 - a. The agriculture commissioner;
 - b. The director of the North Dakota agricultural experiment station;
 - c. The president of the North Dakota crop improvement association;
 - d. The president of the North Dakota farm bureau;

- e. The president of the North Dakota farmers union;
 - f. The president of the North Dakota grain dealers association;
 - g. The president of the North Dakota grain growers association;
 - h. The director of the North Dakota state university extension service;
and
 - i. A resident of this state who is a member of, and selected by, the United States durum growers association.
2. The committee shall submit to the governor the names of three individuals who are qualified to serve as a member at large.
 3. Before the member's term is to expire, the governor shall appoint one of the three individuals to serve as the member at large.
 4. Any member of the nominating committee may appoint a designee to carry out the requirements of this section.

4.1-13-10. Commission vacancies.

1. The commission shall declare a member to be ineligible and the member's position vacant if the commission determines that the member no longer meets the qualifications set forth in section 4.1-13-03.
2. The commission may declare a member to be ineligible and the member's position vacant if the commission determines that the member has failed to attend two consecutive commission meetings.
3. If an elected commission member is declared by the commission to be ineligible or is otherwise unable to continue serving for the duration of the term to which the member was elected, the commission shall direct the county representatives to hold an election for the purpose of filling the vacancy. The election must be conducted in the same manner as that provided for under section 4.1-13-06.
4. If the commission member serving at large is declared by the commission to be ineligible or is otherwise unable to continue serving for the duration of the term to which the member was appointed, the commission shall direct the nominating committee to submit the names of three eligible individuals to the governor for the purpose of filling the vacancy. The appointment must be conducted in the same manner as that provided for under section 4.1-13-09.

4.1-13-11. Election of chairman - Meetings.

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

3. The commission shall meet at least once every calendar quarter.

4.1-13-12. Commission members - Compensation. Each member of the commission is entitled to receive compensation in the amount established by the commission, but not exceeding seventy-five dollars per day plus reimbursement for expenses as provided by law for state officers if the member is attending meetings or performing duties directed by the commission.

4.1-13-13. Commission - Powers.

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

4.1-13-14. Commission - Duties.

1. The commission 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 efforts under the auspices of other state, regional, national, and international organizations.
2. The commission shall develop and disseminate information regarding the purpose of the wheat assessment and ways in which the assessment benefits wheat producers.

4.1-13-15. Assessment. An assessment at the rate of twelve mills per bushel [35.24 liters] by weight is imposed upon:

1. All wheat grown in this state, at the time of its sale;
2. All wheat delivered into this state, at the time of its sale; and
3. All wheat sold through commercial channels to a first purchaser in this state.

4.1-13-16. Collection of assessment - Records.

1. The first purchaser shall collect the assessment from the seller by deducting the assessment from the total price of the wheat being

purchased. If the wheat is subject to a lien, pledge, or mortgage, the assessment must:

- a. Be deducted from the proceeds of the loan; or
 - b. The claim must be secured and must be subject to adjustment at the time of settlement if the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
2. At the time of the sale, the first purchaser shall provide a record of the transaction to the seller in the manner prescribed by the commission.

4.1-13-17. Submission of assessments. No later than thirty days after the conclusion of each calendar quarter, each first purchaser shall:

1. Complete and file with the commission a form prescribed by the commission; and
2. Forward to the commission all assessments collected by the first purchaser.

4.1-13-18. Refund of assessment - Form - Exception.

1. a. To receive a refund of any assessment paid in accordance with this chapter, a producer shall submit to the commission a written request for a refund application within sixty days after the date of the assessment or final settlement.
 - b. The producer shall complete the refund application and return the application to the commission, together with a record of the assessment collected within ninety days after the date of the assessment or final settlement. The commission then shall refund the net amount of the assessment that had been collected.
 - c. If a request for a refund is not submitted to the commission within the prescribed time period, the producer is presumed to have agreed to the assessment.
2. A producer is not entitled to a refund under this section unless the refundable amount meets or exceeds five dollars.
3. Notwithstanding subsection 1, a member of the wheat commission is not eligible to receive a refund under this section.

4.1-13-19. Reimbursement for double payments. Notwithstanding section 4.1-13-18, if a producer documents to the commission that the producer has paid the assessment more than once on the same wheat, the commission shall reimburse the producer for the double payment.

4.1-13-20. Expenditure of funds. The commission shall approve all expenditures made pursuant to this chapter. All expenditures must be recorded on vouchers approved by the commission.

4.1-13-21. Continuing appropriation. The commission shall forward all moneys received under this chapter to the state treasurer for deposit in the state

wheat commission fund. All moneys in the state wheat commission fund are appropriated on a continuing basis to the commission to carry out this chapter.

4.1-13-22. Commission - Report to legislative assembly. At the time the commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentation.

4.1-13-23. Contract with trade associations. The commission shall expend an amount at least equal to that raised by two mills of the assessment provided for in section 4.1-13-15 to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from that money all dues required as a condition of the trade association's membership in any national trade association. The contracts must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.

4.1-13-24. Contract with trade associations - Report to legislative assembly. At the time the commission presents the report required by section 4-24-10, each trade association with which the commission has contracted under section 4.1-13-23 shall present a report detailing all activities in which the trade association engaged under the contract.

4.1-13-25. Legal counsel - Provision by attorney general. The attorney general shall provide legal counsel to the commission or designate an assistant for that purpose.

4.1-13-26. Penalty. Any person willfully violating this chapter is guilty of a class B misdemeanor.

SECTION 14. AMENDMENT. Section 36-04-10 of the North Dakota Century Code is amended and reenacted as follows:

36-04-10. Refusal or revocation of license. The department shall refuse to grant a license, or shall revoke a license which it has granted, when it is satisfied that:

1. The applicant or licensee has violated any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. The applicant or licensee has been guilty of deceit, fraud, dishonesty, forgery, or theft as a dealer in livestock or wool, or in dealing therein;
3. The applicant made or caused to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
4. The applicant has failed to keep and maintain suitable records, which disclose all purchases and sales of livestock, or has refused, during reasonable hours, to allow any authorized agent of the department to

- have access to inspect and to copy any and all of such records relating to the dealer's business;
5. The applicant has failed or refused to furnish the information required under this chapter and as prescribed by the department;
 6. The applicant has failed to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
 7. The applicant or licensee has failed to pay brand inspection fees or veterinarian fees as required by law;
 8. The applicant or licensee has failed to collect beef promotion assessments pursuant to chapter ~~4-34~~ 4.1-03; or
 9. The applicant or licensee has failed to pay for livestock purchased. Such failure includes the issuance of a check as payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

SECTION 15. AMENDMENT. Section 36-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

36-04-10.1. Unlawful acts. It is a violation of this chapter for any applicant or licensee to:

1. Violate any of the laws of this state governing the handling, shipment, or transportation of livestock or wool;
2. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
3. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
4. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
5. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-04-07.1;
6. Fail to pay brand inspection fees or veterinarian fees as required by law;
7. Fail to collect beef promotion assessments pursuant to chapter ~~4-34~~ 4.1-03; or
8. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

SECTION 16. AMENDMENT. Section 36-05-13.2 of the North Dakota Century Code is amended and reenacted as follows:

36-05-13.2. Unlawful acts. It is a violation of this chapter for any auction market or person to:

1. Make or cause to be made any false entry or statement of fact in any application, financial statement, or report filed with the department under this chapter;
2. Fail to keep and maintain suitable records that disclose all purchases and sales of livestock or refuse, during reasonable hours, to allow any authorized agent of the department to have access to inspect and to copy any or all of such records relating to the dealer's business;
3. Fail or refuse to furnish the information required under this chapter as prescribed by the department;
4. Fail to notify the commissioner of the receipt of a nonsufficient funds check as required by section 36-05-09.1;
5. Fail to pay brand inspection fees or veterinarian fees as required by law;
6. Fail to collect beef promotion assessments pursuant to chapter ~~4-34~~ 4.1-03; or
7. Fail to pay for livestock purchased. Such failure includes the issuance of a check or payment for livestock purchased, when such check is returned unpaid with a notation that the payment has been refused because of nonsufficient funds.

⁵⁶ **SECTION 17. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding sections 2-05-01, 4-18.1-04, ~~4-27-04~~ 4.1-05-02, 6-01-03, 6-09-02.1, 12-55.1-02, 12-59-01, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23, 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10, 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following boards and commissions must, subject to the limitations of this section, be considered to have resigned from such boards and commissions effective January first of the first year of each four-year term of the governor:
 - a. The aeronautics commission.
 - b. The milk marketing board.
 - c. The dairy promotion commission.
 - d. The state banking board.
 - e. The state credit union board.

⁵⁶ Section 54-07-01.2 was also amended by section 5 of House Bill No. 1042, chapter 65.

- f. The advisory board of directors to the Bank of North Dakota.
- g. The pardon advisory board.
- h. The state parole board.
- i. The state board of public school education.
- j. The education standards and practices board and the administrator's professional practices board.
- k. The board of trustees for the teachers' fund for retirement.
- l. The state game and fish advisory board.
- m. The health council.
- n. The air pollution control advisory council.
- o. The board of animal health.
- p. The administrative committee on veterans' affairs.
- q. The committee on aging.
- r. The committee on employment of people with disabilities.
- s. The commission on the status of women.
- t. The North Dakota council on the arts.
- u. The state historical board.
- v. The Yellowstone-Missouri Rivers confluence commission.
- w. The state water commission.
- x. The state water pollution control board.

SECTION 18. REPEAL. Chapters 4-10.1, 4-10.2, 4-10.3, 4-10.4, 4-10.5, 4-10.6, 4-10.7, 4-12.1, 4-13.1, 4-27, 4-28, and 4-34 of the North Dakota Century Code are repealed.

Approved March 24, 2009
Filed March 24, 2009

CHAPTER 81

SENATE BILL NO. 2203

(Senators Wanzek, Klein, Taylor)

(Representatives D. Johnson, Mueller, Nelson)

AN ACT to amend and reenact section 4-10.4-08 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-02-12 of the North Dakota Century Code, relating to the barley assessment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.4-08 of the North Dakota Century Code is amended and reenacted as follows:

4-10.4-08. Tax levied.

1. A tax at the rate of ~~ten~~ twenty mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state, delivered into the state, or sold to a first purchaser in the state. This tax is due upon any identifiable lot or quantity of barley.
2. Every first purchaser of barley shall collect the tax imposed by this section by charging and collecting from the seller the tax at the rate of ~~ten~~ twenty mills per bushel [35.24 liters] by deducting the tax from the purchase price of all barley subject to the tax and purchased by the first purchaser.
3. Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of barley, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council by the thirtieth day of each calendar quarter stating the quantity of barley received, sold, or shipped by it. The remittance of the tax as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of an account or accounts designated "barley fund" to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.
4. The tax provided for by this section must be deducted as provided by this chapter whether the barley is stored or sold in this or any other state, but if agreements have not been made with dealers and first purchasers outside of the state for collecting the tax, the grower shall remit the tax to the council on all barley sold by the grower outside the state.

⁵⁷ **SECTION 2. AMENDMENT.** Section 4.1-02-12 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-02-12. Assessment. An assessment at the rate of ~~ten~~ twenty mills per bushel [35.24 liters] is imposed upon all barley grown in this state, delivered to this state, or sold to a first purchaser in this state. The assessment does not apply to barley grown by a producer and used by the producer as livestock feed.

Approved April 8, 2009

Filed April 9, 2009

⁵⁷ Section 4.1-02-12 was created by section 2 of House Bill No. 1025, chapter 80.

CHAPTER 82**HOUSE BILL NO. 1413**

(Representatives Mueller, Hofstad, D. Johnson)
(Senators Flakoll, Klein, Taylor)

AN ACT to create and enact a new section to chapter 4-10.6 of the North Dakota Century Code or in the alternative to create and enact section 4.1-04-04.1 of the North Dakota Century Code, relating to corn utilization council elections; and to amend and reenact sections 4-10.6-02 and 4-10.6-08 of the North Dakota Century Code or in the alternative to amend and reenact sections 4.1-04-04 and 4.1-04-10 of the North Dakota Century Code, relating to corn assessments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.6-02 of the North Dakota Century Code is amended and reenacted as follows:

4-10.6-02. North Dakota corn utilization council - Members - Election - Term.

1. The North Dakota corn utilization council must be composed of one member elected from each district established by section 4-10.6-03. The chairman of the council must be a member of the council elected by a majority vote of the council. Each member must be a resident of and participating grower in the district the member represents. The term of each member is four years, beginning on April first of the year of election, except that initially three members must be elected for four-year terms; two members must be elected for three-year terms; and two members must be elected for two-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications required by this chapter, the member's office is deemed vacant and the council shall appoint a qualified participating grower from any district to complete the term of office.
2. ~~The council shall administer conduct all elections and may request the assistance of the commissioner. Elections must be conducted no later than April first of each year. Before the expiration of a member's term, the council shall appoint a nominating committee made up of participating growers who reside in the member's district. The committee shall nominate a resident participating grower as a candidate for the office. Additional candidates may be nominated by a written petition of five growers from the district as follows:~~
 - a. No later than March first of the year in which the term of a council member is to expire, the extension agent for each county in that member's district shall hold a meeting of corn producers for the purpose of electing a county representative.
 - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks.

- The last notice must be published no fewer than five nor more than ten days before the meeting.
- c. The meeting must be held within the county.
 - d. During the meeting, the county extension agent shall conduct the election.
 - e. Any producer who resides in the county and who did not request a refund during the preceding year may vote in the election.
 - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
3. Subsection 2 does not apply if the extension agent for a county, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no corn producers willing to serve as county representatives reside within the county.
 4. No council member may serve more than two consecutive four-year terms.
 5. When a member's office is vacant, the council; ~~before beginning the nominating process,~~ shall notify growers of the vacancy and pending election by letter or by publishing a conspicuous notice of the vacancy, in the official newspaper of every county in the district.

SECTION 2. A new section to chapter 4-10.6 of the North Dakota Century Code is created and enacted as follows:

Election of district representative - Council member.

1. Upon receiving the notice required by subdivision f of subsection 2 of section 4-10.6-02, 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 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 and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

SECTION 3. AMENDMENT. Section 4-10.6-08 of the North Dakota Century Code is amended and reenacted as follows:

4-10.6-08. Assessment. ~~Effective July 1, 1994 Until the commissioner certifies that a national corn checkoff is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel must be levied and imposed upon all corn marketed purchased by the first designated handler in this state, until a national corn checkoff is implemented. This assessment is due upon any identifiable lot or quantity of corn.~~

⁵⁸ **SECTION 4. AMENDMENT.** Section 4.1-04-04 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-04-04. Election of council member county representative.

1. a. No later than ~~January~~ March first of the year in which the term of a council member is to expire, the council shall appoint an nominating committee consisting of at least two producers who reside in the council member's district and who have not requested a refund under section 4.1-04-13 during the preceding year.
2. No later than February first, the committee shall nominate a qualified producer as a candidate for council membership.
3. Other qualified producers may become candidates for council membership by submitting to the council, no later than March first, a petition signed by at least five producers who reside in the district to be represented.
4. a. If a qualified producer submits a petition in accordance with subsection 3, the council shall:
 - (1) Determine the date, time, and place for the election;
 - (2) Publish that information in the official newspaper of each county in the district for two consecutive weeks;
 - (3) Prepare the ballots; and
 - (4) Conduct the election.
- b. If a qualified producer does not submit a petition in accordance with subsection 3, and the only candidate for council membership is the individual recommended by the nominating committee, the council shall waive the election requirements and declare that the individual recommended by the nominating committee is the new council member.
5. Any producer who resides in the district and who did not request a refund under section 4.1-04-13 during the preceding year may vote in the election.

⁵⁸ Section 4.1-04-04 was created by section 4 of House Bill No. 1025, chapter 80.

6. The council shall provide to the governor the name and address of the new council member extension agent for each county in that member's district shall hold a meeting of corn producers for the purpose of electing a county representative.
 - b. The county extension agent shall publish notice of the meeting in the official newspaper of the county for two consecutive weeks. The last notice must be published no fewer than five nor more than ten days before the meeting.
 - c. The meeting must be held within the county.
 - d. During the meeting, the county extension agent shall conduct the election.
 - e. Any producer who resides in the county and who did not request a refund during the preceding year may vote in the election.
 - f. The county extension agent shall canvass the votes, notify the director of the North Dakota state university extension service and the council that the election has taken place, and provide to the director and the council the name and address of the newly elected county representative.
2. Subsection 1 does not apply if the extension agent for a county, in consultation with the executive director of the county farm service agency office, determines and notifies the council that no corn producers willing to serve as county representatives reside within the county.

SECTION 5. Section 4.1-04-04.1 of the North Dakota Century Code is created and enacted as follows:

4.1-04-04.1. Election of district representative - Council members.

1. Upon receiving the notice required by subdivision f of subsection 1 of section 4.1-04-04, 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 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 and the council that the election has taken place and shall provide to the governor and the council the name and address of the newly elected council member.

⁵⁹ **SECTION 6. AMENDMENT.** Section 4.1-04-10 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-04-10. Assessment. Until the commissioner certifies that a national corn checkoff is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel must be imposed upon all corn ~~grown and sold~~ purchased by the first designated handler in this state.

Approved April 8, 2009
Filed April 9, 2009

⁵⁹ Section 4.1-04-10 was created by section 4 of House Bill No. 1025, chapter 80.

CHAPTER 83**SENATE BILL NO. 2208**

(Senators Klein, Dotzenrod, Wanzek)
(Representatives Brandenburg, D. Johnson, Mueller)

AN ACT to amend and reenact section 4-10.2-08 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-09-16 of the North Dakota Century Code, relating to oilseed assessments; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.2-08 of the North Dakota Century Code is amended and reenacted as follows:

4-10.2-08. Assessments levied - Continuing appropriation. An assessment at the rate of ~~three~~ four cents per hundredweight [45.36 kilograms] must be levied and imposed upon all sunflower; ~~and rapeseed or canola grown in this state or sold to a first purchaser. An assessment at the rate of three cents per hundredweight [45.36 kilograms] must be levied and imposed upon all safflower, rapeseed or canola, and~~ and ~~an~~ an assessment at the rate of ~~two~~ three cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of sunflower, safflower, rapeseed or canola, crambe, or flax.

A first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the first purchaser is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first purchaser, the names and addresses of the several persons constituting the firm partnership, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state, and, if a limited liability company, the limited liability company name and the names and addresses of its principal managers and agents within this state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

The first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate specified in this section by deducting the assessment from the purchase price of all sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the first purchaser.

Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable times. Every first purchaser shall report to the council stating the quantity of sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report.

All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving account or accounts designated as the oilseed fund. All money in the oilseed fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

⁶⁰ **SECTION 2. AMENDMENT.** Section 4.1-09-16 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-09-16. Assessment.

1. An assessment at the rate of ~~three~~ four cents per hundredweight [45.36 kilograms] is imposed upon all ~~oilseeds, other than flax,~~ sunflowers and canola grown in this state or sold to a first purchaser.
2. An assessment at the rate of ~~two~~ three cents per bushel [35.24 liters] is imposed upon all flax grown in this state or sold to a first purchaser.
3. An assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all other oilseeds grown in this state or sold to a first purchaser.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2009.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 2009
Filed May 1, 2009

⁶⁰ Section 4.1-09-16 was created by section 9 of House Bill No. 1025, chapter 80.

CHAPTER 84**HOUSE BILL NO. 1402**

(Representatives D. Johnson, Brandenburg, Hofstad, Mueller)
(Senators Taylor, Wanzek)

AN ACT to amend and reenact section 4-28-07.1 of the North Dakota Century Code or in the alternative to amend and reenact section 4.1-13-15 of the North Dakota Century Code, relating to the wheat assessment; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1025 does not become effective, section 4-28-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4-28-07.1. (Effective after June 30, 2009) Wheat tax levy.

1. a. A tax of ~~twelve~~ fifteen mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state, delivered into this state, or sold through commercial channels to a first purchaser in this state.
 - b. The tax must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] is not accurately determined at the time of the lien, pledge, or mortgage.
 - c. At the time of sale, the first purchaser in this state shall issue and deliver to the producer or seller a record of the transaction in the manner prescribed by the commission.
2. a. Any producer who sells wheat to a first purchaser in this state and who is subject to the deduction provided for in this chapter, within sixty days following the deduction or final settlement, may make application by personal letter to the wheat commission for a refund application blank.
 - b. Upon the return of the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected.
 - c. If no request for refund has been made within the period prescribed in this subsection, the producer is presumed to have agreed to the deduction. A producer that, for any reason, has paid the tax more than once on the same wheat, upon furnishing proof of that payment to the commission, is entitled to a refund of the overpayment.

3. To inform the producer, the commission shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in which refunds may be claimed and to this extent shall cooperate with state and federal agencies and private businesses engaged in the purchase of wheat.
4. The commission shall expend an amount at least equal to that raised by two mills of the levy provided for in this section to contract for activities related to domestic wheat policy issues, wheat production, promotion, and sales. The contracts may be with no more than two trade associations that are incorporated in this state and which have as their primary purpose the representation of wheat producers. The contracts must require that any trade association receiving money under this section pay from the money all dues required as a condition of the trade association's membership in any national trade association. The contracts also must prohibit any trade association receiving money under this section from eliminating any dues required as a condition of membership in that trade association or from reducing such dues below the amount required for membership as of January 1, 2005.
5. When the wheat commission presents the report required by section 4-24-10, the commission shall present a separate report detailing the nature and extent of the commission's efforts to address trade and domestic policy issues. The commission may invite other entities with which it has contracted to assist in the presentations.
6. At the time the wheat commission presents the report required by section 4-24-10, each trade association with which the wheat commission has contracted under subsection 4 also shall present a report detailing all activities in which the trade association engaged under the provisions of the contract.

⁶¹ **SECTION 2. AMENDMENT.** Section 4.1-13-15 of the North Dakota Century Code as created by House Bill No. 1025, as approved by the sixty-first legislative assembly, is amended and reenacted as follows:

4.1-13-15. Assessment. An assessment at the rate of ~~twelve~~ fifteen mills per bushel [35.24 liters] by weight is imposed upon:

1. All wheat grown in this state, at the time of its sale;
2. All wheat delivered into this state, at the time of its sale; and
3. All wheat sold through commercial channels to a first purchaser in this state.

SECTION 3. EFFECTIVE DATE. This Act becomes effective on July 1, 2009.

⁶¹ Section 4.1-13-15 was created by section 13 of House Bill No. 1025, chapter 80.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 2009
Filed April 9, 2009

CHAPTER 85**HOUSE BILL NO. 1270**

(Representatives Mueller, Boe, D. Johnson, Wall)
(Senators Dotzenrod, Wanzek)

AN ACT to create and enact a new chapter to title 4.1 of the North Dakota Century Code, relating to the certification of forage; to repeal section 63-01.1-12.2 of the North Dakota Century Code, relating to weed-free certification; to provide an appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 4.1 of the North Dakota Century Code is created and enacted as follows:

Certification of forage - Compliance with other standards.

1. To obtain certification that weeds prohibited according to the standards of the North American weed management association are not cut when producing viable seeds and included in baled forage, the owner of the forage shall request that the agriculture commissioner conduct a certification inspection.
2. Upon receiving the request, the agriculture commissioner shall:
 - a. Inspect the forage acreage within ten days before harvest to verify that weeds prohibited according to the standards of the North American weed management association are not present and producing viable seeds; and
 - b. (1) Ascertain that the scheduled harvest has occurred;
 - (2) Determine the number of bales for which certification tags must be issued; and
 - (3) Verify that the baled forage is stored or will be stored only in an area where weeds prohibited according to the standards of the North American weed management association are not present and producing viable seeds.
3. If the agriculture commissioner determines that the conditions of subsection 2 have been met, the commissioner shall issue and affix or cause to be affixed on each bale of forage one dated certification tag.

Agents of the commissioner - Designation - Training. The agriculture commissioner may designate individuals to serve as agents of the commissioner for the purpose of conducting the inspections permitted by this Act. To be designated as an agent, an individual must:

1. Be a weed control officer;
2. Be a member of a county or a city weed board;

3. Be determined by the commissioner to have a level of education and experience sufficient to accurately perform the requested certifications; or
4. At least once every thirty-six months, successfully complete a training program conducted by the commissioner.

Reciprocal recognition of certification. The agriculture commissioner may contract with any governmental entity that is responsible for the certification of forage in another state or province and provide for the reciprocal recognition of such certifications.

Fees - Continuing appropriation. The agriculture commissioner may set and charge fees for certifying forage in accordance with this chapter. The commissioner shall deposit moneys collected under this chapter in the environment and rangeland protection fund.

SECTION 2. REPEAL. Section 63-01.1-12.2 of the North Dakota Century Code is repealed.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 24, 2009
Filed March 24, 2009

CHAPTER 86**HOUSE BILL NO. 1026**

(Legislative Council)
(Agriculture Committee)

AN ACT to provide for the control of noxious weeds; to amend sections 4-33-11 and 57-15-06.10 of the North Dakota Century Code, relating to pest control and consolidated levies; to repeal chapter 63-01.1 of the North Dakota Century Code, relating to noxious weed control and pest control; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-33-11 of the North Dakota Century Code is amended and reenacted as follows:

4-33-11. Authority for financing local control programs - County pest coordinator.

1. The governing body of any political subdivision may appropriate money for the control of pests under this chapter ~~or chapter 63-01.1~~. If state funds are involved, the money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs ~~that should~~ to be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in this event the governing body, except the governing body of a park district, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, may levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that the levy may not exceed the limitation in subsection 1 of section 57-15-28.1.
2. The board of county commissioners for any county shall designate a ~~person~~ an individual to serve as county pest coordinator. The county weed control officer may serve in that capacity if approved by the board of county commissioners. The county pest coordinator shall administer local and private funds in cooperation with state and federal pest control programs. When state funds are involved, the county pest coordinator shall submit county and township control plans to the agriculture commissioner for approval.

SECTION 2. Definitions. As used in sections 2 through 33 of this Act:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.

2. "City weed control officer" means an individual designated by a city weed board to be responsible for the operation and enforcement of sections 2 through 33 of this Act within the city.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Control" means to prevent a noxious weed from spreading by:
 - a. Suppressing its seeds or propagating parts; or
 - b. Destroying either the entire plant or its propagating parts.
5. "County weed control officer" means an individual designated by the county weed board to be responsible for the operation and enforcement of sections 2 through 33 of this Act within each county.
6. "Noxious weed" means a plant propagated by either seed or vegetative parts and determined to be injurious to public health, crops, livestock, land, or other property by:
 - a. The commissioner in accordance with section 6 of this Act;
 - b. A county weed board in accordance with section 11 of this Act; or
 - c. A city weed board in accordance with section 22 of this Act.
7. "Township road" means an improved public road that is:
 - a. Located outside of an incorporated city;
 - b. Not designated as part of a county, state, or federal-aid road system; and
 - c. Constructed, maintained, graded, and drained by the township, or by the county if the township is unorganized.

SECTION 3. Control of noxious weeds - Responsibility. Each person shall do all things necessary and proper to control the spread of noxious weeds.

SECTION 4. Noxious weed control - Agriculture commissioner - Powers. The commissioner may enter upon any land in the state to perform duties and to exercise powers under sections 2 through 33 of this Act, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

SECTION 5. Noxious weed control - Agriculture commissioner - Duties. The commissioner shall:

1. Maintain a state noxious weed list;
2. Direct the removal of a noxious weed from a county or city noxious weed list if the commissioner, after consultation with the respective weed board and the North Dakota state university extension service,

determines there is insufficient justification for the continued inclusion of that particular noxious weed;

3. Except as otherwise provided, forward all signed complaints to the proper weed control authority; and
4. Call an annual meeting of all weed control officers to review noxious weed control efforts in this state.

SECTION 6. State noxious weed list - Compilation.

1. Before the commissioner may add a weed to or remove a weed from the state noxious weed list, the commissioner shall consult with the North Dakota state university extension service.
2. Before January 1, 2010, and at least every five years thereafter, the commissioner shall review the state noxious weed list. The commissioner shall provide each county and city weed board with at least fourteen days' notice of the time and place at which the list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide each county and city weed board with written notice of any changes to the state noxious weed list.

SECTION 7. County weed board - Members - Terms - Compensation.

1. Each board of county commissioners shall:
 - a. Establish contiguous county weed board member areas; or
 - b. Determine that county weed board members must be appointed at large.
2. The board of county commissioners shall appoint a county weed board consisting of three, five, or seven members. Members shall serve for a term of four years or until their successors are appointed and qualified. The terms must be staggered so that no more than two expire each year.
3. If the board of county commissioners has established county weed board member areas as provided for in subsection 1, any qualified elector residing in the county weed board member area is eligible to represent that area on the board. If the board of county commissioners has determined that county weed board members must be appointed at large as provided for in subsection 1, any qualified elector residing in the county is eligible to serve on the county weed board.
4. A board member shall assume office at the first regular meeting of the county weed board following that member's appointment.
5. The board of county commissioners shall remove a member of the county weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a county weed board, the board of county commissioners, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.

6.
 - a. The county weed board shall elect a chairman and a vice chairman from among its members.
 - b. The county weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
7. The board of county commissioners shall establish the rate of compensation for county weed board members.

SECTION 8. County weed board - Jurisdiction. The jurisdiction of a county weed board extends to all land within the county but does not include any land within the corporate limits of a city if that city has its own noxious weed control program under sections 2 through 33 of this Act.

SECTION 9. County weed board - Powers. A county weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that control efforts would place an extreme financial burden on the landowner.
2. Employ and compensate additional personnel to assist with noxious weed control efforts.

SECTION 10. County weed board - Duties. Each county weed board shall:

1. Implement a program for the control of noxious weeds;
2. Provide for the control of noxious weeds along county and township roads and along county highways;
3. Establish the time and place of regular board meetings;
4. Meet at least once each year;
5. Keep minutes of its board meetings and a complete record of all official acts;
6. Control and disburse all moneys received by the county from any source for noxious weed control;
7.
 - a. Provide for the compensation of its members and its secretary and treasurer;
 - b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees; and
8.
 - a. Employ and provide for the compensation of a weed control officer;
 - b. Reimburse the weed control officer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees.

SECTION 11. County weed board - Development of county weed list.

1. A county weed board may designate as noxious certain weeds that are not on the state noxious weed list, provided the county weed board consults with the North Dakota state university extension service and that the designation is approved by the commissioner.
2. Before January 1, 2010, and at least every five years thereafter, each county weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The county weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, no later than fourteen days after conclusion of the review, shall provide the commissioner with written notice of any changes to the county list.
3. A county weed board shall immediately remove any noxious weed from its list when directed to do so by the commissioner in accordance with section 5 of this Act.

SECTION 12. County weed control officer - Membership on county weed board - Employment.

1. A county weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

SECTION 13. County weed control officer - Powers. A county weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under sections 2 through 31 of this Act, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

SECTION 14. County weed control officer - Duties. The county weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of this chapter within the county;
2. Become acquainted with the location of noxious weeds within the county;
3. Meet the pesticide certification requirements set forth in chapter 4-35;
4. Encourage noxious weed control by all landowners and land occupants within the county;
5. Investigate all signed complaints received by the officer regarding noxious weeds;
6. Post or publish in the official newspaper of the county any notices the commissioner deems necessary to further noxious weed control under sections 2 through 33 of this Act;

7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under sections 2 through 33 of this Act.

SECTION 15. County noxious weed control program - Payment of expenses - Mill levy authorization.

1. The board of county commissioners may pay the expenses of a county noxious weed control program authorized under sections 2 through 33 of this Act from the county general fund, the noxious weed control fund, or both.
2.
 - a. The county weed board may annually certify to the board of county commissioners a tax, not to exceed two mills on the taxable valuation of all property in the county, other than that which lies within the boundaries of a city having a noxious weed control program under sections 2 through 33 of this Act.
 - b. In addition to the levy authorized in subdivision a, the board of county commissioners may levy an amount not to exceed two mills per dollar on the taxable valuation of all property in the county, other than that which lies within the boundaries of a city having a noxious weed control program under sections 2 through 33 of this Act.
 - c. The board of county commissioners shall levy the taxes authorized by this subsection and shall place those moneys in a separate fund designated as the noxious weed control fund, which is used to pay the expenses of a county noxious weed control program.
 - d. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
3. For purposes of this section, the expenses of a county noxious weed control program include compensation for and the reimbursement of expenses incurred by the county weed board, the county weed control officer, and other employees of the board, and expenses incurred in the provision of noxious weed control, as authorized by sections 2 through 33 of this Act.

SECTION 16. State appropriations for noxious weed control - County share - Determination.

1. The commissioner shall consult with the county weed boards and develop a method for the distribution to county weed boards of all moneys appropriated by the state for noxious weed control, other than the landowner assistance grants provided for in section 17 of this Act.
2. The method must:
 - a. Limit the amount that any county weed board is entitled to receive under this section to fifty percent of the board's actual expenditures under this section; and

- b. Allow the commissioner to waive the limit provided for in this subsection if the commissioner determines that a noxious weed is seriously endangering areas of the county or the state.

SECTION 17. State appropriations for noxious weed control - Landowner assistance program.

1. The commissioner shall consult with representatives of county and city weed boards and develop a formula for the distribution to eligible county weed boards and eligible city weed boards of all moneys appropriated by the state for the landowner assistance program.
2. a. The formula must require that county officials budget, from county sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control; provided, however, that this amount does not apply to property that lies within the boundaries of a city having a noxious weed control program under sections 2 through 33 of this Act.
b. The formula must require that city officials budget, from city sources, an amount equal to the revenue that could be raised by a levy of at least three mills for noxious weed control.
3. The formula must require that the landowner contribute an amount equal to at least twenty percent of the cost to be expended on behalf of the landowner. The formula may include payment-in-kind criteria by which the landowner's contribution may be realized.

SECTION 18. Control of noxious weeds within cities. The governing body of any city having a population of three thousand or more may establish a program for the control of noxious weeds within the jurisdictional limits of the city. If a program is not established, the county weed board shall administer a program for the city.

SECTION 19. City weed board members - Terms - Compensation.

1. If the governing body of a city elects to establish a noxious weed control program, as authorized by section 18 of this Act, the governing body shall appoint a weed board consisting of three, five, or seven members.
2. The term of office for a board member is four years or until a successor is appointed and qualified. The terms must be staggered so that no more than two expire each year.
3. Any qualified elector residing within the city is eligible to serve on the board.
4. A board member shall assume office at the first regular meeting of the city weed board following the member's appointment.
5. The governing body of the city shall remove a member of the city weed board for repeated unexcused failures to attend meetings, for refusal to act as a board member, or for incapacity. If a vacancy occurs on a city weed board, the governing body of the city, at its next regular meeting, shall appoint an individual who possesses the necessary qualifications to fill the unexpired term.

6. The city weed board shall elect a chairman and a vice chairman from among its members.
7. The city weed board shall appoint a secretary and a treasurer. The secretary and treasurer need not be members of the board.
8. The governing body of the city shall establish the rate of compensation for city weed board members.

SECTION 20. City weed board - Powers. A city weed board may:

1. Expend funds from all available sources if it determines that the extent of noxious weed infestation on certain land is so severe that undertaking control efforts would place an extreme financial burden on the landowner.
2. Employ and compensate additional personnel to assist with noxious weed control efforts.

SECTION 21. City weed board - Duties. Each city weed board shall:

1. Implement a program for the control of noxious weeds;
2. Establish the time and place of regular board meetings;
3. Meet at least once each year;
4. Keep minutes of its meetings and a complete record of all official acts;
5. Control and disburse all moneys received by the city from any source for noxious weed control;
6.
 - a. Provide for the compensation of its members and its secretary and treasurer;
 - b. Reimburse its members and its secretary and treasurer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees; and
7.
 - a. Employ and provide for the compensation of a weed control officer;
 - b. Reimburse the weed control officer for actual and necessary expenses; and
 - c. Provide a mileage allowance at the same rate as that established for state employees.

SECTION 22. City weed board - Development of city weed list - Review - Removal.

1. A city weed board may designate as noxious certain weeds that are not on the state or county noxious weed list, provided the city weed board first consults with the North Dakota state university extension service and that the designation is approved by the commissioner.

2. Before January 1, 2010, and at least every five years thereafter, each city weed board shall review its noxious weed list and, by majority vote, may remove any weed from its list. The city weed board shall provide the commissioner with at least fourteen days' notice of the time and place at which its list will be reviewed and, within fourteen days of the review, shall provide the commissioner with written notice of any changes to the city list.
3. A city weed board immediately shall remove any noxious weed from the board's list when directed to do so by the commissioner in accordance with section 5 of this Act.

SECTION 23. City weed control officer - Membership on city weed board - Employment.

1. A city weed control officer may serve as a member of the weed control board by which the officer is employed if the officer is otherwise qualified to do so.
2. An individual may be employed as a weed control officer by several weed boards simultaneously.

SECTION 24. City weed control officer - Powers. A city weed control officer may enter upon any land within the jurisdiction of the officer to perform duties and to exercise powers under sections 2 through 33 of this Act, including taking specimens of weeds or other materials, without the consent of the landowner or other person responsible for the land and without being subject to any action for trespass or damages, provided reasonable care is exercised.

SECTION 25. City weed control officer - Duties. The city weed control officer shall:

1. Cooperate with the board and be responsible for the operation and enforcement of sections 2 through 33 of this Act within the city;
2. Become acquainted with the location of noxious weeds within the city;
3. Meet the pesticide certification requirements set forth in chapter 4-35;
4. Encourage noxious weed control by all landowners and land occupants within the city;
5. Investigate all signed complaints received by the officer regarding noxious weeds within the city;
6. Post or publish in the official newspaper of the city any notices the commissioner deems necessary to further noxious weed control under sections 2 through 33 of this Act;
7. Prepare reports as requested by the commissioner; and
8. Attend meetings called by the commissioner to further noxious weed control under sections 2 through 33 of this Act.

SECTION 26. City noxious weed control program - Payment of expenses - Mill levy authorization.

1. The governing body of a city may pay the expenses of a city noxious weed control program authorized under sections 2 through 33 of this Act from the city general fund, the noxious weed control fund, or both.
2.
 - a. The city weed board may annually certify to the governing body of a city a tax, not to exceed two mills on the taxable valuation of all property in the city.
 - b. In addition to the levy authorized in subdivision a, the governing body of a city may levy an amount not to exceed two mills per dollar on the taxable valuation of all property in the city.
 - c. The governing body of a city shall levy the taxes authorized by this subsection and shall place those moneys in a separate fund designated as the noxious weed control fund, which is used to pay the expenses of a city noxious weed control program.
 - d. The tax may be levied in excess of the mill levy limit prescribed by law for general purposes.
3. For purposes of this section, the expenses of a city noxious weed control program include compensation for and the reimbursement of expenses incurred by the city weed board, the city weed control officer, and other employees of the board, and expenses incurred in the provision of noxious weed control, as authorized by sections 2 through 33 of this Act.

SECTION 27. Publicly owned land - Noxious weed control. Each state agency shall provide for the control of noxious weeds on land within its jurisdiction. If a state agency fails to control noxious weeds on land under its jurisdiction, the county weed board, upon approval of the commissioner, may enter upon the land to control the noxious weeds. The state agency shall reimburse the county weed board for expenses incurred in controlling the noxious weeds, within thirty days after the agency receives the bill.

SECTION 28. Noxious weed control - Enforcement responsibilities of other agencies. Law enforcement agents shall cooperate with the commissioner, a weed control board, and a weed control officer for the purpose of enforcing sections 2 through 33 of this Act.

SECTION 29. Entry upon land for noxious weed control purposes - Notices - Landowner rights - Remedial requirements - Liens.

1.
 - a. If a county weed officer determines that any land other than that referenced in subsection 2 contains noxious weeds, the county weed control officer may serve upon the landowner written notice, either personally or by certified mail, requiring the landowner to control the noxious weeds within the time period prescribed by the county weed control officer.
 - b. The notice must:
 - (1) Specify the minimal remedial requirements;

- (2) Specify the time within which the landowner must meet the minimum remedial requirements;
 - (3) Specify that the landowner may be subject to penalties provided under sections 2 through 33 of this Act if the landowner fails to comply with the remedial requirement;
 - (4) Include a statement of costs if the landowner fails to control the noxious weeds and the city weed officer must provide for control of the weeds; and
 - (5) Provide that the landowner may stay any efforts by the city weed officer to control noxious weeds on the land, by requesting in writing that the city weed board hold a hearing on the matter.
- c. The city weed officer shall deliver a copy of the notice personally or forward a copy of the notice by certified mail to any tenant, lessee, or operator of the land on which the noxious weeds are located.
 - d. If the landowner does not meet the minimum remedial requirements within the time specified in the notice and does not request a hearing on the matter by the city weed board, the city weed control officer may cause the noxious weeds to be controlled and the expenses charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.
 - e. If after holding a hearing on the matter the city weed board directs that the noxious weeds be controlled by the city weed officer, the landowner may appeal the decision to the governing body of the city. A decision by the governing body is final.
 - f. If the landowner does not appeal the decision to the governing body of the city, or if the governing body of the city upholds the decision of the city weed board, the city weed control officer may cause the noxious weeds to be controlled and any expenses incurred by the city weed officer in controlling the weeds must be charged against the land of the landowner. These expenses are part of the taxes to be levied against the land for the ensuing year and must be collected in the same manner as other real estate taxes.

SECTION 30. Quarantine - Declaration - Hearing - Penalty.

1. If the commissioner determines that a quarantine of this state or any portion thereof may be necessary to prevent the spread of noxious weeds, the commissioner shall schedule a public hearing on the matter and provide notice of the hearing by publishing its time, place, and date in the official newspaper of each county having land within the area of the proposed quarantine. If after the hearing the commissioner orders the imposition of a quarantine, the order must include the date by which or the circumstances under which the commissioner shall lift the quarantine order.

2. If the commissioner determines that the imposition of an emergency quarantine is necessary to prevent the spread of noxious weeds, the commissioner may impose such an order for a period not to exceed fourteen days. Within the fourteen-day period, the commissioner shall hold a public hearing as provided for in subsection 1 and determine whether a quarantine order under subsection 1 should be imposed.
3. Following the establishment of a quarantine, the movement of any product or material described in the quarantine order is subject to the order.
4. Any person who violates a quarantine order issued under this section is guilty of a class B misdemeanor.

SECTION 31. Preventing the dissemination of noxious weeds - Penalty.

1.
 - a. A person may not willfully transport any material that contains noxious weed seeds or propagating parts, on a public road, in a manner that allows for the dissemination of noxious weeds.
 - b. A person may not willfully drive or transport any equipment, on a public road, in a manner that allows for the dissemination of noxious weeds.
 - c. A person may not willfully dispose of any material that contains noxious weed seeds or propagating parts in a manner that allows for the dissemination of noxious weeds.
2. Any person who violates this section is guilty of a class B misdemeanor.

SECTION 32. Civil penalty.

1.
 - a. In addition to any other penalties provided for in sections 2 through 33 of this Act, a person who violates sections 2 through 33 of this Act or any rules adopted under this chapter is subject to a civil penalty in an amount not to exceed eighty dollars per day for each day of violation, subject to a maximum penalty of four thousand dollars per year.
 - b. Penalties imposed upon a landowner for failing to comply with the remedial requirements, as set forth in section 29 of this Act, are a lien against the property of the landowner from the day the notice is delivered to the landowner under section 29 of this Act.
2. All penalties collected under this section must be credited to the noxious weed control fund of:
 - a. The city in which the violation occurred if the city has a noxious weed control program under sections 2 through 33 of this Act; or
 - b. The county in which the violation occurred.
3. Any penalties provided for under this section may be adjudicated by a court, a county weed board, or a city weed board after a hearing.

4. An aggrieved person may appeal the imposition of a penalty by a county weed board to the board of county commissioners. An aggrieved person may appeal the imposition of a penalty by a city weed board to the governing body of the city.

SECTION 33. Action on complaint - Request for hearing.

1.
 - a. If an individual filed a signed complaint with a county weed board or the county weed control officer and if the individual believes that the complaint has not been addressed satisfactorily within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the board of county commissioners.
 - b. Upon receiving a request for a hearing, the board of county commissioners shall schedule a public hearing within twenty-one days and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.
 - c. Within fourteen days after the hearing, the board of county commissioners shall issue a determination regarding the matter and shall issue appropriate directives to the county weed board.
 - d. A decision by the board of county commissioners under this section is final.
2.
 - a. If an individual filed a signed complaint with a city weed board or the city weed control officer and if the individual believes that the complaint has not been addressed satisfactorily within twenty-one days from the date of the complaint, the individual may file a written request for a hearing with the governing body of the city.
 - b. Upon receiving a request for a hearing, the governing body of the city shall schedule a public hearing and shall provide notice of the hearing by publishing its time, place, and date in the official newspaper of the county.
 - c. Within fourteen days after the hearing, the governing body of the city shall issue a determination regarding the matter and shall issue appropriate directives to the city weed board.
 - d. A decision by the governing body of the city under this section is final.

SECTION 34. AMENDMENT. Section 57-15-06.10 of the North Dakota Century Code is amended and reenacted as follows:

57-15-06.10. Optional consolidation of county mill levies.

1. In lieu of determining its general fund levy limitation under section 57-15-01.1 or 57-15-06, a county may determine its general fund levy authority as provided in this section. A county may consolidate the levies provided for under sections 4-02-26, 4-02-27, 4-02-27.1, 4-02-27.2, 4-02-37, 4-08-15, 4-08-15.1, 4-16-02, 4-33-11, 11-11-24, 11-11-53, 11-11-60, 11-11-65, 11-11.1-06, 11-28-06, 18-07-01, 24-05-01, 32-12.1-08, 40-38-02, 40-57.2-04, 49-17.2-21, 52-09-08,

57-15-06.4, 57-15-06.5, 57-15-06.6, 57-15-06.9, 57-15-10.1, 57-15-27.2, 57-15-54, 57-15-59, 57-47-04, and 61-04.1-26; and ~~63-04.1-06~~ section 15 of this Act, with its general fund levy under section 57-15-06 to provide for a county general fund levy which may not exceed one hundred thirty-four mills on the dollar of taxable valuation of the county. A county that elects to determine its general fund levy authority under this section may not impose separate levies under the sections listed in this subsection and may not increase the number of mills levied in any one year over the number levied in the previous year by more than the increase in the consumer price index for all urban consumers, all items, United States city average, as completed by the United States department of labor, bureau of labor statistics.

2. The consolidation of mill levies under subsection 1 may be accomplished by resolution of the board of county commissioners, subject to the right of referendum by the county electors. The board of county commissioners may by majority vote adopt a preliminary resolution providing for the consolidated levy. The board shall publish the preliminary resolution in the official newspaper of the county, at least once during two different weeks within the thirty-day period immediately following the adoption of the preliminary resolution. The board of county commissioners shall hold at least one public hearing and receive comments regarding the consolidation of mill levies. The preliminary resolution may be referred to the qualified electors of the county by a petition protesting the consolidation. The petition must be signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election, and filed with the county auditor before four p.m. on the ninetieth day after the preliminary resolution is adopted. If the petition contains the signatures of a sufficient number of qualified electors, the board of county commissioners shall rescind the preliminary resolution or submit the resolution to a vote of the qualified electors of the county at the next regular election or at a special election called by the board of county commissioners to address the question. If a majority of the qualified electors voting on the question approve the resolution, the consolidation becomes effective for the next tax year and subsequent tax years. If a petition protesting the consolidation is not submitted within ninety days, the board of county commissioners shall consider the comments received regarding the consolidation and either adopt a final resolution implementing the consolidation or rescind the preliminary resolution. The consolidation of mill levies may be reversed by resolution of the board of county commissioners following the same procedure provided for implementation of the consolidation or by a majority vote of the qualified electors of the county voting on the question pursuant to submission of a petition to reverse the consolidation signed by ten percent or more of the total number of qualified electors of the county voting for governor at the most recent gubernatorial election.
3. A contractual obligation entered by a county with respect to a dedicated mill levy may not be impaired as a result of consolidation of levies under this section.

SECTION 35. Chapter 63-01.1 of the North Dakota Century Code is repealed.

Approved April 15, 2009
Filed April 15, 2009