

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### AGRICULTURE COMMITTEE

Monday and Tuesday, October 6-7, 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, Mike Brandenburg, Rodney J. Froelich, Curt Hofstad, Dennis Johnson, Joyce Kingsbury, Dorvan Solberg, Gerry Uglem; Senators Arthur H. Behm, Bill Bowman, Tim Flakoll, Ryan M. Taylor, Terry M. Wanzek

**Members absent:** Representative Tracy Boe; Senator Robert S. Erbele

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

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

Chairman Mueller said it is his intention to address those sections of the bill drafts that contain substantive changes. However, he said, if anyone has questions or concerns about any other sections of the bill draft, he will gladly allow time for discussion.

#### HONEY ASSESSMENTS

Chairman Mueller asked the committee to consider the bill draft [\[90073.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to honey assessments.

##### Section 4.1-08-03

Chairman Mueller said current law requires the Agriculture Commissioner to impose a penalty on a delinquent assessment. He said, as directed by the committee, this section now authorizes the commissioner to impose a penalty, but it does not require that the commissioner do so. He said this change parallels the provisions in other commodity group chapters.

##### Section 4.1-08-04

Chairman Mueller said, as directed by the committee, this section now reflects the same number of days given to other commodity groups for requesting and submitting refund forms.

In response to a question from Chairman Mueller, Ms. Judy Carlson, Plant Industries, Department of Agriculture, said there is no difficulty collecting the assessment from beekeepers. She said the commissioner does not issue licenses to beekeepers until their fees are paid. She said there are 177 licensed beekeepers in this state. She said, at

their recent convention, 80 licensed beekeepers were in attendance. She said they passed a resolution supporting the bill draft.

##### Section 4.1-08-06

Chairman Mueller said this section authorizes the use of assessments for purposes of funding research, education programs, and market development efforts, as well as promotional efforts such as the North Dakota Honey Queen program.

In response to a question from Representative Mueller, Ms. Carlson said the resources generated through the honey assessment are not very large. She said, consequently, there is no need for language authorizing the use of honey assessment dollars for purposes beyond those listed in the bill draft. She said broader efforts are undertaken by honey packers.

In response to a question from Representative Froelich, Ms. Carlson said honey packers are those who package honey for retail sale.

**It was moved by Representative Solberg, seconded by Senator Behm, and carried on a voice vote that the bill draft relating to the honey assessments be approved and recommended to the Legislative Council.**

#### TURKEY ASSESSMENTS

Chairman Mueller asked the committee to consider the bill draft [\[90074.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the turkey assessment. He said Mr. David Muehler, President, North Dakota Turkey Federation, was unable to appear before the committee today. He said Mr. Muehler has reviewed the bill draft and shared the bill draft with all members of the North Dakota Turkey Federation.

##### Section 4.1-12-02

Chairman Mueller said, in accordance with a motion by the committee, this section now reflects the level of assessments currently being imposed on turkeys. He said it provides for a one cent assessment if the average live weight of turkeys in a flock, after processing, is less than 18 pounds; an assessment of one and one-half cents if the average live weight of turkeys in a flock, after processing, is at least 18 pounds but less than 28 pounds; and an assessment of one and three-quarter cents if the

average live weight of a flock after processing is at least 28 pounds.

#### **Section 4.1-12-05**

Chairman Mueller said current law requires the Agriculture Commissioner to impose a penalty on a delinquent assessment. He said, as directed by the committee, this section authorizes the commissioner to impose a penalty but does not require that the commissioner do so. He said this change parallels the provisions in other commodity group chapters.

#### **Section 4.1-12-07**

Chairman Mueller said, in accordance with a motion by the committee, this section now reflects the same number of days given to other commodity groups for requesting and submitting refund forms.

Chairman Mueller said Section 4-13.1-01 was omitted from the rewrite because it provides a title for the chapter and is therefore unnecessary and Section 4-13.1-11 was omitted from the rewrite because it duplicates enforcement authority given to the commissioner in proposed Section 4.1-12-10.

**It was moved by Senator Flakoll, seconded by Representative Solberg, and carried on a voice vote that the bill draft relating to the turkey assessment be approved and recommended to the Legislative Council.**

### **SOYBEAN COUNCIL AND ASSESSMENTS**

Chairman Mueller asked the committee to consider the bill draft [\[90059.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the Soybean Council and assessments.

At the request of Chairman Mueller, Ms. Deborah Johnson, Executive Director, North Dakota Soybean Council, presented testimony regarding the bill draft. She said she is being joined by Mr. Dennis Feiken, Chairman, North Dakota Soybean Council.

In response to a question from Representative Mueller, Ms. Johnson said she has notified soybean growers of the rewrite through the organization's newsletter and has worked with the chairman and members of the North Dakota Soybean Council.

#### **Section 4.1-11-01**

Chairman Mueller said this bill draft uses a definition of a producer that involves an ownership interest in the crop and requires that the person has planted the crop during four of the six previous calendar years. He said he would like to have the committee consider a new definition of a producer. He said, in this definition, producer means a person that plants or causes to be planted a crop in which the person has a ownership interest, with the intent that upon maturity the crop will be harvested; a person that will have met the requirements as stated above during the next available growing season; or a person who met the requirements as stated above during the immediately preceding growing season.

Ms. Johnson said the definition of a producer, as described by Chairman Mueller, would meet the definition of a producer set forth in the Soybean Promotion, Research, and Consumer Information Act.

In response to a question from Representative Solberg, Ms. Johnson said organic producers are exempt from the payment of assessments if they qualify as exempt entities in accordance with federal law.

Senator Flakoll said he is in support of the proposed definition of a producer, as described by Chairman Mueller.

Committee counsel said if the new definition of a producer were to be applied to this chapter, it would be necessary to maintain language currently in the bill indicating that the term "producer" does not include an organic producer who has been exempted from the payment of assessments in accordance with federal law.

**It was moved by Senator Flakoll, seconded by Representative Uglem, and carried on a voice vote that the definition of a producer, as described by Chairman Mueller, with the reference to organic producers who have been exempted under federal law, be substituted for the definition of a producer in the current bill draft.**

#### **Section 4.1-11-04**

Chairman Mueller said this section provides that no later than March 1 of the year in which the term of the council member is to expire, the extension agent of each county in that member's district must hold a meeting of soybean producers for the purpose of electing a county representative. He said current law provides that county and district elections must take place before April 1. He said the term of office begins on April 1. He said there is concern that people might read the part of the statute providing that elections must take place before April 1 and not read the part of the statute that references the number of days prior to a meeting that notice must be published in the case of county representative elections and the number of days that county representatives must be notified by registered mail before the district meeting takes place.

Ms. Johnson said the dates proposed in the bill draft are appropriate.

Chairman Mueller said current law does not clarify whether eligibility to vote for a county representative belongs to those who reside in the particular county or to those who farm in the county. He said, in the interest of providing clarity, the rewrite states that any producer who resides in the county may vote in the election.

In response to a question from Ms. Johnson, committee counsel said if a producer does not reside in the county, the producer may not vote in the election. She said a person has only one residence and eligibility to vote in the election is contingent upon that rather than where an individual farms.

Chairman Mueller said the rewrite provides that the meeting to elect a county representative must be held

at a central location within the county. He said some commodity group representatives have expressed an interest in removing the requirement that the election be held at a central location within the county.

Senator Behm said he believes it is appropriate to maintain the requirement that the election take place within the county. However, he said, some counties do not have centrally located facilities that would accommodate or be appropriate for such an event. Therefore, he said, he would support removal of the central location requirement.

**It was moved by Senator Behm, seconded by Representative Solberg, and carried on a voice vote that the bill draft be amended to remove the requirement that meetings for the purpose of electing county representatives and meetings for the purpose of selecting council members be held at a central location.**

Chairman Mueller said the section directs county extension agents to canvas votes, notify the director of the North Dakota State University Extension Service that the election has taken place, and provide to the director the name and address of the newly elected county representative. He said other commodity groups have indicated that it would be appropriate to require notification of the council both with respect to the election of a county representative and with respect to the election of the council member.

**It was moved by Senator Behm, seconded by Senator Flakoll, and carried on a voice vote that the North Dakota Soybean Council be notified of the name and address of a newly elected county representative and of a newly elected council member.**

#### **Section 4.1-11-06**

Chairman Mueller said this section is new law. He said it clarifies that all costs of holding both county and district elections are the responsibility of the council. He said current law does not address who is responsible for the cost of newspaper notices, ballots, hall rentals, or any other charges associated with the holdings of elections.

#### **Section 4.1-11-08**

Chairman Mueller said present law provides that the "council shall determine the amount of compensation payable to each member of the council, except the commissioner. The amount payable may not exceed seventy-five dollars per day plus reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the council, except that no compensation may be paid to any council member who receives compensation or salary as a regular state employee or official." He said he believes the intent was to preclude the payment of compensation if an individual is serving on the council as a requirement of that individual's state position. However, he said, if an individual is a farmer and

holds a state job, and if that individual wishes to serve on the council and is elected to serve on the council, that individual should not be precluded from receiving a per diem compensation, provided the individual fulfills council responsibilities on the individual's own time and independent of the individual's state employment.

Ms. Johnson said that meets with her understanding of the section's intent. She said she would also be in favor of the interim committee increasing the statutory limit of \$75 per day as compensation for council members.

Senator Wanzek said many of the committee members agree that council member compensation should be increased. However, he said, he would prefer that the concept be introduced as a separate bill and not made a part of the title rewrite.

**It was moved by Senator Behm, seconded by Representative Solberg, and carried on a voice vote that the compensation section clarify that state employees are not precluded from receiving compensation and reimbursement for expenses provided they serve on the council in a capacity other than that for which they are employed by the state.**

#### **Section 4.1-11-10**

Chairman Mueller said this section requires the council to determine the uses for which any money raised through the assessment may be expended. He said the uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of national promotion organizations.

In response to a question from Representative Mueller, Ms. Johnson said that language is appropriate and she does not need to have it broadened.

#### **Section 4.1-11-11**

Chairman Mueller said representatives of the North Dakota Soybean Council have suggested that this section be changed to provide that an assessment equaling one-half of one percent of the value of the sale must be imposed upon all soybeans sold to a designated handler. He said the remaining references to the sale of soybeans grown in one state and sold to a designated handler in another should be deleted because that is covered by federal law.

#### **Section 4.1-11-13**

Chairman Mueller said because subsections 2 and 3 were deleted from Section 4.1-11-11, it is unnecessary to retain Section 4.1-11-13, which pertains to producer records.

#### **Section 4.1-11-14**

Chairman Mueller said because subsections 2 and 3 were removed from Section 4.1-11-11, it is

unnecessary to retain subsection 2 of Section 4.1-11-14.

#### **Section 4.1-11-15**

Chairman Mueller said because subsections 2 and 3 were removed from Section 4.1-11-11, it is not necessary to retain subdivision b of subsection 1 of Section 4.1-11-15.

Ms. Johnson said she is in concurrence with all of the suggested deletions.

#### **Section 4.1-11-17**

Chairman Mueller said this section allows soybean producers to have an advisory referendum and to have the results of that referendum sent to the United Soybean Board.

Ms. Johnson said because the soybean checkoff is federally mandated, it is not necessary to retain this provision giving North Dakota producers the authority to conduct an advisory referendum. She said their thoughts and opinions can be communicated at any time without need for this section. She said it is her recommendation that the section be deleted.

**It was moved by Senator Behm, seconded by Representative Uglem, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Senator Behm, seconded by Representative Uglem, and carried on a voice vote that the amended bill draft relating to the North Dakota Soybean Council and assessments, be approved and recommended to the Legislative Council.**

### **OILSEED COUNCIL AND ASSESSMENTS**

#### **Section 4.1-09-01**

At the request of Chairman Mueller, Ms. Lerrene Kroh, Office Manager, North Dakota Oilseed Council, presented testimony regarding the bill draft [\[90036.0200\]](#) to rewrite North Dakota Century Code provisions pertaining to the oilseed assessments. Ms. Kroh said Mr. Stan Buxa, Chairman, North Dakota Oilseed Council, and the members of the North Dakota Oilseed Council, have reviewed the bill draft and agreed to the changes that will be discussed today.

#### **Section 4.1-09-01**

Chairman Mueller said it is the wish of the North Dakota Oilseed Council that the definition of a participating producer be replaced with the following: "Participating producer means a producer who has not applied for a refund under section 4.1-09-17 during the preceding twelve months."

Chairman Mueller said the section also contains a definition of a producer. He said that definition references planting during four of the previous six years.

In response to a question from Chairman Mueller, Ms. Kroh said members of the North Dakota Oilseed Council would prefer to define a producer as a person

that plants or causes to be planted an oilseed crop in which the person has an ownership interest, with the intent that upon the maturity the crop will be harvested; will have met the requirements of subsection 1 during the next available growing season; or has met the requirements of subsection 1 during the immediately preceding growing season.

#### **Section 4.1-09-04**

Chairman Mueller said the North Dakota Oilseed Council consists of one participating sunflower producer elected from each of the seven districts established in proposed Section 4.1-09-02; one participating canola producer elected from each of the three districts established in proposed Section 4.1-09-03; one participating safflower producer appointed by the Governor; one participating flax producer appointed by the Governor; one participating producer of an oilseed other than sunflowers, canola, safflowers, or flax appointed by the Governor, and in the event that such a person cannot be found, the Governor may appoint a participating producer of any other oilseed; one individual appointed by the director of the Agricultural Experiment Station; and the Agriculture Commissioner. He said in paragraph 1 of subdivision e of subsection 1, the reference to "crambe" needs to be replaced with a reference to "flax." He said this will reflect the intent of the committee as articulated at a prior meeting.

#### **Section 4.1-09-05**

Chairman Mueller said this section requires that meetings to elect county representatives be held at a central location within the county.

In response to question from Representative Mueller, Ms. Kroh said the North Dakota Oilseed Council would be in favor of deleting the references to central location both in this section and in the ensuing section.

In response to a response to Representative Mueller, Ms. Kroh said it would be the position of the North Dakota Oilseed Council that the council should be informed of the name and address of any newly elected county representative and any newly elected council member.

Chairman Mueller said current law does not clarify whether the eligibility to vote for county representatives belongs to those who reside in the county or to those who farm in the county.

In response to a question from Representative Mueller, Ms. Kroh said it is the position of the North Dakota Oilseed Council that voting be limited to participating producers who reside in the county.

Chairman Mueller said the law requires that prior to the expiration of the council member's term, the extension agent for each county in that member's district must hold a meeting of producers for the purpose of electing a county representative. He said the county extension agent must also publish notice of the meeting in the official newspaper of the county for two consecutive weeks and hold a meeting. He said if

the county extension agent determines that there are no eligible producers willing to serve as county representatives, the county extension agent should not be required to carry forth the directives of the section.

Ms. Kroh said the North Dakota Oilseed Council is in favor of adding language authorizing a county extension agent, in consultation with the executive director of the county Farm Service Agency office, to forego the steps set forth in the section if no eligible producers are available to serve as county representatives.

Ms. Kroh said this section is confusing and she would prefer that the provisions pertaining to the election of a sunflower producer as a county representative be placed in a separate section from the provisions pertaining to the election of the canola producer as a county representative.

Chairman Mueller said it is the intent of the committee that the provisions pertaining to the election of a sunflower producer as a county representative and the election of a canola producer as a county representative be placed in separate sections.

#### **Section 4.1-09-07**

Chairman Mueller said current law does not address who is responsible for the cost of newspaper notices, ballots, hall rentals, or any other charges associated with the holding of elections. He said that this is a new concept and it clarifies that all costs of holding both county and district elections are the responsibility of the council.

#### **Section 4.1-09-08**

Chairman Mueller said Section 1-01-10 provides that a majority of any board or commission constitutes a quorum. He said because the Agriculture Commissioner is a nonvoting member, it is appropriate to clarify that the commissioner is not to be counted in the determination of a quorum.

#### **Section 4.1-09-10**

Chairman Mueller said this section sets forth the per diem compensation and reimbursement available to members of the council. He said it also provides that the compensation may not be paid to any member of the council who receives a salary or other compensation as an employee or official of this state. He said, while this is intended to preclude both the Agriculture Commissioner and, in this case, the individual appointed by the director of the Agricultural Experiment Station from receiving both a salary extending from their position as an employee or official of the state and a per diem from the council, in reality it would also preclude an oilseed producer who happens to have a second job with the state from receiving per diem compensation for serving on the council outside of the individual's state employment.

Ms. Kroh said it is the intention of the North Dakota Oilseed Council to preclude a per diem payment to

the Agriculture Commissioner and to the individual appointed by the director of the Agricultural Experiment Station because both receive a salary by virtue of being an employee or official of the state. She said it is not the intention of the council to preclude other individuals who are qualified to serve on the council from receiving a per diem payment simply because they hold employment with the state.

Chairman Mueller said the section should be changed to accurately reflect the intention of the council.

#### **Section 4.1-09-11**

Chairman Mueller said the current section prohibits the council from participating in a "competitive" business enterprise. He said the rewrite uses the more common term "commercial" business enterprise.

In response to a question from Representative Mueller, Ms. Kroh said the North Dakota Oilseed Council would not be interested in language that would allow the council to engage in commercial business enterprises if approved by a majority of the council or a majority of the participating producers. She said the council wishes to have the prohibition without any exception.

#### **Section 4.1-09-12**

Chairman Mueller said this section requires the council to determine the uses for which any money raised under this chapter may be expended. He said the uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of other state and national oilseed promotion councils.

In response to a question from Representative Mueller, Ms. Kroh said the North Dakota Oilseed Council would be in favor of expanding this to also reference regional and international promotion efforts.

#### **Section 4.1-09-15**

Chairman Mueller said current law requires first purchasers to keep records regarding all purchases, sales, and shipments of oilseeds permanently. He said the rewrite limits this to three years.

Ms. Kroh said the North Dakota Oilseed Council is in favor of the change. She said that subsection 3 requires each first purchaser to file a report stating in individual and total amounts, the quantity of all oilseeds that the first purchaser received, sold, or shipped. She said the council does not need to know the source of those oilseeds. Therefore, she said, that reference in the final sentence should be deleted.

**It was moved by Representative Kingsbury, seconded by Representative Uglen, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Representative Johnson, seconded by Representative Solberg, and carried on a voice vote that the amended bill draft relating to the North Dakota Oilseed Council and**



**assessments be approved and recommended to the Legislative Council.**

## **WHEAT COMMISSION AND ASSESSMENTS**

Chairman Mueller asked the committee to consider the bill draft [90035.0200] that rewrites North Dakota Century Code provisions pertaining to the North Dakota State Wheat Commission and assessments.

In response to a question from Representative Mueller, Mr. Neal Fisher, Administrator, Wheat Commission, said the bill draft has been presented to and discussed with the county representatives and with the Wheat Commission.

### **Section 4.1-13-01**

Chairman Mueller said a first purchaser is described as any person buying, accepting for sale, or otherwise acquiring, after harvest, the property in or to wheat from the producer. He said the term includes a mortgagee, pledgee, lienor, or other person having a claim against the producer if the actual or constructive possession of wheat is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim. He said it would be appropriate if Mr. Fisher worked with the Legislative Council staff to determine if that definition could be modernized or clarified.

Chairman Mueller said, rather than using the definition of a producer as set forth in the bill draft, consideration should be given to providing that a producer is a person that plants or causes to be planted a wheat crop in which the person has an ownership interest, with the intent that upon the maturity the crop will be harvested; will have met the requirements of subsection 1 during the next available growing season; or has met the requirements of subsection 1 during the immediately preceding growing season.

Mr. Fisher said the new definition of a producer would be acceptable to the Wheat Commission.

### **Section 4.1-13-03**

Chairman Mueller said current law provides that an individual is not eligible to be a member of the Wheat Commission if that individual requested a refund under Section 4-28-07 during the 12-month period before the date on which the term sought by the individual would commence. He said that is reflected in subsection 4 of this section. He said current law also provides that a member of the Wheat Commission is not eligible to receive a refund under Section 4-28-07. He said he wondered if a member of the commission requests a refund during the member's term, is that member deemed ineligible to continue serving on the commission. Mr. Fisher said this issue was not a part of the original legislation.

Chairman Mueller said the language indicating that a member of the commission is not eligible to receive a refund under Section 4-28-07 was not included in

the rewrite. He said it should be included in the final version.

### **Section 4.1-13-05**

Chairman Mueller said current law requires that the meeting at which a county representative is elected must take place at a central location within the county. He said other commodity groups have removed the reference to a central location.

Mr. Fisher said the Wheat Commission would be in favor of removing the requirement that the meeting be held at a central location. He said the requirement that it be held within the county should be retained.

Chairman Mueller said representatives of the Wheat Commission had previously said that because county representatives are in fact the pool from which commission members are elected, it would be appropriate to require that county representatives have the same qualifications as commission members must have. He said this has been included in subsection 7. He said to ensure that individuals who have been elected as county representatives prior to the effective date of this Act are not disqualified, the bill draft should include a grandfather clause for those elected before August 1, 2009.

Chairman Mueller said if a county representative ceases to be qualified for that position, current law indicates that the county representative is deemed to have resigned and the commission is to declare the position vacant. He said current law does not indicate what happens next. He said it is not clear whether or not the commission is to appoint another individual to serve as a county representative or keep the position vacant until the next cycle of district elections.

Committee counsel said, based on conversations she has had with Mr. Fisher, language is being proposed under which the commission could appoint another qualified person to serve as a county representative, if the individual originally elected was unable or unwilling to continue serving in that capacity.

Mr. Fisher said he is in support of the concept. However, he said, the appointment should be made not by the Wheat Commission but by the county extension agent. He said it should also be clear that the appointment is a permissible and not a mandatory one.

### **Section 4.1-13-06**

Chairman Mueller said this section also includes a requirement that the meeting to elect a commission member be held at a central location within the district. He said the reference to a central location will be removed.

Chairman Mueller said the notification process required by this section, as well as the previous section, should include the Wheat Commission.

### **Section 4.1-13-09**

In response to a question from Representative Mueller, Mr. Fisher said this section addresses the

procedure for nominating and appointing the commission member at large. He said the nominating committee is given 60 days within which it must convene and present to the Governor the names of three individuals who would be qualified to serve as member at large. He said the difficulty with the section is that the Governor is then given 60 days after the member's term expires within which to appoint a new commission member. He said although Governors have always been very good about appointing the at-large member in a timely fashion, it would nevertheless be appropriate to remove the language giving them literally until September 1 to appoint a person to a position that began on July 1.

#### **Section 4.1-13-11**

Committee counsel said current law requires the commission to adopt rules setting forth requirements for calling and holding special meetings. She said it is not clear whether the intent is to require that rules be made under North Dakota Century Code Chapter 28-32 or merely established as commission policy. She said other commodity groups require that all meetings be called by the chairman and direct the chairman to call a special meeting within seven days, when petitioned to do so by three commission members.

Mr. Fisher said, in the interest of consistency, it would be appropriate to have that language in this bill draft as well.

#### **Section 4.1-13-13**

Chairman Mueller said this section sets forth the commission's powers. He said it includes the prohibition against engaging in a commercial business enterprise.

In response to a question from Representative Mueller, Mr. Fisher said the Wheat Commission believes that the prohibition is appropriate and it does not seek to have any exceptions to the prohibition.

#### **Section 4.1-13-14**

Chairman Mueller said this section directs the commission to determine the uses for which any money raised under this chapter may be expended. He said the uses may include the funding of research, education programs, and market development efforts.

In response to a question from Representative Mueller, Mr. Fisher said the Wheat Commission would be in favor of including language authorizing their participation in state, regional, national, and international promotion efforts.

#### **Section 4.1-13-17**

Chairman Mueller said the Wheat Commission currently allows 20 days after the conclusion of each calendar quarter for first purchasers to complete and file a form with the commission and to forward the assessments they have collected to the commission.

He said other commodity groups provide 30 days for similar endeavors.

Mr. Fisher said the Wheat Commission, in the interest of consistency, would consider 30 days to be an acceptable change.

#### **Section 4.1-13-25**

Chairman Mueller said current law directs the Attorney General to provide legal counsel to the commission or to designate an assistant for that purpose. He said current law also authorizes the commission to employ other legal counsel. He said this authorization is in direct conflict with Section 54-12-08, which provides that a state officer, head of any state department, state department, board, commission, committee, or agency may not employ legal counsel and no person may act as legal counsel in any matter, action, or proceeding in which the state or any department, board, commission, committee, or agency is interested or a party, except upon written appointment by the Attorney General.

Mr. Fisher said the Wheat Commission has no objection to removal of proposed Section 4.1-13-25(2). He said it has always been their understanding that the Attorney General must provide legal counsel to the commission.

**It was moved by Senator Behm, seconded by Representative Kingsbury, and carried on a voice vote that the bill be amended as discussed.**

**It was moved by Representative Uglem, seconded by Representative Solberg, and carried on a voice vote that the amended bill draft relating to the North Dakota State Wheat Commission and assessments, be approved and recommended to the Legislative council.**

### **BARLEY COUNCIL AND ASSESSMENTS**

Chairman Mueller asked the committee to consider the bill draft [\[90037.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the North Dakota Barley Council and assessments.

Chairman Mueller said under current law a participating producer is defined as one who has not claimed any refunds for the payment of assessments on barley under this chapter for a particular year or a producer who is not exempt from the payment of assessments on barley under this chapter. He said the exemption language lends confusion to the definition. He said he wondered if it would be possible to simply define a participating producer as a producer who has not applied for a refund during the preceding 36 months.

Representative Solberg said rather than using 36 months as the demarcation, the bill draft could use the 12-month parameter which has been used by other commodity groups.

Mr. Steven Edwardson, Executive Administrator, North Dakota Barley Council, said the council concurs with defining a participating producer as one who has not applied for a refund under proposed Section 4.1-02-16 during the preceding 36 months. He said it

would also be appropriate to define a producer as a person that plants or causes to be planted a barley crop in which the person has an ownership interest, with the intent that upon the maturity the crop will be harvested; will have met requirements of subsection 1 during the next available growing season; or has met the requirements of subsection 1 during the immediately preceding growing season.

#### **Section 4.1-02-04**

Chairman Mueller said representatives of the North Dakota Barley Council have asked the committee to delete the requirement that the meeting at which the county representative is elected be held at a central location within the county.

Mr. Edwardson said often central locations are not available in counties. He said sometimes it would be nice to have the flexibility to hold elections in conjunction with other events that might be occurring outside of the county.

Senator Behm said he would find it acceptable to remove the requirement that the meeting be held at a "central location" within the county, but he would prefer to leave the requirement that the election of county representatives be kept within the county.

Chairman Mueller said current law provides that the county and district elections must take place before April 1. He said the rewrite provides that no later than March 1 of the year in which the term of a council member is to expire, the county extension agent shall hold a meeting of barley producers from the county for the purpose of electing a county representative.

In response to a question from Representative Mueller, committee counsel said the terms of council members begin on April 1. She said by retaining the current language that a meeting must be held before April 1, some might mistakenly believe that March 29 or March 30 or March 31 might be acceptable dates on which to hold the respective meetings. She said the difficulty is that this section and the next section have statutory notice requirements.

Mr. Edwardson said the dates as proposed in the rewrite are acceptable to the North Dakota Barley Council.

In response to a question from Representative Mueller, Mr. Edwardson said elections should be open only to participating producers and not to those who have requested refunds.

Representative Solberg said he is supportive of the requirement that eligible voters must reside in the county. He said people who farm in more than one county could, because of crop rotation, find themselves farming in one county one season and in another county the next season. He said one's residence does not change that frequently.

Chairman Mueller said he believes if it is found that there are no eligible barley producers in the county, the county extension agent should not be required to publish notice of and hold a meeting.

In response to a question from Representative Mueller, Mr. Edwardson said the North Dakota Barley Council would be supportive of having waiver language so that a county extension agent is not required to hold a meeting if there is a determination that no barley producers willing to serve as county representatives reside within a county.

Chairman Mueller said the section should be clarified to provide that when the election has taken place, the council is notified of its new county representative.

Mr. Edwardson said the North Dakota Barley Council would be in favor of that change.

#### **Section 4.1-02-05**

Chairman Mueller said the requirement that the meeting must be held at a central location within the district should be changed to require merely that the meeting be held within the district. He said this section should also clarify that upon election of the new council member, the council itself should be notified, along with the Governor.

#### **Section 4.1-02-09**

Chairman Mueller said the North Dakota Barley Council consists of one individual elected from each of the five districts established in proposed Section 4.1-02-02 and the Agriculture Commissioner, who is a nonvoting member.

In response to a question from Representative Mueller, Mr. Edwardson said the section should be clarified to provide that each member of the council, except the Agriculture Commissioner, is entitled to receive compensation and reimbursement for expenses. He said if a barley producer is a member of the council and also holds a job in state government, that individual should not be precluded from receiving a per diem if the individual is performing council duties on the individual's own time and independent of the individual's state employment.

#### **Section 4.1-02-10**

Chairman Mueller said this section outlines the powers of the North Dakota Barley Council. He said subsection 2 specifically states that the council may not engage in a commercial business enterprise.

In response to a question from Representative Mueller, Mr. Edwardson said the council is supportive of the language as it stands in the bill draft. He said the council is not interested in allowing exemptions to this prohibition.

#### **Section 4.1-02-11**

Chairman Mueller said this section sets forth the duties of the North Dakota Barley Council. He said it directs the council to determine the uses to which any money raised under this chapter may be expended. He said the uses may include the funding of research, education programs, and market development efforts. He said the council has also requested that this



section clearly state, as a permissible use of funds, the support of state, regional, national, and international entities that promote barley utilization.

Chairman Mueller said current law also provides that the council shall formulate the general policies and programs of the state respecting the discovery, promotion, and development of markets and industries for the utilization of barley grown within the state. Because this directive is not clear, he said, the rewrite states that the council shall develop and disseminate information regarding the purpose of the barley assessment and ways in which the assessment benefits barley producers.

#### **Section 4.1-02-12**

Chairman Mueller said the North Dakota Barley Council has asked that this section be clarified to provide that the assessment is imposed upon all barley grown in this state, delivered to this state, or sold to a first purchaser in this state, but that it is not imposed on barley grown by a producer and used by that producer as livestock feed.

#### **Section 4.1-02-13**

Chairman Mueller said current law requires that first purchasers keep a variety of records permanently. He said the rewrite suggests that these records be kept for three years. He said that is consistent with what other commodity groups have required.

#### **Section 4.1-02-15**

Chairman Mueller said it is not clear under current law whether a producer selling to a first purchaser in another state is subject to a penalty for failing to submit the assessment to the North Dakota Barley Council in a timely fashion. He said the rewrite includes the penalty for committee consideration.

Committee counsel said the North Dakota Barley Council has indicated that they will be giving consideration to this issue in the future. She said if the council recommends changes to this section, those changes can be addressed during the legislative session.

**It was moved by Senator Wanzek, seconded by Senator Taylor, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Representative Solberg, seconded by Senator Behm, and carried on a voice vote that the amended bill draft relating to the North Dakota Barley Council and assessments be approved and recommended to the Legislative Council.**

### **CORN UTILIZATION COUNCIL AND ASSESSMENTS**

Chairman Mueller said the committee should consider the bill draft [\[90038.0200\]](#) that rewrites the North Dakota Century Code provisions pertaining to

the North Dakota Corn Utilization Council and assessments.

In response to a question from Representative Mueller, Mr. Tom Lilja, Executive Director, North Dakota Corn Utilization Council, said both the council and its Public Policy Committee have reviewed and discussed this bill draft.

#### **Section 4.1-04-01**

Mr. Lilja said the definition of a producer, as found in this bill draft, is acceptable to the council. In the interest of consistency, he said, the council would be willing to accept the definition of a producer as someone who plants or causes to be planted a corn crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested; that the person will have met that requirement during the next available growing season, or that the person had met that requirement during the immediately preceding growing season.

Mr. Lilja said the North Dakota Corn Utilization Council would prefer that under the definition of a designated handler the bill draft make reference not to a grain warehouse but to a public warehouse. He said the council would also prefer that the definition reference both licensed grain buyers and roving grain buyers and that the definition refer to merchandising companies.

#### **Section 4.1-04-03**

Chairman Mueller said under current law a participating grower is one who has paid the assessment on corn and who has not applied for a refund of the assessment. He said this section provides that a member of the council must be a participating producer. He said the requirement for a participating producer is that one may not have requested a refund under proposed Section 4.1-04-14 during the preceding year.

In response to a question from Representative Mueller, Mr. Lilja said the one-year period is acceptable to the council.

Chairman Mueller said current law provides that the council shall appoint another qualified grower from "any" district to complete a member's term in the event of a vacancy. He said the rewrite provides that the council must appoint another qualified producer--i.e., one who meets the requirements set forth in this section.

In response to a question from Mr. Lilja, committee counsel said the qualifications would include not having requested a refund under proposal Section 4.1-04-14 during the preceding year.

#### **Section 4.1-04-04**

Chairman Mueller said current law provides that the elections must be conducted no later than April 1. He said current law also provides that a member's term begins on April 1. He said in order to allow time for the nominating committee to effectuate its charge, and for others to be nominated by a petition process,

it is recommended that sufficient time be accorded to each step in the election process. He said the rewrite provides that no later than January 1, a nominating committee must be appointed and no later than February 1, the nominating committee must nominate a qualified producer as a candidate for council membership. He said, no later than March 1, other qualified producers may become candidates through a petition process.

Mr. Lilja said the North Dakota Corn Utilization Council is supportive of those changes. However, he said, the council would appreciate a change in the section so that only nonrefunders are allowed to vote in the election.

#### **Section 4.1-04-07**

Mr. Mike Clemens, Director, North Dakota Corn Growers Association, said the committee should consider raising the per diem of council members in this bill draft. He said, as long as the bill draft is being considered by an interim committee, and by the Legislative Assembly, it would be appropriate to address this issue at the same time as other changes are being made.

Senator Behm said the per diem payment to council members needs to be addressed. However, he said, he would prefer that it be done in a separate bill during the 2009 legislative session.

Chairman Mueller said since the North Dakota Corn Utilization Council consists of one producer elected from each of the seven corn districts, the final sentence of the section would in fact preclude a producer who also holds a state job from receiving per diem compensation for serving on the council, if the producer does it on the producer's own time and outside of state employment. He said this section should be reconciled with similar sections in other commodity chapters.

#### **Section 4.1-04-09**

Chairman Mueller said this section sets forth the duties of the North Dakota Corn Utilization Council. He said it also authorizes expenditures for participation in programs under the auspices of other state and national corn promotion groups.

Mr. Lilja said the council would be in favor of also referencing other state, regional, national, and international efforts, as have been done in other commodity chapters.

#### **Section 4.1-04-10**

Mr. Lilja said this section states that before a designated handler may sell, process, or ship corn, the designated handler shall obtain a certificate from the council. He said designated handlers are given one number by the North Dakota Corn Utilization Council and another number by the Public Service Commission, because they must also be registered with the Public Service Commission. He said the designated handlers find this confusing. As for the North Dakota Corn Utilization Council, he said, the

Public Service Commission shares the information with the council, so there is really no need to have this section in the North Dakota Century Code.

Senator Wanzek said when his business was bonded by the Public Service Commission that information was shared with other commodity groups.

Senator Behm said if the Public Service Commission is already doing this, the North Dakota Corn Utilization Council should not be required to duplicate the effort.

**It was moved by Senator Wanzek, seconded by Representative Kingsbury, and carried on a voice vote that proposed Section 4.1-04-10, pertaining to the required certification of designated handlers, be deleted.**

#### **Section 4.1-04-12**

Chairman Mueller said current law requires designated handlers to keep documents regarding all purchases, sales, and shipments of corn permanently. He said the rewrite limits this requirement to three years.

Mr. Lilja said the three-year requirement is acceptable to the North Dakota Corn Utilization Council.

#### **Section 4.1-04-14**

Chairman Mueller said this section allows producers 60 days from the date of the assessment or final settlement within which to request a refund application and 90 days from the date of the assessment or final settlement within which to file the application for refund.

Mr. Clemens said the council would appreciate a change establishing a minimum level of refund. He said the Tax Commissioner does not have to send a refund check if the amount is less than \$5.

Senator Behm said he would be supportive of this. He said some of the refunds are so small that it would actually cost the council money in terms of paperwork, staff time, and postage to return the refund.

**It was moved by Senator Flakoll, seconded by Senator Wanzek, and carried on a voice vote that the section include a directive indicating refund requests not totaling \$5 per quarter need not be sent back by the council.**

#### **Section 4.1-04-16**

Chairman Mueller said this section requires each designated handler to forward all assessments collected by the designated handler to the council within 30 days after the end of each calendar quarter. He said it also provides that if the designated handler fails to submit the assessments, the council may levy a penalty equal to 10 percent of the assessment due plus interest at the rate of 12 percent per annum from the due date.

In response to a question from Representative Mueller, Mr. Clemens said it would be appropriate to authorize the assessment of a penalty on a producer

who does not submit an assessment as required by this chapter.

Senator Wanzek said the council should have the flexibility to apply a penalty if the members elect to do so.

#### **Section 4.1-04-19**

Chairman Mueller said this section establishes the manner in which an advisory referendum must be conducted.

Mr. Clemens said the rewrite provides that absentee ballots must be sent to producers who are not residents of this state but who paid an assessment in accordance with this chapter during the preceding 12 months. He said voting in the advisory referendum should be limited to producers who reside in the state.

Chairman Mueller said Section 4-10.6-13 provides that if a designated handler fails to pay the required assessment, the council may enforce collection in any appropriate court in this state. He said this section was omitted from the rewrite because it duplicates enforcement authority given to the council in proposed Section 4.1-04-08. He said Section 4-10.6-15 provides that all records of the council must be available for inspection at the council office during regular business hours. He said this section was omitted because it duplicates Chapter 44-04 provisions governing public records.

**It was moved by Senator Behm, seconded by Representative Hofstad, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Representative Hofstad, seconded by Senator Wanzek, and carried on a voice vote that the amended bill draft relating to the North Dakota Corn Utilization Council and assessments be approved and recommended to the Legislative Council.**

### **POTATO COUNCIL AND ASSESSMENTS**

Chairman Mueller asked the committee to consider the bill draft [\[90076.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the North Dakota Potato Council and assessments.

#### **Section 4.1-10-01**

Chairman Mueller said this section defines a designated handler as a person that initially places potatoes into the channels of trade and commerce or a person who processes his potatoes into food for human consumption. He said current law lists a variety of things that the term does not include.

In response to a question from Representative Mueller, Ms. Diane Peycke, Executive Director, North Dakota Potato Council, said the council would consider it appropriate to remove language articulating what is not included within the definition of a designated handler.

Chairman Mueller said it would be appropriate to replace the definition of a producer that is currently in the bill draft with one providing that a producer is a

person that plants or causes to be planted a potato crop in which the person has an ownership interest, with the intent that upon maturity the crop will be harvested; that the person will have met the requirements during the next available growing season; or that the person had met the requirements during the immediately preceding growing season.

Ms. Peycke said that would be acceptable to the North Dakota Potato Council. However, she said, the bill draft should maintain the current requirement that a person plant at least 10 acres in order to be considered a producer.

#### **Section 4.1-10-03**

Chairman Mueller said this section sets forth the membership of the North Dakota Potato Council. He said current law provides that every elected member of the council must be a resident of the district that the member represents. He said the rewrite applies the same criteria to members who are appointed to fill a vacancy.

#### **Section 4.1-10-04**

Chairman Mueller said this section sets forth the process by which North Dakota Potato Council members are elected. He said, among other things, it directs the Agriculture Commissioner to prepare election ballots and mail the ballots to producers in the district.

Ms. Peycke said the rewrite needs to reflect that the mailing is to participating producers in the district.

#### **Section 4.1-10-06**

Chairman Mueller said this section pertains to the compensation of North Dakota Council members. He said it should be provided that each member of the council, except the Agriculture Commissioner, may receive compensation and reimbursement for expenses. He said it is not the intent to preclude an individual who serves on the council from receiving compensation and reimbursement for expenses merely because the individual is employed by the state, provided the individual fulfills the individual's council duties on the individual's own time and separate and apart from any obligations as a state employee.

#### **Section 4.1-10-07**

Chairman Mueller said this section sets forth the powers of the North Dakota Potato Council. He said it also provides that the council may not engage in a commercial business enterprise.

In response to a question from Representative Mueller, Ms. Peycke said the council wishes to leave the prohibition as it stands in the rewrite and not add any exceptions.

#### **Section 4.1-10-08**

Chairman Mueller said this section sets forth the duties of the North Dakota Potato Council. He said

one of these duties is determining the uses to which any money raised under this chapter may be expended. He said the uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of the National Potato Council.

In response to a question from Representative Mueller, Ms. Peycke said the council would be in favor of language authorizing their participation in programs under the auspices of other state, regional, national, and international promotion groups.

Chairman Mueller said current law authorizes the council to contract with any person for research, education, publicity, promotion, and transportation.

In response to a question from Representative Mueller, Ms. Peycke said the reference to transportation should be maintained. She said, historically, the issues of transportation have been important to potato producers. She said many tiebacks to transportation issues involve railroads.

#### **Section 4.1-10-12**

Chairman Mueller said current law requires that assessments be forwarded to the North Dakota Potato Council at the time and in the manner prescribed by the council. He said because a penalty could be assessed, it would be preferable to provide a specific date. He said because other commodity groups required the submissions no later than the 13<sup>th</sup> day after the end of each calendar quarter, the same provision was inserted in subsection 1.

Chairman Mueller said Section 4-10.1-01 was omitted from the rewrite because it titles the chapter the Potato Industry Promotion Act of North Dakota. He said Section 4-10.1-10 was omitted from the rewrite because it provides that Section 54-27-10 does not apply to appropriations from the spud fund. He said the spud fund is a revolving fund and therefore Section 54-27-10 would not apply under any circumstances. He said Section 4-10.1-14 was omitted from the rewrite because it duplicates enforcement authority provided in proposed Section 4.1-10-07, which sets forth council powers.

**It was moved by Representative Solberg, seconded by Senator Flakoll, and carried on a voice vote that the bill be amended as discussed.**

**It was moved by Representative Kingsbury, seconded by Representative Johnson, and carried on a voice vote that the amended bill draft relating to the North Dakota Potato Council and assessments be approved and recommended to the Legislative Council.**

### **DAIRY PROMOTION COMMISSION AND ASSESSMENTS**

Chairman Mueller asked the committee to consider the bill draft [\[90081.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the North Dakota Dairy Promotion Commission and

assessments. Chairman Mueller said Ms. Char Heer, Program Manager, North Dakota Division, Midwest Dairy Association, and Mr. Jerry Messer, Chairman, North Dakota Division, Midwest Dairy Association, would assist the committee with its review of the bill draft.

#### **Section 4.1-05-01**

Chairman Mueller said this section defines a dairy product as a product for human consumption, which is derived from the processing of milk.

Mr. Messer said the North Dakota Dairy Promotion Commission believes it would be appropriate to clarify that the reference to milk means milk from cows. He said that same reference should also be used in the definition of a producer.

In response to a question from Representative Mueller, Ms. Heer said a dealer is defined as any person that handles, ships, buys, or sells dairy products, or that acts as a sales or purchasing agent, broker, or factor of dairy products. She said a factor is a person that buys and sells goods for a commission.

#### **Section 4.1-05-03**

Chairman Mueller said this section authorizes the commission to appoint up to three nonvoting members from a list that includes the chairman of the North Dakota State University Animal and Range Sciences Department, the Agriculture Commissioner, and a processor located in North Dakota.

In response to a question from Representative Mueller, Mr. Messer said the North Dakota Dairy Promotion Commission suggests that this section be changed to allow the appointment of up to four nonvoting members. He said it is the intent of the commission to obtain the input of people knowledgeable about the industry. He said the three people mentioned in the bill draft are policy people. He said the commission believes it is important to have the flexibility to appoint people as issues arise and perhaps change. He said it is also important that the commission have a strong working relationship with the milk processors.

#### **Section 4.1-05-07**

Chairman Mueller said this section authorizes the commission to determine the uses to which any money raised under this chapter may be expended. He said the uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of state, regional, and national dairy promotion groups.

Mr. Messer said the North Dakota Dairy Promotion Commission believes it is appropriate to insert language indicating that the funding is for uses designed to increase the sale and consumption of dairy products. He said it is also appropriate to add international efforts.



### Section 4.1-05-12

Chairman Mueller said, as directed by the committee, this section maintains language allowing the refund, but specifies that the refund is contingent upon the Attorney General certifying that changes in federal law have taken place and that refunds are now permitted. He said the time period within which refunds must be requested parallel those that the interim committee established for the other commodity groups.

In response to a question from committee counsel, Ms. Heer said subsection 2 provides that in order to receive a refund of any assessment paid, a producer must submit to the commission a written request for a refund application within 60 days after the date of the assessment or final settlement. She said she is not certain whether the reference to the date of final settlement is appropriate. She said that is an issue that the North Dakota Dairy Promotion Commission can discuss and perhaps address during the legislative session.

In response to a question from Senator Wanzek, committee counsel said current law requires records to be kept for a period of two years. She said at an earlier meeting this was clarified to require retention of records for two full fiscal years from the date of submission.

In response to a question from Senator Wanzek, Mr. Messer said given that other commodity groups are requiring record retention for three years, the North Dakota Dairy Promotion Commission would have no objection to extending the retention requirement to three years as well.

Chairman Mueller said Section 4-27-01, which titles the chapter the North Dakota Dairy Promotion Commission Act, was omitted because it is not necessary. He said Section 4-27-09, which provides that the commission may not pay its expenses from any source other than the North Dakota Dairy Promotion Commission Fund and that the expenses incurred by the commission may not exceed the amount available in the fund, is omitted because it is not necessary. He said the constitution provides that all public money may be paid out and disbursed only pursuant to an appropriation by the Legislative Assembly. He said Section 4-27-11, which authorizes the commission to submit a biennial report to the Governor in accordance with Section 54-06-04, is omitted because it is not necessary. He said Section 54-06-04 does not require the North Dakota Dairy Promotion Commission to submit a separate report. He said this section therefore appears to authorize a voluntary act. He said the section also requires that the State Auditor perform a biennial audit. He said this requirement is already set forth in Section 54-10-01 and does not need to be repeated in this chapter.

**It was moved by Representative Solberg, seconded by Senator Flakoll, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Representative Kingsbury, seconded by Senator Wanzek, and carried on a voice vote that the amended bill draft relating to the North Dakota Dairy Promotion Commission and assessments be approved and recommended to the Legislative Council.**

### BEEF COMMISSION AND ASSESSMENTS

Chairman Mueller asked the committee to consider the bill draft [\[90063.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the North Dakota Beef Commission and assessments.

Representative Mueller said Ms. Nancy Jo Bateman, Executive Director, North Dakota Beef Commission, would assist the committee in its consideration of the bill draft.

#### Section 4.1-03-02

Chairman Mueller said this section sets forth the membership of the North Dakota Beef Commission.

Ms. Bateman said reference in subsection 2 to the North Dakota Cattle Feeders' Council should be changed to the North Dakota Stockmen's Association Feeder Council. She said the North Dakota Cattle Feeders' Council was taken over by the Stockmen's Association and is now a council under the umbrella of the North Dakota Stockmen's Association.

Chairman Mueller said current law requires members of the North Dakota Beef Commission to be "actually engaged" in the phase of the cattle industry that they represent. He said, following the committee directive to clarify what the phrase means, the bill draft was written using the new phrase "actively engaged." He said this means that the individual has an ownership interest in an operation that is of sufficient scope and significance so as to constitute a distinct activity and that the individual has and regularly exercises direct control of the operation. Ms. Bateman said the North Dakota Beef Commission is satisfied with the definition.

#### Section 4.1-03-03

Chairman Mueller said this section parallels current law by providing that the term of office for each member of the North Dakota Beef Commission is three years and that it begins on July 1. He said the section also attempts to clarify the length of service in the event an individual is appointed to complete a vacancy. He said it provides that a member of the commission may not serve more than two consecutive terms. He said if an individual is appointed to complete a vacancy, that service is not counted as a term, for purposes of this section, unless the duration of that service exceeds one year.

Ms. Bateman said the North Dakota Beef Commission is in agreement with the provision. However, she said, because there is an existing board member who potentially could be affected by this language, she suggested the section be changed to provide a grandfather clause.



Chairman Mueller said that would be appropriate. He said the committee could insert language indicating that the final sentence of the section is applicable only to individuals appointed after August 1, 2009.

#### **Section 4.1-03-05**

Chairman Mueller said this section authorizes the commission to appoint up to two nonvoting members.

Ms. Bateman said the North Dakota Beef Commission encourages its members to participate in national organizations. She said those organizations often require state representatives to be active members or ex officio members of their state beef commission. She said because the North Dakota Beef Commission has three-year terms and limits its members to no more than two consecutive terms, the only way North Dakota representatives can serve on national organizations is if they become nonvoting or ex officio members of the commission. She said there are times when more than two members of the North Dakota Beef Commission could in fact be going through the chairs of national organizations. Therefore, she said, it would be appropriate to either increase the number of nonvoting members that the commission may appoint or to merely leave the appointment authority and remove the limit on the number of nonvoting members entirely.

In response to a question from Senator Bowman, Ms. Bateman said she would ideally like to see up to five nonvoting members be authorized.

In response to a question from Senator Taylor, Ms. Bateman said the likelihood of having more than three members of the North Dakota Beef Commission in national offices is fairly slim.

In response to a question from Senator Flakoll, Ms. Bateman said the North Dakota Beef Commission already has policies in place governing the appointments and qualifications of nonvoting members.

**It was moved by Senator Taylor, seconded by Senator Bowman, and carried on voice vote that the bill draft be amended to authorize the North Dakota Beef Commission to appoint up to four nonvoting members.**

#### **Section 4.1-03-10**

Chairman Mueller said this section sets forth the duties of the North Dakota Beef Commission. He said the rewrite provides that the commission shall determine the uses to which money raised under this chapter may be expended. He said the uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of state, regional, and national beef promotion organizations.

Ms. Bateman said she would ask the committee to include reference to international organizations and to delete specific reference to beef promotion organizations. She said in the interest of promoting beef, joint efforts could be taken with heart

associations to promote heart healthy red meat. She said efforts also could be undertaken with cancer associations.

#### **Section 4.1-03-11**

Chairman Mueller said this section provides that any person who sells cattle in this state or from this state must pay an assessment equal to the greater of 50 cents for each animal sold or the amount stated in the federal Beef Promotion and Research Act of 1985.

Ms. Bateman said she is concerned that without the words "as amended" following the reference to the federal Beef Promotion and Research Act of 1985, a situation could occur in which federal law raises the checkoff above the current \$1 level and state law refers to the \$1 amount in the 1985 Act.

In response to a question from Representative Mueller, committee counsel said, except for tax legislation, the phrase "as amended" in reference to federal legislation does not include amendments made after the effective date of state legislation making that reference. Otherwise, she said, such a reference raises issues of unconstitutional delegation of legislative authority.

In response to a question from Representative Mueller, committee counsel said because this is federal legislation and because there is no choice but to abide by it, the reference to the specific Act could be deleted but a reference to the amount stated in federal law and applicable regulations still could subject to questions of delegation of authority.

#### **Section 4.1-03-17**

Chairman Mueller said this section sets forth a mechanism for a refund. He said the mechanism becomes effective when the Attorney General certifies to the commission that refunds are no longer precluded by federal law. He said the rewrite provides that in order to receive a refund, a producer must submit to the commission a written request for a refund application within 60 days after the date of the assessment or final settlement.

Ms. Bateman said the section should provide that the producer must submit a written request for a refund application within 60 days after the date of the sale.

In response to a question from Representative Solberg, committee counsel said the section clarifies that refunds are available only when the Attorney General determines that federal law has changed and in fact allows such.

**It was moved by Representative Solberg, seconded by Senator Bowman, and carried on a voice vote that the bill be amended as discussed.**

**It was moved by Senator Bowman, seconded by Representative Kingsbury, and carried on a voice vote that the amended bill draft relating to the North Dakota Beef Commission and assessments, be approved and recommended to the Legislative Council.**

## MISCELLANEOUS

Chairman Mueller said committee members had earlier indicated their desire to revisit the issue of requiring that a refund meet a minimum threshold.

**It was moved by Representative Uglem, seconded by Senator Bowman, and carried on a voice vote that, unless a commodity group indicates it does not wish to have the provision, there would be inserted in each commodity bill draft a provision indicating that a producer is not entitled to a refund unless the refundable amount meets or exceeds \$5.**

## DRY PEA AND LENTIL COUNCIL AND ASSESSMENTS

Chairman Mueller asked the committee to consider the bill draft [\[90071.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the North Dakota Dry Pea and Lentil Council and assessments. He said Ms. Shannon Berndt, Administrator, North Dakota Dry Pea and Lentil Council, would assist the committee in reviewing the bill draft.

### Section 4.1-07-01

Chairman Mueller said this section defines a first purchaser as any person accepting for sale or otherwise acquiring dry peas and lentils from a grower after harvest. He said the term includes a mortgagee, pledgee, lienor, and any person having a claim against the producer, when the actual or constructive possession of dry peas and lentils is taken as partial payment or in satisfaction of a mortgage, pledge, lien, or claim.

In response to a question from Representative Mueller, Ms. Berndt said she is not certain what is meant by the phrase accepting for sale.

Chairman Mueller said perhaps committee counsel could work with the commodity groups that have similar definitions of first purchasers and determine if the definition could in fact be clarified.

Chairman Mueller said it would be appropriate to replace the definition of a producer found in the bill draft with one providing that a producer is a person that plants or causes to be planted a dry pea and lentil crop in which the person has an ownership interest, with the intent that upon the maturity the crop will be harvested; that the person will have met the requirements of a producer during the next available growing season; or that the person had met the requirements of a producer during the immediately preceding growing season.

Ms. Berndt said the definition was acceptable to the members of the North Dakota Dry Pea and Lentil Council.

### Section 4.1-07-04

Chairman Mueller said current law provides that county and district elections must take place before April 1. He said to maximize flexibility for the extension service in scheduling the various meetings

and elections, it would be appropriate to require that the county elections be completed before March 1. He said this would allow the intervening 60 days for the completion of the district election.

In response to a question from Representative Mueller, Ms. Berndt said the dates set forth in the bill draft are acceptable to the North Dakota Dry Pea and Lentil Council.

In response to a question from Representative Mueller, Ms. Berndt said that the North Dakota Dry Pea and Lentil Council is in favor of removing the reference to the central location for purposes of election meetings and it is in favor of clarifying that only producers who reside in the county may in fact vote in the election. She said the council is also in favor of being notified when a new county representative has been elected and when a new council member has been elected.

In response to a question from Representative Mueller, Ms. Berndt said if the county extension agent determines that there are no eligible dry pea and lentil producers in the county, the extension agent should be given a waiver so that the agent does not have to publish notice and hold a meeting.

### Section 4.1-07-05

Chairman Mueller said the North Dakota Oilseed Council had asked the committee to remove the requirement that county representatives be notified of meetings to elect council members by registered mail.

In response to a question from Representative Mueller, Ms. Berndt said the North Dakota Dry Pea and Lentil Council would be in favor of removing the requirement that the notification be by registered mail.

Chairman Mueller said this represents a cost-savings to the council.

### Section 4.1-07-11

Chairman Mueller said several other commodity councils have opted to remove the requirement that first purchasers obtain a certificate from their respective councils prior to conducting business. He said in the case of a first purchaser of dry peas and lentils, that individual must obtain a certificate before any sale, processing, or shipment of dry peas or lentils.

In response to a question from Representative Mueller, Ms. Berndt said while she believes it would probably be acceptable to the council to remove this requirement, she would ask that it be retained until the North Dakota Dry Pea and Lentil Council has had an opportunity to review it.

### Section 4.1-07-15

Chairman Mueller said this section sets forth the procedure by which a producer may obtain a refund of any assessments paid under the chapter.

In response to a question from Representative Mueller, Ms. Berndt said the North Dakota Dry Pea and Lentil Council would be in favor of the

\$5 minimum refund requirement. She said she recalls having to send a \$.29 refund.

Chairman Mueller said Section 4-10.7-13 was not included in the bill draft. He said that section provides that if a first purchaser fails to pay the required assessment, the council may enforce collection in any appropriate court within the state. He said this duplicates enforcement authority given to the council in proposed Section 4.1-07-09. He said Section 4-10.7-16 was not included in the rewrite because that section provides that all records of the council are public information and must be made available for inspection. He said this duplicates provisions in Chapter 44-04 which address public records.

**It was moved by Senator Behm, seconded by Representative Solberg, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Senator Wanzek, seconded by Representative Uglem, and carried on a voice vote that the amended bill draft relating to the North Dakota Dry Pea and Lentil Council and assessments be approved and recommended to the Legislative Council.**

## **DRY BEAN COUNCIL AND ASSESSMENTS**

Chairman Mueller asked the committee to consider the bill draft [\[90069.0200\]](#) that rewrites North Dakota Century Code provisions pertaining to the North Dakota Dry Bean Council and assessments. He said Mr. Tim Courneya, Administrator, North Dakota Dry Bean Council, was unable to appear before the committee today. However, he said, Mr. Courneya met with committee counsel on October 1, 2008, to review the bill draft and to recommend changes to it.

### **Section 4.1-06-01**

Chairman Mueller said the definition of a participating producer in the bill draft is one that has not gained exemption from the payment of taxes on dry bean production under this chapter for a particular year or a producer that is not exempt from the payment of taxes on dry bean production under this chapter. He said Mr. Courneya requested that a participating producer be defined as a producer that has not applied for a refund under proposed Section 4.1-06-16 during the preceding 12 months. He said the reference to exemptions is designed to provide that the assessment imposed by the chapter does not apply to either dry bean seeds or dry beans used for purposes other than human consumption. He said this has been clarified in proposed Section 4.1-06-13.

In response to a question from Senator Bowman, Senator Wanzek said if a dry bean is not used for human consumption, it has very little worth. He said splits and cleanouts are used for feed. He said salvage beans generally lose approximately 95 percent of their value.

In response to a question from Representative Mueller, committee counsel said at a prior meeting

Mr. Courneya had explained that seed growers were exempt from the assessment because, when this law was first enacted, there was a desire to encourage growth within the seed industry. In addition, she said, there are very few dry bean seed producers.

Chairman Mueller said Mr. Courneya reviewed the definition of a producer and agreed it should reference one that plants or causes to be planted a dry bean crop in which the person has an ownership interest, with the intent that upon maturity the crop be harvested; a person that will have met the requirements of a producer during the next available growing season; or a person that has met the requirements of a producer during the immediately preceding growing season.

### **Section 4.1-06-04**

Chairman Mueller said Mr. Courneya indicated that the North Dakota Dry Bean Council does not use the county representative process by which to elect its council members. He said the council uses a process very similar to that used by potato producers. He said, each year during the month of February, the Agriculture Commissioner is to identify the districts represented by council members whose terms are about to expire. He said the commissioner sends letters to producers asking them to place their own name on the ballot or to nominate another producer for election to the council. Upon return of the statements of eligibility, together with signed nomination petitions, the commissioner prepares and mails the election ballots to producers. He said Mr. Courneya has reviewed the proposed language and that language should be substituted for proposed Sections 4.1-06-04 and 4.1-06-05 as they appear in the bill draft.

### **Section 4.1-06-09**

Chairman Mueller said the North Dakota Dry Bean Council consists of one participating producer elected from each of the districts established in proposed Section 4.1-06-02 and the Agriculture Commissioner, who is a nonvoting member. He said it is the wish of Mr. Courneya that the section be clarified to ensure that the commissioner is not paid per diem compensation and not reimbursed from council funds, but that if a dry bean producer who happens to hold a job with state government serves on the council, in a position independent of the producer's state employment, that individual is eligible to receive per diem compensation plus reimbursement for expenses.

### **Section 4.1-06-10**

Chairman Mueller said this section sets forth the powers of the North Dakota Dry Bean Council. He said it also prohibits the council from engaging in a commercial business enterprise. He said Mr. Courneya reviewed this language and indicated that the council is in agreement with the prohibition. He said the council does not want to have any exceptions to the prohibition.

### Section 4.1-06-11

Chairman Mueller said this section sets forth the duties of the North Dakota Dry Bean Council. He said among those duties is the determination for which money raised under the chapter may be expended. He said the bill draft provides that the uses may include the funding of research, education programs, and market development efforts, as well as participation in programs under the auspices of the United States Dry Bean Council. He said Mr. Courneya indicated he would prefer that the section be changed to authorize participation in programs under the auspices of other state, regional, national, and international commodity councils.

### Section 4.1-06-13

Chairman Mueller said Mr. Courneya indicated that this section should be changed to provide that the assessment does not apply to dry bean seeds or to dry beans used for purposes other than human consumption.

Chairman Mueller said Section 4-10.3-01 was not included in the rewrite because it is a statement of legislative policy. He said Section 4-10.3-13 was not included in the rewrite because it duplicates open record provisions already found in Chapter 44-04.

**It was moved by Representative Uglem, seconded by Representative Brandenburg, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Representative Kingsbury, seconded by Senator Behm, and carried on a voice vote that the amended bill draft relating to the North Dakota Dry Bean Council and assessments be approved and recommended to the Legislative Council.**

## NOXIOUS WEEDS

Chairman Mueller asked the committee to consider the bill draft [\[90012.0300\]](#) that rewrites North Dakota Century Code provisions pertaining to the control of noxious weeds. He said the committee has reviewed this bill draft on several other occasions. However, he said, an amendment is being sought to Section 17 of the bill draft. He said Section 17 sets forth state appropriations for noxious weed control--in particular the landowner assistance program.

At the request of Chairman Mueller, Mr. Myron Dieterle, Past President, North Dakota Weed Control Association, and Mr. Merlin Leithold, North Dakota Weed Control Association, presented testimony regarding the bill draft.

Mr. Dieterle said the North Dakota Weed Control Association met on September 30, 2008, and reviewed the bill draft. He said the association members are very pleased with the work that has been done on this bill draft and, with the exception of this one amendment, it appears to be in order. He said the amendment would replicate the intent of present law with respect to the landowner assistance

program. He said it would provide that the formula for distribution of landowner assistance program dollars would involve not only representatives of county weed boards but representative of city weed boards as well. He said city weed boards would be able to access landowner assistance programs if their cities raised an amount equal to the revenue collected from a levy of at least 3 mills.

In response to a question from Representative Mueller, Mr. Leithold said there are no cities that levy 3 mills for noxious weed control and therefore no city that could qualify for landowner assistance program dollars. However, he said, in the future some cities might be qualified for the dollars.

**It was moved by Senator Behm, seconded by Senator Wanzek, and carried on a voice vote that the bill draft be amended as discussed.**

**It was moved by Representative Kingsbury, seconded by Representative Johnson, and carried on a voice vote that the amended bill draft relating to noxious weed control be approved and recommended to the Legislative Council.**

## STATE BOARD OF AGRICULTURAL RESEARCH AND EDUCATION - REPORT

Chairman Mueller said the committee was directed to receive a report from the State Board of Agricultural Research and Education regarding its annual evaluation of research activities and expenditures.

At the request of Chairman Mueller, Mr. Jerry Effertz, Chairman, State Board of Agricultural Research and Education, presented the report.

Mr. Effertz distributed a document entitled *State Board of Agricultural Research and Education - Who We Are and What We Do* ([Appendix B](#)). He said the document sets forth the statutory duties of the board, its membership, and a brief history of the board. Mr. Effertz also distributed a document entitled *Update of 2007 Funded Initiatives (August 2008)* ([Appendix C](#)). He said this document lists the general fund projects and their status as of August 2008.

At the request of Chairman Mueller, Dr. D. C. Coston, Vice President for Agriculture and University Extension, North Dakota State University, assisted in presenting the report. Dr. Coston distributed several documents showing the State Board of Agricultural Research and Education's 2009 priorities applicable to the North Dakota State University Extension Service and the Agricultural Experiment Station. The document is on file in the Legislative Council office.

## COMMITTEE DISCUSSION

Chairman Mueller asked the committee to consider whether it would prefer to have the 12 bills relating to agricultural commodities introduced separately or combined into one bill.

Senator Behm said it would be more efficient to have the 12 bills combined into one bill for purposes of introduction so that the standing committees can have the ability to consider all changes at one time.



Senator Wanzek said he, too, believes that, in the interest of efficiency, it would be preferable to have all of the commodity bills combined into a single bill.

Representative Brandenburg said he would like to ensure that when the different commodity groups appear before the standing committees, due time is given to each group.

In response to a question from Representative Froelich, Representative Johnson said if it is his privilege to again serve as chairman of the House Agriculture Committee, it would be his intent to ensure that the bill representing the work of the interim committee remain true to its purpose and that suggestions for major policy changes be introduced as separate bills and not as amendments to the title rewrite.

**It was moved by Senator Taylor, seconded by Senator Behm, and carried on a voice vote that the 12 bill drafts pertaining to the agricultural commodity councils and commissions and their respective assessments be combined into one bill draft and that when so combined the bill draft be approved and recommended to the Legislative Council.**

### RESOLUTION

Chairman Mueller asked the committee to consider a resolution draft [\[93015.0100\]](#) directing the Legislative Council to continue its study of North Dakota Century Code provisions relating to agriculture. He said this year the interim Agriculture Committee succeeded in proposing a rewrite of 12 separate chapters pertaining to agricultural commodity councils and commissions and their assessments and a rewrite pertaining to noxious weed

control. He said it would be appropriate to continue the efforts of the title rewrite and focus next interim on laws pertaining to agricultural seed and animal issues.

**It was moved by Representative Froelich, seconded by Senator Behm, and carried on a voice vote that the resolution draft directing the Legislative Council to continue its study of North Dakota Century Code provisions that relate to agriculture be approved and recommended to the Legislative Council.**

**It was moved by Senator Wanzek, seconded by Senator Behm, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council.** Representatives Mueller, Brandenburg, Froelich, Hofstad, Johnson, and Solberg and Senators Behm, Bowman, Taylor, and Wanzek voted "aye." No negative votes were cast.

**It was moved by Senator Wanzek, seconded by Senator Bowman, and carried on a roll call vote that the committee be adjourned sine die.** Representatives Mueller, Brandenburg, Froelich, Hofstad, Johnson, and Solberg and Senators Behm, Bowman, Taylor, and Wanzek voted "aye." No negative votes were cast.

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L. Anita Thomas  
Committee Counsel

ATTACH:3