

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### AGRICULTURE COMMITTEE

Thursday and Friday, January 10-11, 2008  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Phillip Mueller, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Phillip Mueller, Tracy Boe, Mike Brandenburg, Rodney J. Froelich, Curt Hofstad, Dennis Johnson, Joyce Kingsbury, Dorvan Solberg, Gerry Uglem; Senators Arthur H. Behm, Bill Bowman, Robert S. Erbele, Tim Flakoll, Terry M. Wanzek

**Member absent:** Senator Ryan M. Taylor

**Others present:** See [Appendix A](#)

**It was moved by Representative Kingsbury, seconded by Senator Flakoll, and carried on a voice vote that the minutes of the previous meeting be approved.**

Chairman Mueller welcomed Representative Shirley Meyer, Legislative Council member, to the meeting.

At the request of Chairman Mueller, Mr. Roger Johnson, Commissioner, Department of Agriculture, presented testimony ([Appendix B](#)) regarding agricultural commodities and the commissioner's role in the various commodity councils and commissions. He said he would like to see the Agriculture Commissioner removed from the governing body of all the commodity groups. He said he would like to see statutory authority for the Agriculture Commissioner to attend and participate in general and executive sessions held by the governing bodies of the commodity groups and he would like the statutory authority to convene all the commodity groups, at least annually, for the purpose of coordinating marketing efforts and engaging in other common efforts.

In response to a question from Representative Mueller, Commissioner Johnson said the commodity groups have for the most part received his suggestion positively. He said there is some reluctance among the Potato Council, the Soybean Council, and the Pea and Lentil Council because he and his staff have had significant involvement with those groups.

Senator Flakoll said the committee should think about having both a major rewrite bill and a separate bill containing substantive changes that the committee deems to be meritorious but that do not fit within the study directive assigned to the committee.

In response to a question from Representative Mueller, committee counsel said the role of the Agriculture Commissioner on the various councils and commissions, as set forth under current law, is neither a legal nor a statutory problem. She said there are,

however, inconsistencies in the commissioner's roles on the various councils and commissions.

Senator Bowman said, before the committee agrees to the commissioner's proposal, the commodity groups should be given a chance to voice their perspectives.

### WHEAT COMMISSION CHAPTER REWRITE

At the request of Chairman Mueller, Mr. Neil Fisher, Administrator, Wheat Commission, presented testimony regarding the bill draft [\[90035.0100\]](#) to rewrite North Dakota Century Code (NDCC) provisions pertaining to the Wheat Commission. He said the North Dakota Wheat Commission legislation dates back to 1959. He said the Act is complex and over the years has become somewhat cluttered. He said this is a good process. He said the first bill draft consolidates the duties and powers and eliminates some of the duplicative language. He said the attempts to clean it up are valuable. He said the bill draft was reviewed by the Attorney General's office and received very high marks.

Mr. Fisher said he would like to see consistency in the qualifications required of those who vote and those who are eligible to serve as county representatives. He said he would also like to see the rewrite change the potential timelag that could take place in the appointment of a commissioner at large. He said consistency and ease of understanding should be the goals of the rewrite.

### Section 1 (Amendment of NDCC Section 4-28-02)

Chairman Mueller said in this section and throughout the rewrite, listings of multiple entities are replaced by the word "person." He said NDCC Section 1-01-49 defines a person as a human being, foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership trust, any legal or commercial entity, government, political subdivision, or government agency or instrumentality.

Chairman Mueller said there is a need to determine whether the rewrite should reference growers or producers.

Committee counsel said it does not matter which term the various commodity groups use in their

day-to-day dealings, but there should be consistency in the North Dakota Century Code.

Chairman Mueller said it is the consensus of the committee that the rewrite references a producer, rather than a grower.

### **Section 2**

#### **(A New Section to NDCC Chapter 4-28)**

Chairman Mueller said this section pertains to the Wheat Commission districts. He said it looks like it is new language, but it is not. He said the section just needed to be moved so that the establishment of the districts statutorily precedes sections governing representation from the districts.

### **Section 3**

#### **(Amendment of NDCC Section 4-28-03)**

Committee counsel said NDCC Section 4-28-03 goes on for several pages. She said, to the greatest extent possible, in this round of drafts, there was an attempt to stay with the current verbiage and use underscoring and overstrikes to highlight the proposed changes. She said this section contained a great deal of material, which was separated into eight new sections. She said this section addresses who is on the Wheat Commission and establishes the terms of office.

In response to a question from Senator Flakoll, Mr. Fisher said a wheat commissioner may serve three terms. He said those are lifetime limits and not necessarily consecutive terms.

Chairman Mueller said it is the consensus of the committee that the bill draft reflects the Wheat Commission's practice of limiting members to three terms within their lifetime.

### **Section 4**

#### **(A New Section to NDCC Chapter 4-28)**

Chairman Mueller said NDCC Section 1-02-36 provides that wherever the term "registered mail" appears, it means "registered or certified mail." He said it is therefore unnecessary to have the phrase "or certified" in this section.

### **Section 5**

#### **(A New Section to NDCC Chapter 4-28)**

Chairman Mueller said Section 5 provides that in order to be a county representative, one must be "actively engaged" in the production of wheat. He said the committee needs to determine what that phrase means.

Mr. Fisher said the phrase was inserted during the 2005 legislative session. He said it was the intent of legislators at the time that county representatives be as active as possible.

In response to a question from Representative Solberg, Representative Mueller said he believes if a landowner cash rents his farmland, the landowner is not "actively involved" in farming. However, he said, if a landowner is involved in a crop share arrangement, the landowner appears to be actively involved in

farming and therefore eligible to hold a seat on the Wheat Commission.

Senator Wanzek said the one who pays the wheat tax is the one who is actively involved in farming.

Representative Mueller said one must have faith in the election process. He said if an individual running for a seat on the commission spends a lot of time out of state, those voting could decide whether that individual would make a good commissioner.

Representative Solberg said a person who pays the taxes on farmland is actively engaged in farming.

Representative Johnson said the person who is actually growing the crop should have a greater say than one who is out of state and just paying the tax on his share of the crop.

Senator Flakoll said we are talking about minimum qualifications to run for the Wheat Commission. He said he supports Senator Wanzek's position that if one is paying the wheat tax, one is eligible to run for the commission. He said the bill draft needs to reflect the intent that an individual must be actively involved in the production of wheat in this state, not just in agriculture.

Representative Kingsbury said she does not believe that one needs to physically sit on a tractor. She said a person who owns the commodity and pays the tax is actively engaged in farming.

Senator Wanzek said determining who is "actively engaged in farming" is a very subjective process. He said it is necessary to clarify what is meant by that phrase.

Representative Brandenburg said if a person pays the wheat tax, the person should be eligible to run for the Wheat Commission.

Senator Behm said he agrees with Representative Brandenburg.

Chairman Mueller said it is the consensus of the committee that if a person owns the crop and pays the tax, that person is eligible to run for the commission and then, through the election process, a determination is made regarding the appropriateness of that particular person being on the commission.

Mr. Fisher said it would be desirable to impose that same requirement on those who can vote, on county representatives, and on commission members.

### **Section 6**

#### **(A New Section to NDCC Chapter 4-28)**

Chairman Mueller said current law sets forth the duties of county representatives with respect to the election process. He said it also provides that county representatives may be called by the commission for the purpose of promoting its programs. He said this is a very limited purpose and is not particularly clear with respect to what it involves. He said the rewrite therefore provides that county representatives may be called by the commission to "attend meetings or perform other duties as directed by the wheat commission."

Mr. Fisher said the role of a county representative has become greater and this change would be compatible with that trend.

### **Section 7**

#### **(A New Section to NDCC Chapter 4-28)**

Committee counsel said this section addresses the process by which the at-large member is appointed. She said the section lists the members of the nominating committee but does not establish who serves as the chairman of that committee.

Mr. Fisher said it has been the practice of the commission to have the Agriculture Commissioner serve as the chairman. He said that is not clearly established in the North Dakota Century Code.

Chairman Mueller said it is the consensus of the committee that the bill draft be clarified to reflect the role of the Agriculture Commissioner as the chairman of the nominating committee.

### **Section 8**

#### **(A New Section to NDCC Chapter 4-28)**

Chairman Mueller said it should be made clear in this section that a member of the commission must have "wheat" farming operations in the district.

### **Section 9**

#### **(A New Section to NDCC Chapter 4-28)**

Chairman Mueller said this section will receive further work by committee counsel and Mr. Fisher so that it clearly articulates the qualifications of commission members.

### **Section 10**

#### **(A New Section to NDCC Chapter 4-28)**

Chairman Mueller said Section 10 addresses the manner in which vacancies are filled. He said there are no substantive changes to this process.

### **Section 11**

#### **(Amendment of NDCC Section 4-28-05)**

Chairman Mueller said this section contains various and sundry topics which, in a future draft, will be moved and separated.

Committee counsel said several of the commodity groups have pointed to the amount of compensation they may pay their council or commission members. She said many, like wheat, are limited to \$75 per day and they wondered if that cap could be raised to equal that which legislators or state officials are paid. She said, after visiting with Chairman Mueller, no such changes were made in the rewrite. She said the \$75 per day cap is not unclear. She said it is not a legal problem, it is not a statutory problem, and therefore, it does not fall within the parameters of the rewrite. She said the groups were told that if they wished to pursue an increase in the per diem rate, they should introduce legislation to that effect during the 2009 legislative session.

### **Section 12**

#### **(Amendment of NDCC Section 4-28-06)**

Committee counsel said the commission, like many of the other groups, has a section in current law that sets forth powers and duties together. She said sometimes it is not clear whether an activity is supposed to be done or whether it is merely authorized. She said in the rewrite two sections were created--one for powers, i.e., those activities that the commission may do; and one for duties, i.e., those activities that the commission shall do. She said the powers section includes authorization for the commission to:

- Contract with any person for the provision of research, education, and publicity.
- Lease, purchase, own, equip, and maintain a commission office.
- Employ, compensate, and bond necessary personnel.
- Accept gifts, grants, or donations of money, property, and services.
- Sue and be sued.
- Do all things necessary to carry out this chapter.
- Engage in any other lawful activities, except those which constitute a competitive business enterprise.

Committee counsel said the rewrite, following current law, authorizes the commission to contract for the provision of research, education, and publicity. She said the question to be addressed is whether that limitation is sufficiently broad or unduly restrictive. She asked whether there are other purposes for which the commission might wish to contract.

Mr. Fisher said the current verbiage is limiting. He said certain commission contracts are broader than the three listed elements--research, education, and publicity. He said the work that is done through contracts should be allowable under the North Dakota Century Code.

Chairman Mueller said it is the consensus of the committee that the contracting authorization be expanded to include those activities with which the commission already is involved.

Senator Flakoll said, in examining the powers and duties of the commission, he would like to see its duties articulated.

In response to a question from Senator Flakoll, Mr. Fisher said the prohibition against engaging in competitive enterprises would extend to the commission taking title to grain.

Senator Flakoll said he wants to ensure that the prohibition against engaging in competitive enterprises does not prevent the commission from engaging in activities such as marketing or the printing of materials.

Committee counsel said the prohibition against engaging in competitive enterprises is found in a number of the commodity chapters. She said what is intended is not articulated in the North Dakota Century Code.

Mr. Fisher said it is important that the commission be able to carry out its duties without limitation.

Senator Wanzek said the Colorado Wheat Commission worked on a research project to develop a specific variety and ultimately created a revenue stream from the royalties.

Mr. Fisher said the language would probably preclude the commission from engaging in such a project.

Senator Flakoll said he wondered if there could be clarification added to provide that the prohibition is limited to enterprises that are competitive with the production of wheat.

Chairman Mueller asked that committee counsel work with Mr. Fisher to clarify what is intended by the prohibition and draft appropriate language.

### Section 13

#### (A New Section to NDCC Chapter 4-28-06)

Chairman Mueller said this section sets forth the duties of the commission. He said there are some redundancies. He said it is the consensus of the committee that the section contains both latitude and specificity.

### Section 14

#### (Amendment of NDCC Section 4-28-07.1)

Chairman Mueller said the committee is asked to determine, for the sake of consistency, whether the term "tax" or the term "assessment" should be used with respect to the commodity chapters.

Mr. Fisher said the term "tax" was used when the wheat chapter was first enacted. He said the belief was that the word would be more readily enforceable. He said in the day-to-day world, people use either the term "assessment" or "checkoff."

Committee counsel said most of the commodity councils and commissions reference both taxes and assessments.

Senator Flakoll said it would be appropriate to reference an assessment because it can be refunded.

Senator Wanzek said a checkoff is an investment to enhance and improve markets and governmental policies. He said it is not a tax in the traditional sense.

Chairman Mueller said it is the consensus of the committee that the word "assessment" be used rather than the word "tax."

Chairman Mueller said this section is very lengthy and contains multiple topics. He said the ensuing bill draft should use several separate sections.

Chairman Mueller said subsection 2 of current law provides that a producer has 60 days, following the deduction or final settlement, within which to send a personal letter to the commission asking for a refund application. The concern is that the law does not set a time period within which that application must be returned to the commission.

Mr. Fisher said he is not certain why the statute references the time within which a refund application must be requested but not the time within which the application must be returned. He said when a request

for a refund application comes to the commission, it is used as an opportunity to send out literature detailing what the commission does on behalf of producers and how the assessments are used. He said the application for a refund is often not returned to the commission.

In response to a question from Senator Bowman, Mr. Fisher said if the committee determines that there should be a finite timeframe within which refunds should be requested, and that timeframe is applied to all the commodity groups, the commission would be supportive. He said most people already assume that there is a 60-day window.

Chairman Mueller said that may be the assumption, but that is not the law. He said it is appropriate for this committee to clarify the law. He suggested that there be perhaps 60 days within which to request a refund application and another 60 days to submit the refund application.

Representative Johnson said technology is such that the period within which one can request a refund does not need to last for four months.

Representative Brandenburg said if the rewrite would provide people 60 days within which to ask for a refund form and return it, the 60-day requirement that people already believe is in law will be maintained.

Senator Behm said he agrees that 60 days is more than sufficient time to complete the paperwork.

Chairman Mueller said the timelines must be clearly set forth in statute. He said if a person requests an application toward the end of the 60-day period, and the commission is busy, the commission may not be able to mail the application in time for the requester to return it.

Representative Boe said the time period is designed to be a cool-off period for a disgruntled producer.

Senator Wanzek said if a 90-day time limit is imposed for the whole process, that would give the commission the benefit of knowing within two quarters whether a refund might be requested.

**It was moved by Senator Wanzek, seconded by Senator Flakoll, and carried on a voice vote that a person have 60 days from the date of final settlement within which to request a refund application and 90 days from the date of final settlement within which to file the application with the commission.**

Committee counsel said the second concern with this subsection is the reference to a personal letter. She said while personal letters are occasionally referenced in a business setting, such as when information is sought from a particular person, such letters tend to be associated more with pen pals, thank you notes, social notes, or communications between family and friends. She said it might be more appropriate to reference a "written request" for a refund application. She said it is also not clear whether an e-mail asking for a refund application would qualify as a personal letter.

Mr. Fisher said the commission accepts a faxed request for an application, provided the request bears the requester's signature. He said the commission itself refers to written requests, not personal letters. He said the problem with accepting e-mails is that the commission is not certain about their source.

Chairman Mueller said it is the consensus of the committee that the bill draft reference a written request, rather than a personal letter.

Chairman Mueller said subsection 3 contains language found in several of the commodity chapters. He said the language directs the commission to develop and disseminate information and instructions regarding the wheat tax and then states that the commission shall "cooperate with state and federal agencies and private businesses engaged in the purchase of wheat. He said this phrase was removed because no one seemed to know why it was there and to what it referred.

Chairman Mueller said subsection 4 authorizes the commission to contract for "activities related to domestic wheat policy issues, wheat production, promotion, and sales." He said subsection 5 requires the commission to present a separate report detailing the nature and extent of the commission's efforts to address "trade and domestic policy issues." He said it is not clear whether the verbiage was referring to separate events and activities.

Mr. Fisher said there may be some subtle differences in intent between subsections 4 and 5.

Chairman Mueller said perhaps committee counsel could work with Mr. Fisher and determine if the language in the two subsections should be reconciled.

### **Section 15**

#### **(Amendment of NDCC Section 4-28-08)**

Chairman Mueller said this section deals with the filing of reports and the forwarding of moneys that have been collected. He said the rewrite removes the sentence requiring that regular audits are to be conducted in accordance with NDCC Chapter 54-10. He said the audit requirement exists by virtue of Chapter 54-10 and it does not have to be repeated in this chapter.

### **Section 16**

#### **(Amendment of NDCC Section 4-28-09)**

Chairman Mueller said the rewrite maintains the current penalty provision that makes violating the chapter a Class B misdemeanor.

### **Section 17**

#### **(Repeal of NDCC Section 4-28-01)**

Committee counsel said NDCC Section 4-28-01 states that:

The public policy of the state is declared to be that to foster, promote, and protect opportunities for economic security, individual rights and enterprise, the development of the natural resources of the state, and the health, prosperity, and general welfare of all of the

people of the state, the greater development, more effective utilization, and better marketing of wheat produced in the state involves and concerns a public purpose, the accomplishment of which among other things, requires and demands the establishment of a state wheat commission for the purpose and with the objective of stabilizing and improving the agricultural economy of the state.

The provisions of this chapter must not be construed to abrogate or limit in any way the rights, powers, duties, and functions of the department of agriculture or any other agency of the state but are supplementary thereto and in aid and cooperation therewith; nor may such provisions be construed to authorize the state wheat commission to engage in competitive business enterprises, it being the intent and purpose of this chapter that the commission shall promote, aid, and develop the orderly marketing and processing of North Dakota wheat.

Committee counsel said that provision will remain preserved for historical purposes but, because it is not a statutory directive, it does not need to be in the North Dakota Century Code.

## **BARLEY COUNCIL CHAPTER REWRITE**

At the request of Chairman Mueller, Mr. Steven Edwardson, Executive Administrator, Barley Council, presented testimony regarding the bill draft [\[90037.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the Barley Council.

Mr. Edwardson said the Barley Council was established in 1983. He said the first bill draft already contains a lot of streamlining and removes redundancy.

### **Section 1**

#### **(Amendment of NDCC Section 4-10.4-01)**

Chairman Mueller said, just as with the Wheat Commission chapter, the rewrite uses the term "person" and eliminates all the unnecessary terminology describing various corporate entities.

Chairman Mueller said the rewrite moves the definition of a participating grower to the sections in which it is used.

### **Section 2**

#### **(A New Section to NDCC Chapter 4-10.4)**

Chairman Mueller said this section establishes the state's five Barley Council districts. He said it is not new. He said it was moved so that the establishment of the districts preceded the election of council members from those districts.

Mr. Edwardson said he would like to see language indicating that those districts are to be approximately equal in terms of production.

Committee counsel said when the Legislative Assembly creates districts or changes districts, the

reasons behind its determinations are of historical value, but do not need to be placed in the North Dakota Century Code.

Chairman Mueller said when groups appear before the standing Agriculture Committees and request a change in their statutory districts, they explain to the committees why they are seeking the changes.

### **Section 3**

#### **(Amendment of NDCC Section 4-10.4-03)**

Chairman Mueller said this section pertains to eligibility for a seat on the council and council elections. He said the rewrite removes the historical provisions regarding the terms of council members and inserts a reference to the maintenance of staggered terms.

Chairman Mueller said this section attempts to set forth the qualifications needed by council members. He said these include being a resident of the district and qualified elector, not having claimed refunds during the 12-month period before the commencement of the member's term, and in the case of a council member, not requesting a refund during the member's term, unless the refund is for a double payment.

Chairman Mueller said current law provides that 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 fair and reasonable." He said it would be preferable if the chapter included more detail regarding the election process. He said some of the things that probably should be addressed include the qualifications of electors and whether one needs to be a current barley grower, the date on which or range of time within which elections must be conducted, voting locations, the acceptability of absentee or mail ballots, ballot counting requirements, the determination of candidate eligibility, and the certification of winners.

Committee counsel said the council is a taxing entity and, therefore, the manner in which it is structured and operates is subject to scrutiny. She said putting into the commissioner's lap the responsibility for determining what is a fair and reasonable manner of conducting an election could be viewed as an unlawful delegation of authority.

Mr. Edwardson said the council elections are fairly similar to those of the Wheat Commission. He said a particular district will undergo an election every four years. He said if there are five counties within the district, each of those counties will conduct an election for a council county representative and then those representatives will elect one from among themselves to serve on the council.

Mr. Edwardson said he would be happy to work with committee counsel to draft election language for insertion into the chapter.

Chairman Mueller said this section also contains a sentence providing that the "chairman of the council must be an elected member of the council elected by

a majority vote of the council." He said it is recommended that the concept be placed in a more appropriate section. He said it would be appropriate to include information regarding the time at which the election of a chairman takes place and the frequency of the election or term of the chairman. He said this could be reflected in the next bill draft.

Senator Flakoll said the rewrite should clarify that in order to be a member of the council, an individual may not have requested a barley refund.

Senator Bowman said it appears to be unfair that a person who requests a refund cannot serve on the council. He said that individual might be a terrific board member.

Chairman Mueller said, as written, a person is not eligible for a seat on the council if the person requested a refund within 12 months of the date on which the term begins. He said a current council member may not request a refund, except in the case of an overpayment.

### **Section 4**

#### **(Amendment of NDCC Section 4-10.4-05)**

Chairman Mueller said NDCC Section 1-01-10 already provides that a majority of any board or commission constitutes a quorum and it is a long-established principle that it takes a quorum to conduct business. He said, therefore, the first sentence is removed in the bill draft. He said it would be appropriate to put the language regarding council member compensation in its own section. He said if there is a desire to change the amount of the per diem, a bill could be introduced during the 2009 legislative session.

### **Section 5**

#### **(Amendment of NDCC Section 4-10.4-06)**

Chairman Mueller said this section addresses the expenditure of moneys by the council.

### **Section 6**

#### **(Amendment of NDCC Section 4-10.4-07)**

Chairman Mueller said under current law, the council may contract with any person for the provision of research, education, publicity, promotion, and transportation. He said it is recommended that the language be reviewed to determine those limitations are still appropriate and if the limitations are clear.

Mr. Edwardson said the terms research, education, publicity, promotion, and transportation cover a broad degree of contracting authority. However, he said, he is concerned it might be unduly limiting in the future.

Committee counsel said it might be possible to give the group the authority to contract for any purpose related to the chapter and include as examples current familiar terminology, i.e., research, education, publicity, promotion, and transportation.

Chairman Mueller said the rewrite adds additional language authorizing the council to do all things necessary and proper to enforce the chapter and to engage in all lawful activities, with the exception of

engaging in competitive business enterprises. He said this would also serve to authorize activities that are not clearly articulated such as maintaining an office.

### **Section 7**

#### **(Amendment of NDCC Section 4-10.4-08)**

Chairman Mueller said this is the tax levy section and will be known as the assessment section. He said under subsection 1, a tax is imposed upon all barley grown in the state, delivered into the state, or sold to a first purchaser in the state. He said because the tax is imposed on all barley, the second sentence requiring that it be due upon any identifiable lot or quantity is redundant. He said the rewrite therefore deletes the second sentence.

Chairman Mueller said subsection 3 requires first purchasers to keep certain records and to make them available to the council for examination, at all "reasonable" times. He said it is recommended that the more commonly used phrase "upon request" be used, so that there is no confusion about what constitutes a "reasonable" time.

Chairman Mueller said subsection 5 again sets forth the requirement for regular audits of the council's accounts. He said this reference was removed because NDCC Chapter 54-10 contains the state's audit requirements and repetition in this chapter is not necessary.

Chairman Mueller said subsection 1 requires that the barley tax must be levied upon all "barley grown in the state, delivered into the state, or sold to a first purchaser in the state." He said subsection 6 further provides that the tax must be deducted regardless of whether the barley is stored or sold in this or any other state. He said perhaps all the criteria for assessments could be grouped together and then the second part of subsection 6 could be retained as a separate subsection because that puts the onus on the grower to pay the tax on all barley sold by the grower outside the state.

In response to a question from Representative Solberg, Mr. Edwardson said there is only one reciprocal agreement with an out-of-state entity. He said there is only very limited reciprocity across state lines. He said 20 years ago, a lot more barley was grown in the Red River Valley and there was reciprocity with Minnesota. He said it is up to the council to ensure that a reciprocal agreement is in place.

Chairman Mueller said current law requires the grower to submit the tax on all barley sold outside the state. He said there is no obligation on the part of a first purchaser out of state to collect and remit the barley tax.

### **Section 8**

#### **(Amendment of NDCC Section 4-10.4-09)**

Chairman Mueller said this section addresses the process for receiving a refund. He said under current law, a grower has 60 days following final settlement to

send the council a personal letter asking for a refund application. He said the law is silent with respect to how long the grower has to actually complete and file the refund application with the council.

Senator Wanzek said in the interest of consistency, the council should contain the same time provisions for refunds as those adopted for the Wheat Commission.

**It was moved by Senator Wanzek, seconded by Senator Flakoll, and carried on a voice vote that a producer have 60 days from the date of final settlement within which to request a refund application and 90 days from the date of final settlement within which to file the application with the commission.**

Chairman Mueller said current law also provides that if a grower has paid the tax more than once on the same barley, the grower is entitled to a refund of the overpayment. Because this deals with a different situation than the request for a refund, it has been placed in a separate and new section--Section 9.

Committee counsel said the North Dakota Century Code refers to both double payments and overpayments. She said it would be preferable for the committee to select one phrase that would then be used consistently.

Senator Wanzek said we should refer to an overpayment.

Chairman Mueller said current law also provides that the "council shall develop and disseminate information and instructions relating to the purpose of the barley tax and the manner in which refunds may be claimed and shall cooperate with state and federal governmental agencies and private businesses engaged in the purchase of barley." He said because there is no certainty regarding the intent of the second part of the quoted sentence, it is recommended that the language be deleted.

### **Section 9**

#### **(A New Section to NDCC Chapter 4-10.4)**

Chairman Mueller said this section contains new language that was removed from the previous section and which pertains to overpayments. In accordance with the committee's earlier decision, he said, the tax will be referred to as an assessment in future bill drafts.

### **Section 10**

#### **(Amendment of NDCC Section 4-10.4-10)**

Committee counsel said under current law, a petition can be filed asking the council to conduct a referendum among the participating growers of the state to determine whether they wish the Legislative Assembly to raise or lower the tax. She said it might be more effective to ask growers the amount by which the tax should be raised or lowered. She said it is not clear in the current law whether the referendum could actually ask if the tax should be \$0.

Mr. Edwardson said the council would not be supportive of a referendum that asked whether the assessment should be dropped to \$0.

Representative Mueller said if there is going to be a referendum and the members are displeased with the council, the referendum should allow for a full and complete query and that would include asking if the assessment should be \$0. He said if the referendum is going to be statutorily limited in what it can ask, then perhaps a referendum process is not needed.

Senator Flakoll said the referendum is only a recommendation. He said the Legislative Assembly is the entity that ultimately determines the amount of the checkoff and that includes whether or not there should be one.

Representative Mueller said current law does not address what happens after the referendum. He said it is presumed that the council will introduce a bill to reflect the results of the referendum.

Mr. Edwardson said this is an issue that needs to be reconsidered by the council.

Representative Mueller said some commodity councils require that the Agriculture Commissioner introduce a bill. He said some require only that the Agriculture Commissioner be asked to introduce a bill. In those instances, he said, the commissioner literally has veto power. He said every person in this state is represented by legislators and every person has the option to ask one of those legislators to introduce a bill.

Chairman Mueller said it is the consensus of the committee that committee counsel meet with representatives from the council and clarify the referendum provisions.

### **Section 11**

#### **(Amendment of NDCC Section 4-10.4-11)**

Chairman Mueller said this section provides that if a first purchaser fails to pay the tax provided in this chapter, the council may enforce collection in any appropriate court.

### **Section 12**

#### **(Amendment of NDCC Section 4-10.4-12)**

Chairman Mueller said this section provides that if a first purchaser fails to pay any tax levied by this chapter when due, the council may levy a penalty on the delinquent payments. He said if it levies such a penalty, the amount of the penalty must be 10 percent of the tax due, plus interest at the rate of 6 percent per annum from the due date. He said most elevators are doing what they are supposed to do and if they are not, generally a telephone call remedies the situation. He said if there is no resolution and the council needs to impose a penalty to achieve compliance, then the 10 percent penalty is appropriate.

Mr. Edwardson said the penalty plus interest is stated clearly and it is subjective. However, he said, there is no intent to penalize a grain dealer that might have a new or inexperienced staff person. He said

this section is adequate with respect to the business of the council.

Chairman Mueller said it is the consensus of the committee that the concept of the law should be retained in its current form.

### **Section 13**

#### **(Amendment of NDCC Section 4-10.4-13)**

Chairman Mueller said all of the records of the council, including acreage reports, tax returns, claims of exemption, and any other data, records, or information retained by the council are public information and are available for the inspection of any person for any lawful purpose. However, the council may adopt rules concerning the inspection of the information or data and the time or place of inspection or the manner in which the information is available for inspection. The council shall keep all records at least three years. He said it is recommended that this section be repealed. He said NDCC Chapter 44-04 addresses public records. He said its provisions are applicable to the council and therefore do not need to be reiterated in this chapter. Because the council is an agency of the state, he said, its record retention is covered by the records management program authorized under Chapter 54-46. He said it is not therefore necessary to include a reference to record retention in the barley chapter.

### **Section 14**

#### **(Repeal of NDCC Sections 4-10.4-02 and 4-10.4-04)**

Chairman Mueller said because NDCC Section 4-10.4-02 is a statement of public policy, it is recommended that it be repealed. However, he said, the section also contains a prohibition against the council engaging in competitive business enterprises. He said that prohibition is addressed in the note following the rewrite of Section 4-10.4-07.

Mr. Edwardson said the statements of public policy give people an idea of why an entity such as the council was created and what it is supposed to do. He said committee counsel indicated that it would be appropriate to include such information in the council's promotional literature.

Chairman Mueller said it is the consensus of the committee that statements of public policy and legislative intent be removed from the North Dakota Century Code. He said even though they provide information regarding the role and mission of the various commodity groups, they do not rise to the level of statutory directives.

Chairman Mueller said NDCC Section 4-10.4-04 establishes the council districts. He said it is recommended that it precede the section pertaining to the council elections. He said in order to accomplish this, the section must be repealed and rewritten as new law.

Chairman Mueller said NDCC Section 4-10.4-11 provides that any "person who willfully violates this chapter is guilty of a class B misdemeanor." He said

the section was not included in this first bill draft because no change was made to it.

## **CORN UTILIZATION COUNCIL CHAPTER REWRITE**

At the request of Chairman Mueller, Mr. Tom Lilja, Executive Director, Corn Utilization Council, presented testimony regarding the bill draft [90038.0100] to rewrite North Dakota Century Code provisions pertaining to the Corn Utilization Council. He said the biggest issue for the council will be getting the term "designated handler" properly defined. He said ethanol plants, roving grain buyers, and feedlots all need to be discussed. He said another question is whether bonding ought to be a part of the requirements.

### **Section 1**

#### **(Amendment of NDCC Section 4-10.6-01)**

Chairman Mueller said current law provides that a designated handler "means" a grain warehouse, licensed grain buyer, processing plant, or ethanol plant which purchases corn from a grower. He said the word "means" is a limitation on who is a designated handler. He said he wonders if there are other entities that could conceivably be designated handlers.

Mr. Lilja said this is part of the ongoing discussion about whether feedlots should be considered designated handlers for purposes of collecting the assessment.

Chairman Mueller said in this chapter the word "producer" will be used, rather than the word "grower." He said committee counsel will review the definitions of producers and growers in all of the commodity chapters. He said the phrase "participating grower" is removed because the only section in which it is used is NDCC Section 4-10.6-02. He said the concept can be included in that section. Similarly, he said, on page 2, line 6, the phrase "voting grower" is removed because the only section in which it is used is Section 4-10.6-12. He said the concept can be included in that section.

### **Section 2**

#### **(Amendment of NDCC Section 4-10.6-02)**

Chairman Mueller said this section contains a variety of topics, most of which will be placed into separate sections in the next bill draft. He said current law provides that the chairman of the council is elected by a majority of the council. He said it is not clear when and how often this is to take place. He said it is not clear how many terms an individual may serve as the chairman and whether those terms may or may not be consecutive.

Mr. Lilja said council members are precluded from serving more than two consecutive four-year terms. He said a person could conceivably serve as the chairman for eight years.

Chairman Mueller said there is some confusion about the process and time for the election of a chairman and vice chairman. He said perhaps committee counsel could work with Mr. Lilja to determine how business is currently conducted and reflect that in the next bill draft.

Chairman Mueller said current law provides that each member of the council must be a resident of and participating grower in the district the member represents. He said the rewrite spells out that this means the member must plant, raise, and harvest corn in the district that the member represents and that the member may not have requested a refund during the preceding 24 months.

Mr. Lilja said under current law, if a person ever requested a refund, that person would be ineligible to be on the council. He said in discussions with committee counsel during the preparation of the rewrite, he suggested that this was unrealistic and therefore proposed that the 24-month provision be added.

Senator Flakoll said because nothing specific was in place before, it would be preferable to have 12 months, rather than 24 months. He said that way the language and time period would be consistent with that of other commodity groups.

Mr. Lilja said it is not the intent of the council to preclude a person from being a council member just because that person asked for a refund 10 years ago. He said he would be amenable to a 12-month requirement in the interest of consistency.

Chairman Mueller said current law provides that before a member's term is to expire, a nominating committee made up of participating growers who reside in the district shall nominate a person as a candidate for the office. He said the rewrite reflects Mr. Lilja's suggestion that the nominating committee consist of at least two growers. He said because current law is silent with respect to the timeframe by which the nomination must take place, the rewrite reflects Mr. Lilja's suggestion that the nomination take place at least 30 days before an election.

### **Section 3**

#### **(Amendment of NDCC Section 4-10.6-04)**

Chairman Mueller said this section contains verbiage regarding regular and special meetings, as well as council member compensation. He said the compensation issue was placed in its own section.

### **Section 4**

#### **(A New Section to NDCC Chapter 4-10.6)**

Chairman Mueller said this section looks like new language but it is the compensation language from NDCC Section 4-10.6-04. He said the language was moved to its own section.

### **Section 5**

#### **(Amendment of NDCC Section 4-10.6-05)**

Chairman Mueller said this section deals with the approval of expenditures. He said in a fashion similar

to that of the other commodity groups, the rewrite removes the reference to the council's designated agent approving expenditures. He said the council effectively approves all expenditures through approval of its budget and through authorization of the executive director's or the office manager's role and function.

### **Section 6**

#### **(Amendment of NDCC Section 4-10.6-06)**

Chairman Mueller said this section sets forth the council's powers. He said it authorizes the council to contract for market maintenance and expansion, utilization research, transportation, and education. He said it is not clear why the council's ability to contract would be limited just to utilization research, as opposed to other types of research, so the rewrite deletes the word "utilization."

Committee counsel said in the committee's discussion regarding barley, it was recommended that the council be authorized to contract for any purpose necessary to promote the product and that the proposed language include a list of examples.

Chairman Mueller said it is the consensus of the committee that similar language be included in this chapter.

Chairman Mueller said subsection 5 retains the authority for the council to sue and be sued and subsection 6 authorizes the council to do all things necessary and proper to enforce and administer the chapter. He said this language or something authorizing the council to engage in all other lawful activities would be helpful and would include those activities not specifically listed, e.g., maintaining an office.

### **Section 7**

#### **(A New Section to NDCC Chapter 4-10.6)**

Chairman Mueller said NDCC Section 4-10.6-11 contains the directive that the council develop and disseminate information and instructions relating to the purpose of the corn assessment and manner in which refunds may be claimed. He said this directive has been moved to the newly created duties section.

### **Section 8**

#### **(Amendment of NDCC Section 4-10.6-07)**

Chairman Mueller said this section requires the certification of designated handlers before they may sell, process, or ship any corn. He said current law makes it appear to be a one-time filing. He said the rewrite adds the requirement that the designated handler notify the council when any of the required information changes.

Mr. Lilja said he thought if there was a business structure change, it would be appropriate to require a new filing. He said the council did not need to be notified of other changes.

In response to a question from Representative Mueller, Mr. Lilja said a business structure change

would involve something like a partnership becoming a corporation.

Committee counsel said if a partnership applies for a designated handler certificate and if that partnership later becomes a corporation, the partnership does not exist anymore and a new entity has been created. She said that new entity would then have to apply for a certificate. She said that is a different situation than a corporation replacing its registered agent or changing the address of its home office. She said keeping the council records current was the purpose behind the wording in subsection 4.

In response to a question from Senator Wanzek, Chairman Mueller said this section of the rewrite reflects current law.

In response to a question from Senator Wanzek, Mr. Lilja said he does not know why it is important that the council know whether a designated handler is a corporation or a partnership.

In response to a question from Senator Wanzek, committee counsel said when working with representatives of the Oilseed Council, she was told that the certification of designated handlers was in place so that the council would know who was buying that particular commodity and where that person or entity was located. Outside of having to file an initial request for certification, she said, the section requires nothing more of the designated handlers.

Chairman Mueller said it would appear that if the requirement is not needed in the Wheat Commission chapter, it probably is not needed in the other chapters.

### **Section 9**

#### **(Amendment of NDCC Section 4-10.6-08)**

Chairman Mueller said this section requires an assessment on all corn marketed in the state. He said if the assessment is required to be levied on "all" corn marketed in the state, the last sentence indicating that the assessment is due upon any identifiable lot or quantity of corn is unnecessary.

### **Section 10**

#### **(Amendment of NDCC Section 4-10.6-09)**

Chairman Mueller said this section provides that the assessment is to be deducted from all corn "subject to the assessment." He said the rewrite removed the phrase "subject to the assessment." He said corn is defined as "all varieties of corn marketed in the state except sweet corn or popcorn" and all corn, as so defined, is subject to the assessment.

In response to a question from Representative Solberg, Representative Mueller said if a grower sells corn to a person who is not a designated handler, the grower has the obligation to submit the assessment to the council.

### **Section 11**

#### **(Amendment of NDCC Section 4-10.6-10)**

Chairman Mueller said this section requires designated handlers to keep a record of all purchases,

sales, and shipments of corn. He said it further provides that the record is a permanent record and may be examined by the council at all reasonable times. He said the preferred phrase would be "upon request." He said this removes any confusion about what constitutes a "reasonable time."

Chairman Mueller said the section requires designated handlers to file reports with the council. He said these reports are quarterly reports and the rewrite specifies that. He said current law spells out the quarterly period. He said quarterly periods are standardized throughout state government and therefore the rewrite deletes lines 14 through 16 on page 8. He said the rewrite also removes the reference to regular audits. He said NDCC Chapter 54-10 sets forth the state's audit requirements and therefore there is no reason to maintain this reference.

### Section 12

#### **(Amendment of NDCC Section 4-10.6-11)**

Chairman Mueller said this section begins with a directive that the council develop and disseminate information and instructions relating to the purpose of the corn assessment and manner in which refunds may be claimed. He said this was moved to a duties section. He said the second part of the sentence directs the council to "cooperate with governmental agencies and private businesses engaged in the purchase of corn." He said as with the other commodity groups, this phrase was removed as well.

Chairman Mueller said unlike the other commodity groups, the council gives its growers 90 days after final settlement within which to request a refund application and another 90 days from the date the application was mailed to actually submit the claim.

In response to a question from Representative Mueller, Mr. Lilja said the council would not be opposed to standardizing this requirement.

**It was moved by Senator Wanzek, seconded by Representative Kingsbury, and carried on a voice vote that a producer have 60 days from the date of final settlement within which to request a refund application and 90 days from the date of final settlement within which to file the application with the council.**

### Section 13

#### **(A New Section to NDCC Chapter 4-10.6)**

Chairman Mueller said this section provides that the grower is entitled to a refund of the overpayment or double payment if the grower can demonstrate that the grower has paid the tax more than once on the same corn. He said it is the consensus of the committee that the rewrite reference overpayments.

### Section 14

#### **(Amendment of NDCC Section 4-10.6-12)**

Chairman Mueller said the corn council also has an advisory referendum. He said the referendum may be conducted only among voting growers. He said these are described as growers who have paid the assessment, regardless of whether they have applied for a refund. He said it is the consensus of the committee that the adjective "voting" is not necessary.

Chairman Mueller said like other commodity groups, the council also provides for a referendum to "determine whether the assessment should be changed." He said in the interest of consistency with other commodity groups, this rewrite provides that the referendum should determine the amount by which the assessment should be changed. He said this could include asking about changing the assessment to \$0.

Chairman Mueller said the section does not address the amount of time that may elapse between the filing of a petition and the actual vote. He said it does not address how frequently a referendum may be conducted. He said committee counsel will work with Mr. Lilja to incorporate this in a future draft.

Chairman Mueller said subsection 5 states that a "voting grower requesting an absentee ballot shall file a statement with the council affirming the grower's eligibility to vote." He said the council shall provide a statement form upon request. He said the section does not indicate whether this to be filed at the time the ballot is requested or at the time the ballot is submitted to the council. He said committee counsel will work with Mr. Lilja to clarify this in a future draft.

Chairman Mueller said subsection 7 provides if there is a vote calling for a change, the council is to request that the Agriculture Commissioner prepare appropriate legislation for submission to the next Legislative Assembly. He said it is not clear whether the commissioner is to submit a bill reflecting the intent of the referendum or just have it drafted and given to the council. He said it is also not clear whether the commissioner may refuse the request to prepare appropriate legislation. He said if there is a problem requiring a statutory change, the council may contact the commissioner for the commissioner's assistance in getting legislation drafted, but the council should not assume that that commissioner will do that. He said everybody has two representatives and a senator to assist with such matters.

### Section 15

#### **(Amendment of NDCC Section 4-10.6-13)**

Chairman Mueller said there is no substantive change in this section.

**Section 16  
(Amendment of NDCC Section 4-10.6-14)**

Chairman Mueller said this issue was addressed in the committee's discussion regarding other commodity chapters. He said it was the committee's consensus that the provisions of this section not be changed.

**Section 17  
(Repeal of NDCC Sections  
4-10.6-03 and 4-10.6-15)**

Chairman Mueller said this section repeals NDCC Section 4-10.6-03, which establishes the council districts. He said the content of this section was moved into Section 4-10.6-02. He said the section also repeals Section 4-10.6-15, which provides that records of the council must be available for inspection at the council office during regular business hours. He said Chapter 44-04 addresses public records and therefore the provisions do not need to be reiterated in this chapter.

Chairman Mueller said NDCC Chapter 4-10.6 also includes a section providing that any person who willfully violates this chapter is guilty of a Class B misdemeanor. He said because the section was not amended, it is not included in this bill draft.

Chairman Mueller recessed the meeting at 4:30 p.m.

**OILSEED COUNCIL  
CHAPTER REWRITE**

Chairman Mueller reconvened the committee at 9:00 a.m. on Friday, January 11. He welcomed Senator David O'Connell, Legislative Council member, to the meeting.

At the request of Chairman Mueller, Mr. Stan Buxa, Chairman, Oilseed Council, presented testimony regarding the bill draft [\[90036.0100\]](#) to rewrite North Dakota Century Code provisions pertaining to the Oilseed Council. He said the Oilseed Council is the checkoff group for multiple commodities. He said most of the council's work is contracted out to the National Sunflower Association, the Northern Canola Growers Association, and Ameriflax. He said the council generally meets twice per year and holds conference calls in between.

**Section 1  
(Amendment of NDCC Section 4-10.2-02)**

Chairman Mueller said current law defines a "first purchaser" as any person buying, accepting for shipment, or otherwise acquiring sunflower, safflower, rapeseed or canola, crambe, or flax from a grower. He said it provides that the term includes a mortgagee, pledgee, lienor, or any other person having a claim against the grower if the actual or constructive possession of the oilseed is taken as part payment or in satisfaction of the mortgage, pledge, lien, or claim. He said it then goes on to provide that for the purposes of assessments and reporting, the term "first purchaser" includes a grower selling the

grower's unharvested sunflower, safflower, rapeseed or canola, crambe, or flax out of state, or delivering the grower's sunflower, safflower, rapeseed or canola, crambe, or flax from the farm where it was produced to any storage facilities, packaging sheds, or processing plants located outside the state. He said it would appear that a separate section is needed addressing the grower's responsibility to pay the checkoff if the grower is selling to someone who is out of state and under no obligation to deduct the assessment.

Chairman Mueller said subsection 4 defines a grower. He said in the interest of consistency throughout the commodity chapters, it is recommended that a decision be made to use either the word "grower" or the word "producer."

Chairman Mueller said the definition of a grower contains confusing elements. He said it is not clear whether a landlord in a crop share arrangement qualifies as a grower. He said it is not clear whether a grower has to be actively involved in the activities of planting, raising, and harvesting oilseeds.

Committee counsel said it was decided earlier that discussions would continue with the Wheat Commission regarding the definition of a producer and the implications that had for commission membership. She said the outcome of that pursuit might very well be applied in future bill drafts to other commodity groups.

Chairman Mueller said this commodity chapter defines a producer as one who plants, raises, and harvests oilseeds from more than 10 acres. He said there appears to be an inconsistency between requiring that a person plant, raise, and harvest oilseeds from more than 10 acres in order to be considered a producer and the requirement that the assessment be levied on all oilseeds grown in the state.

In response to a question from Representative Mueller, Mr. Buxa said the language was probably enacted to eliminate cumbersome paperwork generated by small novel growers.

In response to a question from Senator Bowman, Chairman Mueller said language later in the chapter requires that the assessment must be paid on all oilseeds, not just those grown in plots larger than 10 acres. In addition, he said, only growers, i.e., only those who plant, raise, and harvest oilseeds from more than 10 acres, are eligible to request refunds.

Chairman Mueller said 22 times in this chapter, one can find a listing of "sunflower, safflower, rapeseed or canola, crambe, or flax." He said it is much more convenient to refer to "oilseeds" and to define oilseeds as including "sunflower, safflower, rapeseed or canola, crambe, or flax."

Chairman Mueller said the term "participating grower" is used in only two sections and so the rewrite included it within the content of those sections. He said NDCC Section 1-01-49 defines a person as "an individual, organization, government, political subdivision, or government agency or instrumentality"

and further defines an organization as including a "foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity." Therefore, he said, a separate definition of person in this chapter is not needed.

Committee counsel said subsection 5 defines a hundredweight as a 100-pound unit or a combination of packages making a 100-pound unit. She said it then provides that a hundredweight may also be any shipment of oilseeds based on assembly sheets or bills of lading records. She said words are missing in the current law. She said the committee should determine if it is necessary to define a hundredweight.

Mr. Buxa said hundredweight is a commonly understood term and it does not need to be defined.

Chairman Mueller said if the committee removes the definition of a hundredweight, it also eliminates the concern about the second part of the definition.

Senator Wanzek said the last part of the current definition makes no sense. He said that language could be eliminated and hundredweight could be defined.

Committee counsel said the question remains whether there needs to be a definition of a hundredweight in the chapter. She said the term appears to be self-evident.

Senator Flakoll said this definition is not necessary. He said it is a commonly understood term.

Chairman Mueller said it is the consensus of the committee that the definition of a hundredweight be deleted.

## **Section 2**

### **(Amendment of NDCC Section 4-10.2-03)**

Chairman Mueller said this section establishes the membership of the council. He said current law states that one member of the council must be a "crambe grower appointed by the governor." He said this crop is grown in only a very limited fashion and in some years it is not grown at all. He said if no one grows the crop, the Governor cannot appoint to the council a person who grows crambe. He said it is suggested that the seat on the council be held by an individual who grows an oilseed other than sunflowers, canola, safflowers, or flax.

Mr. Buxa said no crambe acres have been planted in the state during the last two years. He said there needs to be some flexibility so that the law does not specifically require that there be a crambe grower to fill that slot.

Senator Flakoll said perhaps the Governor could give a preference to qualified growers of oilseeds not otherwise listed in the section. He said that way, the Governor could appoint the grower of crambe or a lesser-known oilseed if such a crop is grown in the state. He said if it is not grown, the Governor would still be able to appoint an oilseed producer and the council would have a full complement of members.

Committee counsel said if the Governor would appoint another sunflower grower, the council would be more heavily weighted in favor of that commodity.

Chairman Mueller said subsection 2 provides that the chairman of the council must be a member of the council elected by a majority vote of the council. He said it would be appropriate to indicate when the election is to take place and the length of the chairman's term. He said committee counsel and Mr. Buxa should add such verbiage to the next bill draft.

Chairman Mueller said if a council seat becomes vacant, it is to be filled by the remaining members of the council, regardless of whether the member was initially elected or appointed by either the Governor or the director of the Agricultural Experiment Station. He said the rewrite reflects the intent that if an appointee's seat is vacated, the appointing entity must make another appointment.

Chairman Mueller said subsection 6 is the council's election provision. He said it delegates to the commissioner, or a county agent designated by the commissioner, in cooperation with the North Dakota State University Extension Service, the duty to conduct elections in each district, in the manner the commissioner determines fair and reasonable. He said because the council is a governmental entity, charged with the collection and expenditure of tax dollars, it would be preferable to describe the election process in statute, so that anyone can determine what that process is and also to ensure that the burden of determining what constitutes a fair and reasonable election is not delegated to one individual, i.e., the commissioner. He said committee counsel should meet with representatives of the council, determine their election procedure, and include such provisions in a subsequent draft.

## **Section 3**

### **(Amendment of NDCC Section 4-10.2-04)**

Chairman Mueller said this section establishes the seven sunflower districts. He said the section will be relocated in the next bill draft so that it precedes the section or sections governing elections.

## **Section 4**

### **(Amendment of NDCC Section 4-10.2-04.1)**

Chairman Mueller said this section establishes the three canola districts. He said it too should be placed earlier in the chapter so that it precedes the section or sections governing elections.

## **Section 5**

### **(Amendment of NDCC Section 4-10.2-05)**

Chairman Mueller said the first sentence of this section, which described what constitutes a quorum, was removed. He said NDCC Section 1-01-10 already defines a quorum for purposes of the entire code.

### Section 6

#### (Amendment of NDCC Section 4-10.2-06)

Chairman Mueller said current law provides that the council or its designated agent shall approve each expenditure. He said the rewrite provides that the council shall approve each expenditure because that is in essence what happens. He said the council approves the budget and establishes the duties of its office manager with respect to paying the day-to-day bills.

### Section 7

#### (Amendment of NDCC Section 4-10.2-07)

Chairman Mueller said this section attempts to separate the council's powers and duties. He said in subsection 3, it appears as if the rewrite removes the right to discharge employees. He said this is not the case. He said the law has long recognized that the right to employ carries with it the right to discharge. Therefore, he said, the rewrite does not need to specifically list the authority to discharge an employee.

Chairman Mueller said subsection 5 was shortened to provide authorization for the council to sue and be sued. He said in some of the chapters that were considered previously, the committee added the authority to do all things necessary and proper to administer and enforce the chapter. He said that language would be appropriate here as well.

Chairman Mueller said this section sets forth the powers of the council, i.e., those activities that the council is authorized to do. He said the committee may want to consider adding another section to set forth the council's duties. He said some of these could come from the current legislative policy section or could involve the broad authority to promote the sale and use of oilseeds domestically and internationally. He said it is the consensus of the committee that powers and duties be reflected in two separate sections.

### Section 8

#### (Amendment of NDCC Section 4-10.2-08)

Chairman Mueller said current law provides that an assessment must be imposed upon all oilseeds and that the assessment is due upon any identifiable lot or quantity of oilseeds. He said this latter provision is unnecessary, when combined with the prior directive that the assessment be levied on "all" oilseeds.

Chairman Mueller said subsection 2 pertains to a certificate that must be obtained by a first purchaser before the first purchaser sells, processes, or ships any oilseeds. He said the rewrite clarifies that the first purchaser must notify the council whenever there is a change in the information required by the subsection. He said it is the consensus of the committee that the content of this subsection be moved to a separate section, rather than maintained within the assessment section.

Chairman Mueller said subsection 5 currently provides that the assessments collected from the

individual oilseeds must be used to further the interests of the respective crops. He said with respect to flax, the current law directs that the expenditures should emphasize nutritional and therapeutic research. He said the rewrite deletes this limitation at the direction of representatives from the Oilseed Council. He said provisions regarding how the assessments are to be used do not fit well with provisions regarding the actual levying of the assessments and should be in a separate section. In fact, he said, this is material that should rightfully be in a separate duties section.

Chairman Mueller said the section also provides that regular audits must be conducted in accordance with NDCC Chapter 54-10. He said because that chapter sets forth the state's audit requirements and because those requirements apply to all state entities, it is not necessary to repeat that.

### Section 9

#### (Amendment of NDCC Section 4-10.2-09)

Chairman Mueller said this section addresses the manner in which refunds may be obtained. He said current law provides that a person has 60 days following the assessment or final settlement to send a personal letter to the council asking for a refund application. He said it is silent with respect to the date by which that application must be filed. He said the committee has elected to standardize the time limit for refund applications in the other commodities.

**It was moved by Senator Wanzek, seconded by Representative Kingsbury, and carried on a voice vote that a producer have 60 days from the date of final settlement within which to request a refund application and 90 days from the date of final settlement within which to file the application with the council.**

Chairman Mueller said NDCC Section 4-10.2-08 provides that an assessment is levied and imposed upon all oilseeds grown in the state or sold to a first purchaser. He said this is where there is concern about the prior discussion regarding the 10-acre limitation. He said perhaps a sentence could be added providing that only oilseeds grown in plots of more than 10 acres are subject to the assessment.

Representative Uglem said growers could have seven plots of eight acres each.

Committee counsel said the committee needs to determine what the intent is with respect to who must pay the assessment. She said if the assessment is to be paid on all oilseeds, regardless of plot size, then the refund should likewise be available to all growers. She said under current law all oilseeds are assessed, but only growers can request refunds. She said growers are defined as persons who plant, raise, and harvest oilseeds from more than 10 acres.

Senator Bowman said the paperwork that is associated with very small quantities of oilseeds is not worth the effort.

Senator Wanzek said the problem is that the first purchaser has no way of determining whether the

oilseeds were grown on a plot of fewer than 10 acres or more than 10 acres.

Committee counsel said current law is very clear. She said the assessment is due upon all oilseeds and the first purchaser must collect the assessment. She said Section 9 precludes the grower, i.e., the individual who raises oilseeds on fewer than 10 acres, from claiming a refund.

Representative Uglem said if the Legislative Assembly eliminated the 10-acre requirement, the confusion would be eliminated.

Mr. Buxa said the 10-acre requirement was instituted to eliminate the \$1.29 refund check. He said he would not be averse to keeping it simple. He said the assessment should be on everything that is grown. He said elevators are not going to determine plot size.

In response to a question from Senator Wanzek, Mr. Buxa said there are growers who request refunds of the \$4 they paid in assessments.

Committee counsel said the Tax Department does not provide refunds if the amount to be refunded is less than \$5. She said perhaps something like that could be explored.

In response to a question from Representative Mueller, committee counsel said if the reference to 10 acres were eliminated, each grower would continue to be assessed on all oilseeds the grower raised and the grower would be permitted to obtain a refund of all assessments paid.

**It was moved by Senator Wanzek, seconded by Representative Johnson, and carried on a voice vote that all references in the Oilseed Council chapter to 10-acre plots be deleted.**

Senator Flakoll said he would like to see different terminology used for overpayment or double payment refunds. He said that is not the same as requesting a regular refund.

Chairman Mueller said committee counsel should work with the commodity groups and devise alternate terminology so that a person who requests and receives a reimbursement for an overpayment is not categorized the same way as a person who requests a refund because the person does not want to pay the assessment.

### **Section 11**

#### **(Amendment of NDCC Section 4-10.2-10)**

Chairman Mueller said this is the referendum section. Under current law, he said, the referendum is to ask whether the participating growers wish to have the Legislative Assembly raise or lower the assessment. He said the rewrite changes this so that the referendum would ask the amount by which the assessment should be raised or lowered. He said although this section does not address whether the referendum could ask if the stated amount should be \$0, it was the consensus of the committee that other commodity groups be allowed to set any dollar amount and, therefore, the Council should be allowed to do the same.

Chairman Mueller said under current law, if a majority of the growers favor the proposed change, the council is to certify the result to the commissioner and request that the commissioner prepare a bill to submit to the next Legislative Assembly. He said it is not entirely clear whether this actually requires the commissioner to introduce the bill or just have it drafted. He said, regardless of the response, it appears to give the commissioner veto power in that the council can request that the commissioner prepare a bill and the commissioner could reject that request for a bill. He said representatives of the council suggested that it should be their responsibility to introduce a bill after a referendum and based on that discussion the rewrite reflects that position.

### **Section 12**

#### **(Amendment of NDCC Section 4-10.2-11)**

Chairman Mueller said Section 12 authorizes the council to levy a penalty. He said the section does not require that the council do so. However, he said, if the council determines that a penalty is appropriate, it has no latitude in the amount of the penalty. He said the penalty is statutorily set at 10 percent. He said it is the consensus of the committee that this provision remain consistent among the commodity groups.

### **Section 13**

#### **(Repeal of NDCC Sections 4-10.2-01 and 4-10.2-13)**

Chairman Mueller said because NDCC Section 4-10.2-01 sets forth legislative policy, it is recommended that the section be repealed. He said Section 4-10.2-13 provides that all the records of the council are public information and must be available for inspection. He said because Chapter 44-04 addresses public records, and because its provisions are applicable to the council, there is no need to reiterate the open records requirement in this chapter.

### **NOXIOUS WEED BILL DRAFT**

At the request of Chairman Mueller, Mr. Ken Junkert, Manager, Plant Industries, Department of Agriculture, presented testimony ([Appendix C](#)) regarding the noxious weed bill draft [[90012.0200](#)]. He said the testimony was prepared for and is being delivered on behalf of Agriculture Commissioner Roger Johnson. He said Commissioner Johnson wishes to propose that the bill allow noxious weed funding to be used on certain invasive species.

In response to a question from Representative Mueller, Ms. Rachel Seifert-Spilde, Noxious Weed Specialist, Department of Agriculture, said an invasive species is a plant that is not native to the ecosystem and which causes or is likely to cause economic or environmental harm or harm to human health. She said if a new invasive species appears in a county, a county weed board would have to put the plant on its noxious weed list before it could use money under the Act to pay for control efforts. She said some county weed boards do not meet very frequently.

**It was moved by Representative Kingsbury and seconded by Senator Behm that the bill draft be revised to authorize the expenditure of noxious weed funds for the control of invasive species.**

Senator Flakoll said the phrase "harmful to human health" is nebulous.

Dr. Kevin Sedivec, School of Natural Resource Sciences, North Dakota State University, said caution should be exercised before the proposed definition of an invasive species is accepted. Under the definition, he said, brome grass would qualify.

Chairman Mueller said he is concerned that the proposed definition may have more consequences than the commissioner intends. He said the concept could more appropriately be pursued as a separate bill during the 2009 legislative session.

**Representative Kingsbury, with the consent of Senator Behm, withdrew her motion.**

Mr. Junkert said the commissioner also proposes that the commissioner's ability to direct the removal of noxious weeds from city and county weed lists be retained.

In response to a question from Representative Mueller, Mr. Junkert said it would be the commissioner's intention to consult with experts regarding the removal of a noxious weed. He said he would be willing to work with committee counsel to include consultation language in the proposed amendment.

**It was moved by Representative Uglem, seconded by Representative Kingsbury, and carried on a voice vote that the commissioner's ability to direct the removal of noxious weeds from city and county weed lists be retained and that consultation requirements be developed and included.**

### Section 1

Chairman Mueller said this section needed to be amended because it contained cross-references to NDCC Chapter 63-01.1. He said that is the current noxious weed chapter.

### Section 2

Chairman Mueller said this section contains a reworked definition of "control." He said the section now provides that control means to prevent a noxious weed from spreading by suppressing its seeds or propagating parts or destroying either the entire plant or its propagating parts. He said the prior definition also referenced the control of pests.

### Section 3

Chairman Mueller said current law provides that every person in charge of or in possession of land shall control or eradicate noxious weeds on those lands. He said this committee determined that each person has a duty to control the spread of noxious weeds, not just landowners or those who farm. He said the rewrite provides that each person shall do all

things necessary and proper to control the spread of noxious weeds.

### Section 4

Chairman Mueller said current law authorizes weed control authorities to enter upon land to perform duties and exercise powers under the chapter. He said the committee directed that the phrase "control authority" be replaced by references to the individual or entity that has the respective powers and duties. He said this section authorizes the Agriculture Commissioner to enter land for the purposes of performing duties and exercising powers under this chapter. He said county and city weed control officers have sections giving them similar authority.

### Section 5

Chairman Mueller said this section was based on a list of 10 duties that the Agriculture Commissioner has with respect to noxious weeds. He said the committee directed the removal of "cooperating" language and "encouraging" language. He said three important duties are left--the maintenance of a state weed list, the forwarding of signed complaints, and the calling of an annual meeting. He said under current law the annual meeting is for the purpose of reviewing the intent, operation, procedures, and accomplishments under the chapter. He said at the committee's direction the purpose of the annual meeting was shortened to review noxious weed control efforts in this state.

### Section 6

Chairman Mueller said based on committee directives, this section now provides that before the commissioner may add to or remove a weed from the state list, the commissioner must consult with the NDSU Extension Service. He said the section also requires that no later than January 2010, and every five years thereafter, the commissioner must review the state noxious weed list. He said the commissioner must provide notice of the review to county and city weed boards and after the conclusion of the review, provide written notice of any changes to the state list.

### Section 7

Chairman Mueller said this section allows for a three-member board as well as the currently permissible five-member and seven-member boards. He said at the previous meeting the committee directed the removal from current law of a provision that required there to be a board member from each city in the county having a population of 5,000 or more. He said the section also includes a clarification. He said current law provides that the board of county commissioners "may" set the rates of compensation for county weed board members. He said the rewrite, as per committee direction, requires that the board of county commissioners set the rates.

### **Section 8**

Chairman Mueller said this section reiterates the jurisdiction of the county weed boards.

### **Section 9**

Chairman Mueller said current law authorizes a county weed board to employ additional personnel to assist with noxious weed control efforts. He said the rewrite authorizes not only the employment of additional personnel but their compensation as well.

### **Section 10**

Chairman Mueller said this section sets forth the duties of a county weed board. He said under current law each county weed board is to provide technical assistance to any city that has a population of 3,000 or more and which establishes its own noxious weed control program. He said as per committee direction this provision was removed. He said the rewrite also removes the provision stating that all meetings are open to the public. He said that is the case under NDCC Chapter 44-04.

Chairman Mueller said this is the duties section and it provides that a county weed board is obligated to control noxious weeds along county and township roads and county highways. He said this provision is currently found in NDCC Section 63-01.1-09.

### **Section 11**

Chairman Mueller said this section pertains to the development of the county weed list. He said as per committee direction the section requires a periodic review similar to that required by the Agriculture Commissioner. He said county weed boards are to give the Agriculture Commissioner 14 days' notice of their review and within 14 days after conclusion of the review, they are to provide the commissioner with written notice of any changes. He said the rewrite, on page 6, line 12, needs to provide that the requisite timeframe is 14 days after "conclusion of" the review.

### **Section 12**

Chairman Mueller said current law authorizes weed control authorities to enter upon land to perform duties and to exercise powers under the chapter. He said as per committee direction the phrase "control authority" was eliminated and the rewrite references the specific individual or entity that may enter land for the purposes of performing duties and exercising powers under this chapter.

### **Section 13**

Chairman Mueller said this section sets forth the duties of a county weed control officer. He said the section was not changed. However, he said, there are a couple of concepts that need to be placed somewhere. He said present law provides that a county weed control officer may be a member of the county weed board and it also provides that an individual may serve as a weed control officer for

more than one weed board. He said those are neither duties nor powers. He said a new section must be created to accommodate the concepts.

### **Section 14**

Chairman Mueller said this section provides that the county weed board may levy up to two mills for noxious weed control and that the board of county commissioners may levy up to two mills on top of the county weed board's levy.

### **Section 15**

Chairman Mueller said this section addresses how the county share of various state appropriations is determined. He said the section calls for the commissioner to work with the county weed boards and develop a method for the distribution of the dollars. He said the section provides that the method must limit what any one county weed board may receive to 50 percent of its annual expenditures and the section allows the commissioner to waive the 50 percent limit if the commissioner determines that a noxious weed is seriously endangering a particular area. He said this is a restatement of current law.

### **Section 16**

Chairman Mueller said this section addresses how money is distributed under the landowner assistance program. He said the section calls for the commissioner to work with the county weed boards and develop a formula for the distribution of the dollars. He said the section requires that a county budget, from county sources, an amount equal to the revenue that could be raised by a three-mill levy for noxious weed control. He said landowners are expected to contribute at least 20 percent of the cost. He said the landowner's contribution may be "in kind." He said members of the weed control community differ as to whether or not a three-mill levy should be required in order for an entity to receive state dollars. However, he said, if the three-mill levy requirement was removed, local governing authorities would have no incentive to raise any of their own money for noxious weed control.

### **Section 17**

Chairman Mueller said this section authorizes a city of 3,000 or more to establish its own noxious weed control program.

### **Sections 18 Through 24**

Chairman Mueller said these sections address city noxious weed control programs and parallel the sections previously discussed with respect to the county programs.

### **Section 25**

Chairman Mueller said this section calls for each state agency to control noxious weeds on land under its jurisdiction.

**Section 26**

Chairman Mueller said this section was reworded. He said the section provides that law enforcement agents must cooperate with the commissioner, with weed boards, and with weed control officers in enforcing this Act.

**Section 27**

Chairman Mueller said this section allows a county weed officer to serve written notice upon a landowner requiring that the landowner control the noxious weeds within a time certain. He said the section lists the content of the notice and authorizes the county weed board to control the weeds, if the landowner does not, and to charge the expenses against the land. He said the section provides a hearing for the landowner in front of the county weed board and then provides an appeal to the board of county commissioners. He said the prior bill draft provided that the first hearing would be before the board of county commissioners. He said the committee specifically directed that there be a two-step hearing process. He said the section also contains parallel provisions with respect to city entities.

**Section 28**

Chairman Mueller said this section establishes a procedure for quarantines. He said the section was not changed since the last bill draft except that, as per committee direction, a penalty was added. He said if a person violates a quarantine order issued under this section, the person would be guilty of a Class B misdemeanor.

**Section 29**

Chairman Mueller said this section is a clarification of the current law. He said the section pulls together several provisions and now states that a person may not 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. He said if one is going to transport grain screenings, one should cover them. He said, secondly, the section states that a person may not drive or transport any equipment on a public road in a manner that allows for the dissemination of noxious weeds. He said a person should clean the person's combine before driving it down the road or trailering it. He said, thirdly, a person may not dispose of any material that contains noxious weed seeds or propagating parts in a manner that prevents the dissemination of noxious weeds. He said a person may not just scatter or dump products in a fashion that allows for the dissemination of noxious weeds. He said doing any of these things is a Class B misdemeanor.

Senator Bowman said that the next bill draft should include some level of culpability, be that negligently, recklessly, or willfully.

**Section 30**

Chairman Mueller said this section is a clarification of the current civil penalty section. He said the section states that in addition to any other penalties that might be added, a person is subject to the current penalty of \$80 per day for each day of a violation up to a maximum of \$4,000 per year. He said if one is a landowner and fails to meet certain remedial requirements, the penalties become a lien against one's land.

**Section 31**

Chairman Mueller said this is the current conflict of interest section. He said as per committee direction the rewrite provides that if an individual files a signed complaint with a county weed board and if the individual believes that the complaint has not been satisfactorily addressed within 21 days, the individual may request a hearing before the board of county commissioners. He said this hearing is to take place within 21 days from the time of the request. He said no later than 14 days after the hearing the board of county commissioners is to render a determination. He said its determination is final. He said a parallel provision is inserted for the city level. He said the Agriculture Commissioner no longer has a role in determining the outcome of such disputes. He said the commissioner can certainly play a part in encouraging a specific outcome. He said this change puts the issue squarely into the realm of local control.

Representative Brandenburg said he is comfortable with the proposed change but still is concerned about weed boards and boards of county commissioners that choose not to act on issues before them.

Chairman Mueller said local governing board members ultimately are responsible to their constituents. He said the members have to stand for election and justify what they have and have not done for and on behalf of the electorate.

**Section 32**

Chairman Mueller said this section, like Section 1, reconciles cross-references.

**FINAL ACTION**

No further business appearing, Chairman Mueller adjourned the meeting at 12:00 noon.

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L. Anita Thomas  
Committee Counsel

ATTACH:3