

AGRICULTURE

CHAPTER 56

HOUSE BILL NO. 1383

(Representatives Brandenburg, Boe, Headland, Howe, D. Johnson, Schmidt)
(Senators Dotzenrod, Erbele, Luick, J. Roers, Rust, Wanzek)

AN ACT to create and enact a new section to chapter 4.1-01 and a new section to chapter 49-22 of the North Dakota Century Code, relating to the creation of an environmental impact mitigation fund and to mitigating direct environmental impacts; to amend and reenact subsection 1 of section 4.1-01-18, sections 49-22-05.1 and 49-22-09, and subsection 4 of section 49-22-16 of the North Dakota Century Code, relating to the federal environmental law impact review committee, exclusion and avoidance areas, the factors considered by the public service commission when evaluating and designating sites, corridors, and routes, and state agency rules; to provide for a report to the legislative management; to provide an appropriation; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4.1-01-18 of the North Dakota Century Code is amended and reenacted as follows:

1. The federal environmental law impact review committee consists of:
 - a. The commissioner, who shall serve as the chairman;
 - b. The governor or the governor's designee;
 - c. The majority leader of the house of representatives, or the leader's designee;
 - d. The majority leader of the senate, or the leader's designee;
 - e. One member of the legislative assembly from the minority party, selected by the chairman of the legislative management;
 - f. ~~One individual appointed by the lignite energy council;~~
 - g. One individual appointed by the North Dakota corn growers association;
 - ~~h-g.~~ One individual appointed by the North Dakota grain growers association;
 - i. ~~One individual appointed by the North Dakota petroleum council;~~
 - ~~j-h.~~ One individual appointed by the North Dakota soybean growers association; and

- k.i. One individual appointed by the North Dakota stockmen's association;
- j. One individual appointed by the North Dakota farm bureau;
- k. One individual appointed by the North Dakota farmers union;
- l. The chairman of the public service commission or the chairman's designee;
- m. The state engineer or the state engineer's designee;
- n. The director of the game and fish department, or the director's designee;
- o. The director of the department of transportation, or the director's designee;
- p. The director of the department of environmental quality, or the director's designee;
- q. One representative of an investor-owned utility company;
- r. One representative from the North Dakota association of rural electric cooperatives; and
- s. Two individuals from the energy community appointed by the commissioner.

SECTION 2. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Environmental impact mitigation fund - Report to legislative management - Continuing appropriation.

1. The fund is created in the state treasury the environmental impact mitigation fund. The fund consists of all moneys deposited in the fund under section 5 of this Act. All moneys in the fund are appropriated to the commissioner on a continuing basis for distribution by the agriculture commissioner to landowners for the mitigation of agricultural land impacted by development as set forth under subsection 2.
2. Funding may be used only for:
 - a. Contracting for consultation with environmental scientists or engineers for relevant services to implement mitigation required from the impact of development; and
 - b. Reclamation or mitigation of adverse impacts from development.
3. The commissioner is not subject to chapter 54-44.4 when contracting for services under this chapter.
4. The federal environmental law impact review committee shall establish criteria for disbursement of environmental impact funds.
5. The commissioner shall make disbursements based upon the determinations made by the federal environmental law impact review committee.

6. For purposes of this section, the federal environmental law impact review committee shall hold meetings as the chairman determines necessary at a time and place set by the chairman. Upon written request of any four members, the presiding officer shall call a special meeting of the committee.
7. The federal environmental law impact review committee shall make determinations for the disbursement of grants in accordance with subsection 2 and provide those determinations to the commissioner.
8. The federal environmental law impact review committee shall provide a biennial report to the legislative management.
9. For purposes of this section, the environmental impact mitigation fund is not subject to subsection 2 of section 4.1-01-18.

SECTION 3. AMENDMENT. Section 49-22-05.1 of the North Dakota Century Code is amended and reenacted as follows:

49-22-05.1. Exclusion and avoidance areas - Criteria.

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.
2. The commission may not identify prime farmland, unique farmland, or irrigated land as exclusion or avoidance areas when evaluating and designating geographical areas for site, corridor, or route suitability.
3. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.
- ~~3-4.~~ Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

SECTION 4. AMENDMENT. Section 49-22-09 of the North Dakota Century Code is amended and reenacted as follows:

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

1. The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:
 1. a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
 2. b. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
 3. c. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
 4. d. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
 5. e. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
 6. f. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
 7. g. The direct and indirect economic impacts of the proposed facility.
 8. h. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
 9. i. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
 10. j. The effect of the proposed site or route on areas ~~which are~~ unique because of biological wealth or because ~~they~~the areas are habitats for rare and endangered species.
 11. k. Problems raised by federal agencies, other state agencies, and local entities.
2. The commission may not condition the issuance of a certificate or permit on the applicant providing a mitigation payment assessed or requested by another state agency or entity to offset a negative impact on wildlife habitat.

SECTION 5. A new section to chapter 49-22 of the North Dakota Century Code is created and enacted as follows:

Mitigating direct environmental impacts.

1. An applicant may elect to provide payment to mitigate any assessed adverse direct environmental impacts of a proposed site, corridor, route, or facility. The applicant may elect to provide the payment to the agriculture commissioner.

2. The agriculture commissioner shall deposit into the environmental impact mitigation fund any moneys paid to mitigate the adverse direct environmental impacts of a proposed site, corridor, route, or facility.

¹⁸ **SECTION 6. AMENDMENT.** Subsection 4 of section 49-22-16 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~No~~ A site or route shall may not be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at least thirty days before the public hearing on an application for a certificate, a permit, or a waiver, which position ~~shall~~ must clearly state whether the site, corridor, or route being considered for designation will be in compliance with ~~such~~ the agency's rules. For purposes of this chapter it ~~shall be~~ is presumed that a proposed facility will be in compliance with a state agency's rules if ~~such~~ the agency fails to present its position on the proposed site, corridor, or route at least thirty days before the appropriate public hearing.

SECTION 7. APPROPRIATION. There is appropriated out of any moneys in the environmental impact mitigation fund in the state treasury, not otherwise appropriated, the sum of \$5,000,000, or so much of the sum as may be necessary, to the agriculture commissioner for the purpose of providing grants to political subdivisions for the mitigation of environmental impacts, for the biennium beginning July 1, 2019, and ending June 30, 2021.

Approved April 24, 2019

Filed April 24, 2019

¹⁸ Section 49-22-16 was also amended by section 3 of Senate Bill No. 2038, chapter 389.

CHAPTER 57

SENATE BILL NO. 2224

(Senators Wanzek, Meyer, Sorvaag)
(Representatives Keiser, Sanford, Schreiber-Beck)

AN ACT to create and enact a new section to chapter 4.1-01 of the North Dakota Century Code, relating to a bioscience innovation grant program; to amend and reenact sections 54-65-01, 54-65-06, and 54-65-07 of the North Dakota Century Code, relating to research North Dakota; to repeal section 10-30.5-14, chapters 15-69 and 54-65, and sections 54-65-02, 54-65-03, 54-65-04, and 54-65-05 of the North Dakota Century Code, relating to the centers of excellence, centers of research excellence, and research North Dakota; to provide a continuing appropriation; to provide an appropriation; to provide for a transfer; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

Bioscience innovation grant program - Continuing appropriation.

1. The commissioner shall collaborate with a local association having bioscience experience to develop and administer a bioscience innovation grant program through the bioscience innovation grant fund. The commissioner shall collaborate with the department of commerce when awarding bioscience innovation grants to coordinate the management of the commissioner's bioscience innovation grant program and the department of commerce's biotechnology grant program.
2. The commissioner shall collaborate with the committee established under subsection 5 to adopt rules and criteria necessary to administer the bioscience innovation grant program. The rules must include criteria for program eligibility, including requiring a bioscience business that receives funding through the program match up to fifty percent of the amount of the grant received.
3. The bioscience innovation grant fund is a special fund created in the state treasury. Moneys in the fund are appropriated on a continuing basis to the commissioner to award grants to:
 - a. Support biotechnology innovation and commercialization in areas including crop genetics, biofuels, biomaterials, biosensors, and biotechnology in relation to food, nutrition, animals, humans, equipment, medical and health products and services, medical diagnostics, medical therapeutics, and farm-based pharmaceuticals;
 - b. Promote the creation of bioscience jobs in the state to be filled by graduates from institutions under the control of the state board of higher education;

- c. Encourage the development of new bioscience technologies and bioscience startup companies in the state;
 - d. Leverage the agriculture industry in the state to support the development of bioscience technologies impacting livestock operations and crop production;
 - e. Promote bioscience research and development at institutions under the control of the state board of higher education; and
 - f. Encourage coordination and collaboration among other entities and programs in the state to promote bioscience innovation goals.
4. A bioscience business operating in the state is eligible to receive a grant under the program if the business:
- a. Employs at least two employees;
 - b. Has documented annual sales of less than two million five hundred thousand dollars; and
 - c. Is a corporation, partnership, limited liability company, limited partnership, or limited liability partnership registered in the state.
5. The bioscience innovation program shall award grant funding through a committee consisting of:
- a. One representative from the department of agriculture appointed by the agriculture commissioner;
 - b. One representative from the bioscience association of North Dakota appointed by the board of the bioscience association of North Dakota; and
 - c. One representative from the department of commerce appointed by the commissioner of the department of commerce.
6. Grant funds awarded under this section may not be used for capital improvements, academic programming or curriculum, or workforce training.

SECTION 2. AMENDMENT. Section 54-65-01 of the North Dakota Century Code is amended and reenacted as follows:

54-65-01. Definitions.

In this chapter, unless the context otherwise requires:

- 1. ~~"Center" means a center of research excellence that has been designated under this chapter.~~
- 2. ~~"Commission" means the centers of excellence commission as defined under chapter 15-69.~~
- 3. ~~"Department" means the department of commerce.~~
- 4. ~~"Industry cluster" means one of the following industries:~~

- a. ~~Advanced manufacturing;~~
 - b. ~~Energy;~~
 - c. ~~Information and technology;~~
 - d. ~~Value-added agriculture; or~~
 - e. ~~An industry, including the aerospace industry, specifically identified by the department of commerce as an industry that will contribute to the gross state product.~~
5. ~~"Infrastructure" means new building construction or major building renovation. The term does not include a purchase of equipment or remodel of an existing building.~~
- 6-2. "Research university" means an institution under the control of the state board of higher education which has a full-time student enrollment in excess of nine thousand students.

SECTION 3. AMENDMENT. Section 54-65-06 of the North Dakota Century Code is amended and reenacted as follows:

54-65-06. Research North Dakota grants.

The department shall establish and administer a research North Dakota grant program to provide grants to a research university for research, development, and commercialization activities related to a private sector partner. ~~The centers of excellence commission, established under chapter 15-69,~~ department shall make grant award determinations under this section. ~~The department shall work with the centers of excellence commission in establishing~~ establish guidelines to qualify for a grant under this section, including the requirement that an application must be accompanied by a partnership agreement between the private sector partner and a research university. The agreement must include details regarding the scope of the work, the budget, the location of the work to be completed, the intellectual property ownership rights, and the intellectual property income distribution. ~~The commission~~ department may approve changes to the scope of the work or the budget only to the extent that the changes are agreed upon by the private sector partner and the research university. ~~Before the commission directs the department to distribute~~ distributes funds awarded under this section, the research university shall provide the ~~commission~~ department with detailed documentation of private sector participation and the availability of one dollar of matching funds for each dollar of state funds to be distributed. Matching funds must be in the form of cash and may not include in-kind assets.

SECTION 4. AMENDMENT. Section 54-65-07 of the North Dakota Century Code is amended and reenacted as follows:

54-65-07. Research North Dakota venture grants.

The department shall establish and administer a research North Dakota venture grant program to provide grants to a research university for pursuing further commercialization of technology developed by the research university or developed jointly by the research university and a startup or spinoff business operating in North Dakota. ~~The department shall collaborate with the centers of excellence commission in establishing~~ establish guidelines to qualify for a grant under this section.

SECTION 5. REPEAL. Section 10-30.5-14 and chapter 54-65 of the North Dakota Century Code are repealed.

SECTION 6. REPEAL. Chapter 15-69 and sections 54-65-02, 54-65-03, 54-65-04, and 54-65-05 of the North Dakota Century Code are repealed.

SECTION 7. TRANSFER - CENTERS OF EXCELLENCE FUND AND CENTERS OF RESEARCH EXCELLENCE FUND TO THE RESEARCH NORTH DAKOTA FUND. The office of management and budget shall transfer any balance in the centers of excellence fund and the centers of research excellence fund to the research North Dakota fund on July 1, 2019.

SECTION 8. TRANSFER - RESEARCH NORTH DAKOTA FUND TO BIOSCIENCE INNOVATION GRANT FUND. The director of the office of management and budget shall transfer the sum of \$700,000, from the research North Dakota fund to the bioscience innovation grant fund during the biennium beginning July 1, 2019, and ending June 30, 2021. Of the funds transferred in this section, up to \$200,000 may be awarded to entities providing assistance to develop bioscience companies.

SECTION 9. TRANSFER - RESEARCH NORTH DAKOTA FUND TO THE STATE GENERAL FUND. Notwithstanding the amount appropriated in section 8 of this Act, the office of management and budget shall transfer any balance in the research North Dakota fund to the state general fund on June 30, 2021.

SECTION 10. EFFECTIVE DATE. Section 5 of this Act becomes effective July 1, 2021.

Approved April 25, 2019

Filed April 26, 2019

CHAPTER 58

SENATE BILL NO. 2328

(Senators Klein, Elkin, Holmberg, Luick)
(Representatives D. Johnson, Schreiber-Beck)

AN ACT to create and enact a new chapter to title 4.1 of the North Dakota Century Code, relating to the agricultural products utilization commission; to repeal chapter 54-60.3 of the North Dakota Century Code, relating to the agricultural products utilization commission; and to provide a report.

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:

Agricultural products utilization commission - Composition - Appointment.

The agricultural products utilization commission shall administer the agricultural products utilization fund. The commission shall consist of nine members, five of whom must be appointed by the agriculture commissioner for terms of two years each, arranged so that two terms expire in odd-numbered years and three terms expire in even-numbered years. Four members appointed by the agriculture commissioner must be actively engaged in farming in this state and one member appointed by the agriculture commissioner must be actively engaged in business in this state. The governor shall appoint one member for a term of two years which expires in odd-numbered years. The member appointed by the governor must be actively engaged in business in this state. Commission members may be reappointed. Terms of commissioners commence on the first day of July. The commissioner of commerce, the president of North Dakota state university, and the agriculture commissioner, or their designees, are members of the commission. The commission shall elect one of its members as chairman.

Agricultural products utilization commission - Authority.

1. The North Dakota agricultural products utilization commission may apply for, accept, and expend any appropriation, grant, gift, or service made available from public or private sources.
2. The commission may administer grant programs including:
 - a. A basic and applied research grant program;
 - b. A utilization and marketing grant program;
 - c. A cooperative marketing grant program;
 - d. A nature-based tourism grant program;
 - e. A technical assistance grant program for value-added businesses;
 - f. A farm diversification grant program;

- g. An agricultural prototype development grant program;
 - h. An agricultural technologies grant program; and
 - i. A North American marketing grant program.
3. As a condition of any grant administered by the commission, the commission may require the recipient repay some or all of the grant if the recipient does not fulfill the conditions of the grant. Repayment may be monetary or any other type or method determined by the commission.

Agricultural products utilization commission - Meetings - Personnel - Reports.

The agricultural products utilization commission, an office of the agriculture commissioner, shall meet as necessary and shall report to each session of the legislative assembly. The commissioner shall provide office space, employ required personnel for the performance of its duties, hire consultants, spend any funds appropriated to the commission, and contract with public entities or private parties for services.

Agricultural products utilization commission - Reimbursement - Compensation.

Members of the agricultural products utilization commission are entitled to be reimbursed for 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 per diem compensation of one hundred thirty-five dollars for each day of 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.

Agricultural products utilization commission - Administrative expenses.

Administrative expenses of the agricultural products utilization commission, including expenses of members of the commission, employment of required personnel, hiring of consultants, and contracting with public or private entities for services may not exceed ten percent of the funds appropriated to the commission by the legislative assembly each biennium, excluding federal funds.

Agricultural products utilization fund - Purposes.

The agricultural products utilization fund in the state treasury must be used to fund programs for agricultural research, development, processing, technology, and marketing. The fund must be used to defray the expenses of the North Dakota agricultural products utilization commission. Interest earned on moneys in the fund must be credited to the fund.

SECTION 2. REPEAL. Chapter 54-60.3 of the North Dakota Century Code is repealed.

Approved April 9, 2019

Filed April 10, 2019

CHAPTER 59

SENATE BILL NO. 2035

(Legislative Management)
(Judiciary Committee)

AN ACT to amend and reenact subdivision b of subsection 1 of section 4.1-02-04, subdivision b of subsection 1 of section 4.1-04-04, subdivision b of subsection 1 of section 4.1-07-04, subdivision b of subsection 1 of section 4.1-09-05, subdivision b of subsection 1 of section 4.1-09-06, section 4.1-11-04, subsection 2 of section 4.1-13-05, and section 11-11-11 of the North Dakota Century Code, relating to notice and publication requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision b of subsection 1 of section 4.1-02-04 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council 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.

SECTION 2. AMENDMENT. Subdivision b of subsection 1 of section 4.1-04-04 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council 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.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 4.1-07-04 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council 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.

SECTION 4. AMENDMENT. Subdivision b of subsection 1 of section 4.1-09-05 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council 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.

SECTION 5. AMENDMENT. Subdivision b of subsection 1 of section 4.1-09-06 of the North Dakota Century Code is amended and reenacted as follows:

- b. The ~~county extension agent~~council 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.

SECTION 6. AMENDMENT. Section 4.1-11-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-11-04. Election of county representative.

1. Before January first, the council shall identify each district represented by a council member whose term is about to expire and notify the extension agent for each county in that member's district that an election to select a county representative must occur before March first.
2. Each year during the month of January, ~~each county extension agent required to conduct an election in accordance with this section~~ the council shall publish notice of the election in the official newspaper of the county for one week. The notice must contain a description of the election process, a request for the nomination of potential candidates for the position, and a deadline for the receipt of all nominations.
3. In order for a nomination to be valid, it must be submitted to the county extension agent in writing and signed by a nominating producer who resides in the county. The county extension agent shall determine if a nomination is valid. A decision by the county extension agent under this subsection is final.
4. The county extension agent shall:
 - a. Compile all valid nominations;
 - b. Contact each nominee to determine if the nominee consents to being on the ballot; and
 - c. Forward the name of each nominee to the council.
5. The council shall prepare the election ballots and mail to each producer of record in the county:
 - a. A ballot;
 - b. A stamped self-addressed return envelope;
 - c. Instructions for completing and returning the ballot; and
 - d. A statement indicating the last date by which the ballots must be postmarked or filed with the county extension agent.
6. ~~The county extension agent~~ council shall publish notice of the pending election in the official newspaper of the county for one week. The notice must announce the election, provide information regarding the manner in which a producer may obtain a ballot if one was not received by mail, and indicate the deadline by which all ballots must be returned.
7. Any producer who resides in the county may vote in the election.
8. Immediately after the passing of the deadline by which the ballots must be returned, the county extension agent shall:

- a. Tabulate the ballots;
 - b. 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; and
 - c. Notify the newly elected county representative.
9. Subsections 1 through 8 do 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.

SECTION 7. AMENDMENT. Subsection 2 of section 4.1-13-05 of the North Dakota Century Code is amended and reenacted as follows:

2. The ~~county extension agent~~commission 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.

SECTION 8. AMENDMENT. Section 11-11-11 of the North Dakota Century Code is amended and reenacted as follows:

11-11-11. General duties of board of county commissioners.

The board of county commissioners:

1. Shall superintend the fiscal affairs of the county.
2. Shall supervise the conduct of the respective county officers.
3. May cause to be audited and verified the accounts of all officers having the custody, management, collection, or disbursement of any moneys belonging to the county or received in their official capacity.
4. Before ~~March~~November fifteenth of each year, shall have the county auditor prepare general purpose financial statements in accordance with generally accepted accounting principles. Public notice that financial statements have been prepared and are available for inspection must be published in the official newspaper.

Approved April 22, 2019

Filed April 23, 2019

CHAPTER 60

SENATE BILL NO. 2144

(Senators Klein, Myrdal, Wanzek)
(Representatives Boe, C. Johnson, D. Johnson)

AN ACT to amend and reenact sections 4.1-06-03 and 4.1-06-04 of the North Dakota Century Code, relating to elections of members to the North Dakota dry bean council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-06-03 of the North Dakota Century Code 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.
2. Each member of the council must be a United States citizen.
3. Each member of the council 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~~ ^{May} 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.

SECTION 2. AMENDMENT. Section 4.1-06-04 of the North Dakota Century Code is amended and reenacted as follows:

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~~^{four} 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~~^{April} 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;
 - 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.
7. If, by April tenth or the date specified by the commissioner, the council does not receive any nomination petitions from eligible producers in districts represented by council members whose terms are about to expire, the council may appoint an eligible producer from the district to serve on the council until the seat is filled by a write-in candidate in accordance with subsection 4.

Approved March 21, 2019

Filed March 22, 2019

CHAPTER 61

HOUSE BILL NO. 1349

(Representatives Monson, D. Johnson, Kading)
(Senators Luick, Oban, Wanzek)

AN ACT to create and enact chapter 4.1-18.1 of the North Dakota Century Code, relating to the regulation of hemp; to amend and reenact subdivision b of subsection 2 of section 12-60-24 and subsection 22 of section 19-24.1-01 of the North Dakota Century Code, relating to criminal history background checks and the definition of marijuana; to repeal chapter 4.1-18 of the North Dakota Century Code, relating to the regulation of industrial hemp; to provide a penalty; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 4.1-18.1 of the North Dakota Century Code is created and enacted as follows:

4.1-18.1-01. Hemp (cannabis sativa L.).

"Hemp" means the plant cannabis sativa L. and any part of the plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis.

4.1-18.1-02. Hemp - Licensure.

Any person desiring to grow or process hemp shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner. A license must be obtained before a person purchases or obtains hemp material for planting or propagation. The applicant is responsible for anyone working under the applicant's license for all sections of this chapter.

1. 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 hemp.
2. The commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
3. 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.
4. The commissioner shall deny licensure to any person convicted of a felony relating to a controlled substance under state or federal law in the last ten years.

5. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license. A license issued under this chapter expires December thirty-first.
6. An application for a license under this subsection may be submitted to the commissioner anytime before the purchase of hemp seed or viable propagation material.

4.1-18.1-03. License fee.

The commissioner shall assess each producer and processor a fee not to exceed three hundred fifty dollars. The commissioner shall deposit fees collected under this chapter in the commissioner's operating fund which are appropriated to the commissioner on a continuing basis for the purpose of enforcing this chapter.

4.1-18.1-04. License - Grounds for denial.

1. The agriculture commissioner may deny or revoke a license to any person who:
 - a. Repeatedly violates this chapter;
 - b. Provides false or misleading information in connection with any application required by this chapter; or
 - c. Has been convicted of a felony, as described in section 4.1-18.1-02, since the most recent criminal history background check.
2. Any person denied a license under this section may request a hearing before the commissioner within thirty days after the date of the denial.

4.1-18.1-05. Violations.

1. A producer found in violation of this chapter for negligently failing to provide the legal description of the land where the producer is growing hemp, failing to obtain a license, or by producing hemp with a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent on a dry weight basis is subject to:
 - a. Meeting a deadline set by the commissioner to come into compliance with this chapter; and
 - b. Additional reporting requirements set by the commissioner for a period of no less than two years.
2. An applicant or person licensed to grow hemp under this chapter found in violation of the chapter with a culpable mental state greater than negligence must be reported to the attorney general.

4.1-18.1-06. Confiscation and disposal.

1. Any hemp found to be in violation of this chapter is subject to confiscation and disposal by the commissioner.
2. Any disposal-related costs will be the responsibility of the producer, owner, or person responsible for the hemp.

3. The commissioner is not liable for any destruction of hemp or hemp products carried out under this chapter.

4.1-18.1-07. Commissioner powers.

The commissioner may enter on any land or areas where hemp is grown, stored, or processed for the purposes of inspections, sample collection, testing, or investigation for the purposes of enforcing this chapter.

4.1-18.1-08. Hemp - Research.

1. Any researcher associated with or operating under an institution under the control of the state board of higher education is exempt from obtaining a license described under section 4.1-18.1-02 to grow hemp. A researcher shall notify the commissioner of the researcher's intent to plant hemp and provide the following information to the commissioner:
 - a. The name and contact information of the primary investigator; and
 - b. The legal description of all land where hemp will be grown as part of the project.
2. The research institution shall ensure the primary investigator and all other project participants meet the criminal history background restrictions in section 4.1-18.1-02.

¹⁹ **SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- b. ~~The agriculture commissioner for each applicant for a license to grow or process industrial hemp under section 4.1-18-02 and any individual engaged in an activity authorized under section 4.1-18-034.1-18.1-02.~~

²⁰ **SECTION 3. AMENDMENT.** Subsection 22 of section 19-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

22. "Marijuana" means all parts of the plant of the genus cannabis; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, the seeds of the plant, or the resin extracted from any part of the plant. The term marijuana does not include hemp as defined in section 4.1-18.1-01.

SECTION 4. REPEAL. Chapter 4.1-18 of the North Dakota Century Code is repealed.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 28, 2019

Filed March 29, 2019

¹⁹ Section 12-60-24 was also amended by section 1 of House Bill No. 1074, chapter 102, section 1 of House Bill No. 1084, chapter 100, section 1 of House Bill No. 1102, chapter 404, section 1 of House Bill No. 1219, chapter 239, section 1 of House Bill No. 1376, chapter 101.

²⁰ Section 19-24.1-01 was also amended by section 1 of House Bill No. 1119, chapter 191, section 2 of House Bill No. 1119, chapter 191, section 1 of House Bill No. 1283, chapter 193, section 1 of House Bill No. 1417, chapter 190, section 2 of House Bill No. 1417, chapter 190, section 3 of House Bill No. 1417, chapter 190, and section 1 of House Bill No. 1519, chapter 192.

CHAPTER 62

HOUSE BILL NO. 1081

(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 1 of section 4.1-19-01 and section 4.1-19-06 of the North Dakota Century Code, relating to the definition and sale of eggs.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4.1-19-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Eggs" means eggs in the shell which are the product of a domesticated ~~chicken~~poultry.

SECTION 2. AMENDMENT. Section 4.1-19-06 of the North Dakota Century Code is amended and reenacted as follows:

4.1-19-06. Eggs~~Egg dealers to be graded~~registered - Exemption.

1. All eggs sold or offered for sale ~~to an ultimate consumer in this state must be candled, graded, and labeled with the correct grade designation other than to an end consumer in this state must be candled, labeled, and meet all other requirements as the commissioner deems necessary. All eggs sold or offered for sale to an end consumer are exempt from this requirement.~~
2. The agriculture commissioner may adopt appropriate rules under chapter 28-32 to provide for registration of egg dealers and standards for candling, grading, and inspecting eggs as to size, quality, purity, strength, holding requirements, transportation, labeling, and sanitation in conformity with United States department of agriculture regulations governing the grading and inspecting of eggs.

Approved March 8, 2019

Filed March 8, 2019

CHAPTER 63**HOUSE BILL NO. 1026**

(Legislative Management)
(Agriculture Committee)

AN ACT to amend and reenact section 4.1-20-19 of the North Dakota Century Code, relating to mandatory training for soil conservation district supervisors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-20-19 of the North Dakota Century Code is amended and reenacted as follows:

4.1-20-19. Soil conservation district supervisors - Training.

As soon as practicable after an individual is elected or appointed to the position of a soil conservation district supervisor, the individual shall attend a training session delivered by the state soil conservation committee. ~~An, and the individual who has attended a training session as an elected or as an appointed soil conservation district supervisor may not be required to~~ shall attend any additional or subsequent session or participate in annual training as determined by the state soil conservation committee.

Approved March 8, 2019

Filed March 8, 2019

CHAPTER 64

SENATE BILL NO. 2064

(Government and Veterans Affairs Committee)
(At the request of the State Forester)

AN ACT to amend and reenact subsection 1 of section 4.1-21-01 of the North Dakota Century Code, relating to the state forester appointment, qualification, and duties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4.1-21-01 of the North Dakota Century Code is amended and reenacted as follows:

1. The state forester must be a graduate of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry. ~~The office of the state forester must be located in Bottineau.~~ The state forester shall serve as the director of the state forest service and, subject to the approval of the board of higher education and the president of North Dakota state university, may employ assistants and secure office facilities and equipment necessary for the administration of this chapter and the performance of the powers and duties of the office.

Approved March 19, 2019

Filed March 20, 2019

CHAPTER 65

SENATE BILL NO. 2065

(Government and Veterans Affairs Committee)
(At the request of the State Forester)

AN ACT to amend and reenact section 4.1-21-04 of the North Dakota Century Code, relating to the state forester reserve account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-21-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-21-04. State forester reserve account.

The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds one million five hundred thousand dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than ~~seven~~one million two hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

Approved March 28, 2019

Filed March 29, 2019

CHAPTER 66

SENATE BILL NO. 2079

(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact subsection 19 of section 4.1-25-01 and sections 4.1-25-31, 4.1-25-32, and 4.1-25-33 of the North Dakota Century Code, relating to the definition of pasteurized milk ordinance and to the pasteurized milk ordinance revision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 19 of section 4.1-25-01 of the North Dakota Century Code is amended and reenacted as follows:

19. "Pasteurized milk ordinance" means the ~~2015~~2017 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.

SECTION 2. AMENDMENT. Section 4.1-25-31 of the North Dakota Century Code is amended and reenacted as follows:

4.1-25-31. 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 - ~~2015~~2017 Revision, Edition" and the sampling of milk and dairy products must be in accordance with the guidelines in the Standard Methods.

SECTION 3. AMENDMENT. Section 4.1-25-32 of the North Dakota Century Code is amended and reenacted as follows:

4.1-25-32. 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 Standard Methods and the procedures outlined in the public health service food and drug administration publication entitled "Evaluation of Milk Laboratories - ~~2015~~2017 Edition".

SECTION 4. AMENDMENT. Section 4.1-25-33 of the North Dakota Century Code is amended and reenacted as follows:

4.1-25-33. Grade A pasteurized milk ordinance.

Dairy producers, processors, and manufacturers shall comply with the pasteurized milk ordinance 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, ~~2015~~2017 Revision".

Approved March 8, 2019

Filed March 8, 2019

CHAPTER 67

HOUSE BILL NO. 1400

(Representatives Schmidt, D. Johnson, Magrum, Meier, Rohr, Satrom)
(Senators Cook, Schaible)

AN ACT to create and enact section 4.1-31-05.1 and a new section to chapter 19-02.1 of the North Dakota Century Code, relating to misrepresenting nonmeat as a meat food product; to amend and reenact section 4.1-31-01 of the North Dakota Century Code, relating to the definition of meat and the nomenclature of edible meat products; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²¹ **SECTION 1. AMENDMENT.** Section 4.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

4.1-31-01. Definitions.

1. "Adulterated" means a carcass or meat food product:
 - a. That includes a poisonous or harmful substance that may render it injurious to health;
 - b. That includes a chemical pesticide that is unsafe under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - c. That includes a food or color additive that is unsafe under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - d. That includes a filthy, putrid, or decomposed substance or is for any other reason unfit for human food;
 - e. That has been prepared, packed, or held under unsanitary conditions;
 - f. That includes the product of an animal that has died in a manner other than slaughter or includes the product of an animal condemned by reason of disease that existed at the time of slaughter;
 - g. The container of which includes a poisonous or harmful substance that may make the contents harmful to health;
 - h. That has been intentionally subjected to radiation, unless the use of the radiation conformed with a regulation or exemption in effect under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.];
 - i. That is damaged or inferior and that damage or inferiority has been concealed; or

²¹ Section 4.1-31-01 was also amended by section 1 of House Bill No. 1146, chapter 68.

- j. That has had a substance added to it or mixed or packed with it so as to increase its bulk or weight, or make it appear better or of greater value than it is.
- 2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, and poultry.
- 3. "Carcass" includes all or any part of an animal carcass.
- 4. "Container" means a receptacle of a meat food product.
- 5. "Custom processing" means slaughtering, eviscerating, dressing, or processing an animal carcass or meat food products for the owner of the animal carcass or the meat food products, if all meat food products derived from the custom processing are returned to that owner.
- 6. "Inspector" means an inspector appointed by the commissioner to perform duties under this chapter.
- 7. "Intrastate commerce" means commerce within this state.
- 8. "Meat" means the edible flesh of an animal born and harvested for the purpose of human consumption.
- 9. "Meat food product" means a product usable as human food which contains any part of an animal carcass from an animal born and harvested for the purpose of human consumption. The term does not include any product that contains any part of an animal carcass in a relatively small proportion or which historically has not been considered by consumers as a product of the meat food industry, and which is not represented as a meat food product.
- 9-10. "Poultry" includes domesticated fowl bred for the primary purpose of producing eggs or meat, or both, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, but excluding doves and pigeons.
- 10-11. "Prepared" means slaughtered, canned, salted, rendered, boned, cut up, or otherwise manufactured or processed.

SECTION 2. Section 4.1-31-05.1 of the North Dakota Century Code is created and enacted as follows:

4.1-31-05.1. Misrepresentation of cell-cultured protein as meat food product prohibited.

- 1. A person may not advertise, offer for sale, sell, or misrepresent cell-cultured protein as a meat food product. A cell-cultured protein product:
 - a. May not be packaged in the same, or deceptively similar, packaging as a meat food product; and
 - b. Must be labeled as a cell-cultured protein food product.
- 2. For purposes of this section, "deceptively similar" means packaging that could mislead a reasonable person to believe the product is a meat food product.

SECTION 3. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Misrepresentation of cell-cultured protein as meat food product prohibited.

1. A person may not advertise, offer for sale, sell, or misrepresent cell-cultured protein as a meat food product. A cell-cultured food product:
 - a. May not be packaged in the same, or deceptively similar, packaging as a meat food product; and
 - b. Must be labeled as a cell-cultured food product.
2. For purposes of this section, "deceptively similar" means packaging that could mislead a reasonable person to believe the product is a meat food product.

Approved March 12, 2019

Filed March 13, 2019

CHAPTER 68**HOUSE BILL NO. 1146**

(Representatives McWilliams, Kading, D. Ruby, Simons, Skroch)
(Senator O. Larsen)

AN ACT to amend and reenact subsection 2 of section 4.1-31-01 of the North Dakota Century Code, relating to the inclusion of domesticated rabbits in the definition of animal for meat inspection.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²² **SECTION 1. AMENDMENT.** Subsection 2 of section 4.1-31-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Animal" includes cattle, swine, sheep, goats, farmed cervidae, llama, horses, equines, bison, other large domesticated animals, domesticated rabbits, and poultry.

Approved March 8, 2019

Filed March 8, 2019

²² Section 4.1-31-01 was also amended by section 1 of House Bill No. 1400, chapter 67.

CHAPTER 69**SENATE BILL NO. 2080**

(Agriculture Committee)
(At the request of the Agriculture Commissioner)

AN ACT to amend and reenact section 4.1-31-01.1 of the North Dakota Century Code, relating to the federal meat inspection revision.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-31-01.1 of the North Dakota Century Code is amended and reenacted as follows:

4.1-31-01.1. Federal meat inspection regulations.

All federal meat and poultry inspection regulations effective as of ~~August 1, 2016~~ May 31, 2018, as provided under title 9, Code of Federal Regulations, parts 301-320, 325, 329, 381, 391, 416-418, 424, 430, 441, 442, and 500, but excluding parts 307.5 and 381.38, are incorporated by reference and made a part of this title.

Approved March 6, 2019

Filed March 7, 2019

CHAPTER 70

SENATE BILL NO. 2152

(Senators Luick, Erbele, Klein)
(Representatives D. Johnson, Pollert)

AN ACT to amend and reenact sections 4.1-37-02, 4.1-37-03, and 4.1-37-04 of the North Dakota Century Code, relating to the licensing of anhydrous ammonia storage tanks and mobile storage containers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-37-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-37-02. ~~Definition~~Definitions.

As used in this chapter, "~~anhydrous~~unless the context otherwise requires:

1. "Anhydrous ammonia storage facility" means a bulk anhydrous ammonia storage facility with a capacity exceeding six thousand gallons [22712.47 liters] which is owned or operated by a user or vendor of anhydrous ammonia.
2. "Mobile storage container" means a United States department of transportation class MC-331 cargo tank, or an American society of mechanical engineers code constructed and national board registered mobile storage container, approved by the United States department of transportation, used for the temporary storage of anhydrous ammonia to be downloaded into a nurse tank.

SECTION 2. AMENDMENT. Section 4.1-37-03 of the North Dakota Century Code is amended and reenacted as follows:

4.1-37-03. License required - Anhydrous ammonia facilities constructed after June 30, 1985 and mobile storage container.

The owner or operator of an anhydrous ammonia storage facility or a mobile storage container shall apply to the agriculture commissioner and to the board of county commissioners for a license to site and operate the facility or mobile storage container. Neither an anhydrous ammonia storage facility nor mobile storage container may ~~not~~ be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is located. Any permanent anhydrous ammonia storage facility constructed before July 1, 1985, is exempt from the siting requirements of this chapter and may receive a license under this chapter regardless of noncompliance with the siting requirements. The commissioner or the board may deny a license for failure to remit the proper fee for failure to comply with the siting requirements of this chapter and rules adopted under this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the facility does not meet the initial inspection standards required by this chapter and by any rules adopted under this chapter. To obtain a license, an applicant

shall submit with the application two sets of drawings or photographs showing, and two signed affidavits stating, the facility or mobile downloading site has been measured and meets the siting requirements. The drawings or photographs must show the proposed location of the tank and the surroundings in all directions. A set of drawings or photographs must be provided to the agriculture commissioner and a set must be provided to the board of county commissioners. An applicant for a mobile storage container license also shall submit a certification from the United States department of transportation.

SECTION 3. AMENDMENT. Section 4.1-37-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-37-04. State license fee.

The agriculture commissioner shall charge a one-time twenty-five dollar fee for a private anhydrous ammonia storage facility or a mobile storage container license ~~for each anhydrous ammonia storage facility and an additional one hundred dollars for each retail and storage site, and a one-time one hundred dollar fee for a retail anhydrous ammonia storage facility or a mobile storage container license.~~ Expansion of an existing anhydrous ammonia storage facility does not require reapplication for licensing, but all siting requirements must be met. The license is valid indefinitely but may not be transferred. A new license is required when an anhydrous ammonia storage facility changes ownership.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 71

HOUSE BILL NO. 1134

(Representatives Pollert, Boe, D. Johnson, Trottier)
(Senators Erbele, Klein, Wanzek)

AN ACT to create and enact two new sections to chapter 4.1-41 of the North Dakota Century Code, relating to commercial feed and prohibited acts; to amend and reenact sections 4.1-41-01, 4.1-41-02, 4.1-41-04, 4.1-41-05, 4.1-41-06, 4.1-41-07, 4.1-41-09, 4.1-41-10, 4.1-41-11, 4.1-41-13, 4.1-41-16, and 4.1-41-18 of the North Dakota Century Code, relating to commercial feed; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-41-01 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-01. Definitions.

In this chapter, unless the context otherwise requires:

1. "Brand name" means any word, name, symbol, or device, used singly or in combination, that identifies commercial feed and distinguishes it from that of all others.
2. "Commercial feed" means any materials, used singly or in combination, which are distributed, or are intended to be distributed, for use as feed or for mixing in feed, except:
 - a. Unmixed whole seeds and unmixed physically altered seeds, provided the seeds are not chemically changed or adulterated;
 - b. Commodities such as hay, straw, stover, silage, cobs, husks, and hulls, provided the commodities are:
 - (1) Not intermixed or mixed with other materials;
 - (2) Not adulterated; and
 - (3) Specifically exempted by the agriculture commissioner;
 - c. Individual chemical compounds or substances, provided the chemical compounds or substances are:
 - (1) Not intermixed or mixed with other materials;
 - (2) Not adulterated; and
 - (3) Specifically exempted by the agriculture commissioner; and
 - d. Unprocessed grain screenings or unprocessed mixed grain screenings, provided:

- (1) The distributor does not make oral or written reference to the nutritional value of the screenings;
 - (2) The screenings are not adulterated; and
 - (3) The screenings are specifically exempted by the ~~agriculture~~ commissioner.
3. "Commissioner" means the agriculture commissioner or the commissioner's designee.
4. "Contract feeder" means an independent contractor that feeds commercial feed to animals pursuant to a contract under which the commercial feed is supplied, furnished, or otherwise provided to the independent contractor and the independent contractor's remuneration is determined in whole or in part by feed consumption, mortality, profits, or the amount or quality of the product.
- 4-5. "Customer-formula feed" means a commercial feed that is manufactured according to the specific instructions of the final purchaser.
- 5-6. "Distribute" means to:
- a. Offer for sale, sell, exchange, or barter commercial feed or customer-formula feed; or
 - b. Supply, furnish, or otherwise provide commercial feed or customer-formula feed to a contract feeder.
- 6-7. "Drug" means any article:
- a. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in an animal other than a human; and
 - b. Other than feed, intended to affect the structure or function of an animal's body.
- 7-8. "Feed ingredient" means each of the constituent materials making up a commercial feed.
- 8-9. "Guarantor" means the person whose name and principal mailing address appear on a feed label and who is responsible for guaranteeing the information contained on the label.
10. "Label" means any ~~written, printed, or stamped~~ graphic information on or attached to a commercial feed or customer-formula feed container or its wrapper ~~and, or the~~ written information accompanying the distribution of a commercial feed or customer-formula feed, including the invoice or delivery slip.
- 9-11. "Labeling" means the written information accompanying the distribution of commercial feed or customer-formula feed, including promotional materials distributed to market the feed.
12. "Manufacture" means to grind, mix, blend, or further process a commercial feed for distribution.

13. "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.
- ~~10-14.~~ "Official sample" means any feed taken by the agriculture commissioner in accordance with section 4.1-41-13.
- ~~14-15.~~ "Percent" or "percentage" means a rate determined by weight.
16. "Pet food" means any commercial feed prepared and distributed for consumption by dogs or cats.
- ~~12-17.~~ "Product name" means a term that identifies a commercial feed as to its kind, class, or specific use and which distinguishes that feed from all other products bearing the same brand name.
- ~~13-18.~~ "Quantity statement" means the net weight, mass, volume, or count of the feed.
19. "Specialty pet food" means a commercial feed prepared and distributed for consumption by canaries, finches, gerbils, goldfish, hamsters, mynahs, psittacine birds, snakes, turtles, and any other domesticated animals, not including dogs or cats, normally maintained in a cage or a tank.
20. "Ton" means a net weight of two thousand pounds avoirdupois [907.18 kilograms].

SECTION 2. AMENDMENT. Section 4.1-41-02 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-02. Manufacturer's license - Retailer's license.

1. a. A person shall obtain a commercial feed manufacturer's license for each facility at which the person manufactures commercial feed if the person distributes the feed within this state.
- b. A person shall obtain a commercial feed manufacturer's license if the person's name appears on the label of a commercial feed as a guarantor.
- c. This subsection does not apply to a person that manufactures or guarantees pet food or specialty pet food.
2. A person shall obtain a commercial feed retailer's license for each facility at which the person sells commercial feed other than pet food or specialty pet food. This subsection does not apply to a person licensed as a commercial feed manufacturer.
3. ~~In order to~~To obtain an initial license required by this section, a person shall submit an application form at the time and in the manner required by the ~~agriculture~~ commissioner and:
 - a. If the person is applying for a manufacturer's license, a fee in the amount of one hundred twenty dollars for a manufacturer's license; or
 - b. If the person is applying for a retailer's license, a fee in the amount of sixty dollars.

- ~~4.3.~~ To renew a license required by this section, a person shall submit an application form at the time and in the manner required by the commissioner and:
- a. If the person is applying for a manufacturer's license renewal, a fee in the amount of one hundred dollars; or
 - b. If the person is applying for a retailer's license renewal, a fee in the amount of fifty dollars.
- ~~5.4.~~ A license issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. A license issued under this section is not transferable.
6. If a person fails to renew a license within thirty-one days of its expiration, that person must apply for an initial license.

SECTION 3. AMENDMENT. Section 4.1-41-04 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-04. License - Registration - Hearing.

~~1. a. The agriculture~~ After providing an affected person with an opportunity for an informal hearing, the commissioner may refuse;

1. Refuse to issue a license to an applicant that is not in compliance with this chapter:
 - ~~b. The commissioner may revoke;~~
2. Revoke an existing license if the licensee is not in compliance with this chapter:
 - ~~e. The commissioner may refuse; or~~
3. Refuse to register any feed and ~~may~~ cancel the registration of any feed if the registrant is not in compliance with this chapter.
- ~~2. Before the commissioner may act under this section, the commissioner shall provide the affected person with an opportunity for an informal hearing.~~

SECTION 4. AMENDMENT. Section 4.1-41-05 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-05. Pet food - Specialty pet food - Registration - Exemption - Penalty.

1. Before being distributed in this state, each pet food product and each specialty pet food product must be registered with the ~~agriculture~~ commissioner. This requirement does not apply to a distributor, provided the pet food or specialty pet food is registered by another person.
2. To register pet food and specialty pet food, a person shall submit:

- a. An application form at the time and in the manner required by the agriculture commissioner; and
 - b. A fee in the amount of one hundred twenty dollars per product.
3. To renew a registration required by this section, a person shall submit:
- a. An application form at the time and in the manner required by the commissioner; and
 - b. A fee in the amount of one hundred dollars per product.
4. A registration issued under this section is valid during the period beginning on January first of an even-numbered year and ending on December thirty-first of the ensuing odd-numbered year.
5. If a person fails to renew a registration within thirty-one days of its expiration, that person must apply for an initial registration.
6. Upon approving an application for an initial registration or a renewed registration, the commissioner shall furnish a certificate of registration to the applicant. A certificate of registration is not transferable.
7. Any person violating this section is subject to a penalty of twenty-five dollars for each product that must be registered.
8. A person is exempt from this section if the person:
- a. Produces pet food in a noncommercial kitchen;
 - b. Sells the pet food directly to the end consumer at a community event or farmer's market; and
 - c. Does not use meat, poultry, fish, or their byproducts as an ingredient in the product.

SECTION 5. AMENDMENT. Section 4.1-41-06 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-06. Commercial feed - Label - Content.

Except as provided in section 4.1-41-07, any commercial feed that is distributed in this state must be labeled. The label must include:

1. The product's name, including any brand name under which the product is distributed;
2. The product's weight, volume, or quantity, as appropriate;
3. A guaranteed analysis expressed on an "as is" basis as determined by the commissioner to adequately advise the consumer of the composition and contents of the commercial feed or to support claims made in the labeling. The composition and contents of the commercial feed must be determinable by laboratory tests, such as the methods published by the association of official analytical chemists international;

4. Unless waived by the agriculture commissioner in the interest of consumers, the commonly accepted name of each ingredient or, if permitted by the commissioner, a collective term for a group of ingredients that perform a similar function;
5. The name and principal mailing address of the manufacturer or the distributor;
6. Directions for the safe and effective use of anyall commercial feed containing drugs and those determined by the commissioner as being necessary; and
7. Any precautionary statements recommended by the commissioner to ensure the safe and effective use of the feed.

SECTION 6. AMENDMENT. Section 4.1-41-07 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-07. Customer-formula feed - Label - Content.

Any customer-formula feed that is distributed in this state must be labeled.

1. The label must include:
 - a. The name and address of the manufacturer;
 - b. The name and address of the purchaser;
 - c. The date of delivery;
 - d. The product's name;
 - e. The ~~weight, volume, or quantity, as appropriate,~~ statement of each ingredient, including commercial feed; ~~and~~
 - f. Directions for the safe and effective use of all customer-formula feed containing drugs and those determined by the commissioner as being necessary; and
 - g. Any precautionary statement recommended by the ~~agriculture~~ commissioner to ensure the safe and effective use of the feed.
2. If the feed contains drugs, the label must also include:
 - a. The purpose of each drug;
 - b. The weight, volume, or quantity, as appropriate, of each drug; and
 - c. The name of each active ingredient.

SECTION 7. AMENDMENT. Section 4.1-41-09 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-09. Inspection fee - Responsibility for payment - Report - Penalty.

1. The person responsible for payment of the inspection fee is:
 - a. The manufacturer listed on the label;

- b. The guarantor listed on the label; or
 - c. The distributor listed on the label.
2. Before the close of business on each February fifteenth, the person responsible for the payment of the inspection fee shall provide to the agriculture commissioner:
 - a. A ~~sworn statement~~tonnage report indicating the number of net tons [kilograms] of commercial feed, by class, which the person distributed in this state during the immediately preceding calendar year; and
 - b. The inspection fees due in accordance with this chapter.
 3. If the person responsible for the payment of the inspection fee fails to submit the assessments as required by this section, the commissioner 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. If imposed, a penalty under this section may not be less than ten dollars nor more than two hundred fifty dollars.

SECTION 8. AMENDMENT. Section 4.1-41-10 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-10. Inspection fee - Records.

1. The person responsible for payment of the inspection fee shall maintain, for a period of three years, records of all transactions necessary to verify the statement of tonnage required by section 4.1-41-09.
2. The person shall make the records required by this section available to the agriculture commissioner for examination upon request.
3. If the commissioner determines the records required by this section were not maintained accurately, the commissioner may cancel all licenses on file for the distributor.

SECTION 9. AMENDMENT. Section 4.1-41-11 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-11. Adulteration.

1. A person may not distribute any commercial feed that is adulterated.
4. Commercial feed is adulterated if it ~~contains~~:
 - a. ~~Contains~~ any poisonous or harmful substance that may render the feed injurious to health. However, if the substance naturally occurs in the feed and is not an added substance, the commercial feed may be considered adulterated under this ~~subsections~~subdivision only if the substance is present in sufficient quantity to render it injurious to health.
 2. ~~b. Commercial feed is adulterated if it contains~~Contains any added substance that is poisonous, harmful, or nonnutritive, and unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346]. This ~~subsections~~subdivision does not apply to any pesticide in or on a raw agricultural commodity or to a food additive.

3. ~~c.~~ Contains Commercial feed is adulterated if it ~~contains~~ Contains any food additive that is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].
4. ~~d.~~ a. Commercial feed is adulterated if it ~~is~~ is a raw agricultural commodity and it contains a pesticide that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
- b. (1) However, if a pesticide has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a] and if the raw agricultural commodity has been subjected to a process such as canning, cooking, dehydration, freezing, or milling, any pesticide residue remaining in or on the processed feed may be deemed safe, provided:
- (+ (a) The residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice; and
- (2) (b) The concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity.
- e. (2) The exception set forth in ~~subdivision b paragraph 1~~ subdivision b paragraph 1 does not apply if the consumption of the processed feed may result in the edible product of the animal evidencing a pesticide residue that is unsafe within the meaning of section 408a of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 346a].
5. ~~e.~~ Contains Commercial feed is adulterated if it ~~contains~~ Contains any color additive that is unsafe within the meaning of section 721 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 379e].
6. ~~f.~~ Contains Commercial feed is adulterated if it ~~contains~~ Contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 360b].
7. ~~2.~~ provisions of subsection 1 In addition to the ~~foregoing subsections~~ provisions of subsection 1, commercial feed is adulterated if:
- a. Any valuable constituent has been omitted, in whole or in part, thereby providing a lower nutritive value in the finished product;
- b. The composition or quality of the feed falls below or differs from that which is stated on its label;
- c. The feed contains added hulls, screenings, straw, cobs, or other high fiber material, unless each material is stated on the label;
- d. The feed contains viable weed seeds in amounts exceeding ~~the limits the commissioner establishes by rule~~ four and one-half viable restricted seeds per pound avoirdupois [453.59 grams];

- e. The feed contains a drug and the methods used in or the facilities or controls used for its manufacturing, processing, or packaging do not conform to current good manufacturing practice rules adopted by the commissioner to ensure the drug meets the identity, strength, quality, purity, and safety requirements of this chapter;
- f. The feed consists in whole or in part of any filthy, putrid, or decomposed substance, or if the feed is otherwise unfit for its intended use;
- g. The feed has been prepared, packed, or held under unsanitary conditions that may have caused it to become contaminated with filth or rendered injurious to health;
- h. The feed consists in whole or in part of the product of a diseased animal or of an animal that has died otherwise than by slaughter which is unsafe within the meaning of section 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 342];
- i. The feed's container is composed, in whole or in part, of any poisonous or harmful substance that may render the contents injurious to health;
- j. The feed has been packaged in bags or totes that previously contained pesticide products, treated seeds, or other hazardous materials; or
- k. The feed has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act, as amended [21 U.S.C. 348].

SECTION 10. AMENDMENT. Section 4.1-41-13 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-13. Inspection, sampling, analysis.

- 1.a. For purposes of enforcing this chapter, designated officers and employees of the agriculture commissioner may enter and inspect, ~~during normal business hours, any factory, warehouse, or establishment in this state, or vehicle in which commercial feeds are manufactured, processed, packed, or held for distribution, or transported,~~ provided the individuals first present their credentials and written notice to the owner ~~or manager, or driver.~~
- b. ~~For purposes of enforcing this chapter, designated officers and employees of the commissioner may enter and inspect any vehicle being used to transport or hold commercial feed, provided the individuals first present their credentials and written notice to the owner, manager, or driver.~~
- 2. Any inspection authorized under this section must take place at reasonable times, within reasonable limits, and in a reasonable manner. The inspection may include the verification of records and production and control procedures, as necessary to determine compliance with this chapter and rules implemented under this chapter.
- 3. A separate notice must be given for each authorized inspection. However, a separate notice is not required for each entry made during the period covered by the inspection. Each inspection must be commenced and completed with

reasonable promptness. Upon completion of the inspection, the individual in charge of the facility or the individual in charge of the vehicle must be notified.

4. If the officer or employee making an inspection ~~of a factory, warehouse, or other establishment~~ has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, the officer or employee shall give to the owner or manager a receipt describing the samples obtained.
5. If an officer or employee of the commissioner is denied entry as authorized by this section, the commissioner may obtain a warrant directing the owner or manager to submit the premises described in the warrant to inspection.
6. Any officer or employee of the commissioner authorized to enter any structure or vehicle in accordance with this section, may obtain samples and examine records relating to distribution of commercial feeds.
7. Sampling and analysis under this section must be conducted in accordance with generally recognized methods ~~and any analysis of the samples taken must be conducted in accordance with generally recognized laboratory methods, such as methods published by the association of official analytical chemists international.~~
8. The commissioner shall forward the results of any sample analysis to the person named on the label and to the purchaser.
9. If an analysis indicates that a commercial feed has been adulterated or misbranded, within thirty days following receipt of the analysis, the person named on the label may request that the commissioner provide a portion of the sample.
10. In determining for administrative purposes whether a commercial feed is deficient in any component, the commissioner must be guided by the official sample.

SECTION 11. A new section to chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

Prohibited acts.

Committing the following acts and causing the following acts are prohibited:

1. The manufacture or distribution of commercial feed that is adulterated or misbranded;
2. The adulteration or misbranding of commercial feed;
3. The distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls, which are adulterated within the meaning of section 4.1-41-11;
4. The removal or disposal of commercial feed in violation of an order under section 4.1-41-14;
5. The failure or refusal to register in accordance with section 4.1-41-03 or section 4.1-41-05;

6. The failure or refusal to register in accordance with section 4.1-41-02; and
7. The failure to pay inspection fees or file reports as required by section 4.1-41.

SECTION 12. AMENDMENT. Section 4.1-41-16 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-16. Publications.

1. The agriculture commissioner may publish information regarding commercial feeds, including their production, sales, and use, and publish a comparison of the analyses of official samples of commercial feeds sold in this state with the analyses guaranteed in their registration and on their label.
2. Information regarding the production and use of commercial feeds may not disclose the operations of any person.

SECTION 13. AMENDMENT. Section 4.1-41-18 of the North Dakota Century Code is amended and reenacted as follows:

4.1-41-18. Certificates - Fees.

The agriculture commissioner may:

1. Implement a program to inspect, audit, and certify commercial feed manufacturing and distribution facilities, at the request of an owner;
2. Issue commercial feed export certificates; and
3. Establish a schedule of fees for the services provided under this section.

SECTION 14. A new section to chapter 4.1-41 of the North Dakota Century Code is created and enacted as follows:

Administration - Rulemaking authority.

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.

Approved March 12, 2019

Filed March 13, 2019

CHAPTER 72

HOUSE BILL NO. 1149

(Representatives D. Johnson, Kempenich, Monson, Vigesaa)
(Senators Dotzenrod, Schaible, Wanzek)

AN ACT to create and enact a new section to chapter 4.1-47 of the North Dakota Century Code, relating to noxious weed certification; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4.1-47 of the North Dakota Century Code is created and enacted as follows:

Noxious weed certification - Gravel and sand pits.

1. If requested by any person needing certification, a county weed board may certify, based on standards set by the commissioner after consulting with representatives of county or city weed boards, gravel, scoria, topsoil, or sand surface mining operations are not contaminated with noxious weeds.
2. The commissioner may adopt a schedule of fees that county weed boards may charge for inspecting, testing, analyzing, and certifying gravel, scoria, topsoil, or sand surface mining operations.
3. Certification of gravel, scoria, topsoil, or sand surface mining operations as being free from contamination of noxious weeds is not a warranty of any kind as to the quality of the gravel, scoria, topsoil, or sand from an inspected and certified location.

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

Approved March 12, 2019

Filed March 13, 2019

CHAPTER 73

HOUSE BILL NO. 1166

(Representatives D. Johnson, C. Johnson, Jones, Kempenich)
(Senators Dotzenrod, Patten, Schaible)

AN ACT to amend and reenact section 4.1-73-01 of the North Dakota Century Code, relating to freeze branding.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4.1-73-01 of the North Dakota Century Code is amended and reenacted as follows:

4.1-73-01. Definition.

For purposes of this chapter, "brand" means an identifying imprint ~~that is:~~

1. ~~Placed~~placed on livestock by use of a hot branding iron; ~~or~~
2. ~~Placed on equines by means of either a hot branding iron or a freeze branding technique.~~

Approved March 8, 2019

Filed March 8, 2019