

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-02 of the North Dakota Century Code, relating
2 to the barley council and assessment; to repeal chapter 4-10.4 of the North Dakota Century
3 Code, relating to the barley council and assessment; to provide a penalty; and to provide a
4 continuing appropriation.

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

6 **SECTION 1.** Chapter 4.1-02 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-02-01. Definitions.** As used in this chapter:

- 9 1. "Barley" means all varieties of barley harvested in the state.
10 2. "Commissioner" means the agriculture commissioner or the commissioner's
11 designee.
12 3. "Council" means the North Dakota barley council.
13 4. "First purchaser" means any person accepting for shipment or otherwise acquiring
14 barley from a producer. The term includes a mortgagee, pledgee, lienor, or other
15 person having a claim against the producer, if the actual or constructive
16 possession of the barley is taken as partial payment or in satisfaction of the
17 mortgage, pledge, lien, or claim.
18 5. "Participating producer" means a producer who has not claimed on that producer's
19 behalf any refunds for the payment of assessments on barley under this chapter for
20 a particular year or a producer who is not exempt from the payment of
21 assessments on barley under this chapter.

NOTE: Could we say that a "participating producer" means a producer who has not applied for a refund under Section 4.1-02-16 for at least _____ years? Who is intended to be covered by the exemption language?

6. "Producer" means any person who has an ownership interest in barley that the person has:

- a. Planted during four of the previous six calendar years; or
- b. Caused to be planted during four of the previous six calendar years.

NOTE: Present law defines a grower (producer) as a person who plants, raises, and harvests barley. Sometimes crops are planted but, because of weather conditions, they might not be harvested. The proposed definition, therefore, specifies that there must be an ownership interest in the crop and that the producer must have planted the crop (or caused the crop to be planted) during four of the previous six calendar years. This latter provision is inserted because some commodity groups were concerned about the eligibility of farmers who decided not to plant a specific crop during one or two growing seasons. (The committee is asked to determine an appropriate ratio.)

SOURCE: Section 4-10.4-01.

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

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

SOURCE: Section 4-10.4-04.

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

- 1. The council consists of one individual elected from each district established in section 4.1-02-02 and the commissioner, who is a nonvoting member.
- 2. Each member of the council, other than the commissioner, must be a resident of and a participating producer in the district that the member represents.
- 3. The term of each elected member is four years and begins on April first. The terms must be staggered so that no more than two terms expire each year.
- 4. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this section, the member's office is deemed vacant

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

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

NOTE: The preceding sentence is new. It attempts to clarify the length of service in the event an individual is appointed to complete a vacancy.

SOURCE: Section 4-10.4-03.

7 **4.1-02-04. Election of county representative.**

- 8 1. No later than March first of the year in which the term of a council member is to
9 expire, the extension agent for each county in that member's district shall hold a
10 meeting of barley producers for the purpose of electing a county representative.
11 2. The county extension agent shall publish notice of the meeting in the official
12 newspaper of the county for two consecutive weeks. The last notice must be
13 published no fewer than five nor more than ten days before the meeting.
14 3. The meeting must be held at a central location within the county.
15 4. During the meeting, the county extension agent shall conduct the election.
16 5. Any producer who resides in the county may vote in the election.
17 6. The county extension agent shall canvass the votes, notify the director of the North
18 Dakota state university extension service that the election has taken place, and
19 provide to the director the name and address of the newly elected county
20 representative.

NOTE: Current law provides that county and district elections must take place before April 1. In order to allow maximum flexibility for the Extension Service in scheduling the various meetings and elections, perhaps consideration could be given to requiring that the county elections be completed at least 60 days before the expiration of a council member's term, i.e., before March 1.

Current law does not clarify whether eligibility to vote for a county representative belongs to those who reside in the county or to those who farm in the county. (see subsection 5)

If the county extension agent (perhaps in consultation with the executive director of the county Farm Service Agency office) determines that there are no eligible barley producers in the county, must the county extension agent still publish notice of and hold a meeting? Should there be a waiver in this instance?

SOURCE: Section 4-10.4-03.

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

1. Upon receiving the notice required by section 4.1-02-04, the director of the North Dakota state university extension service shall call a meeting of all county representatives in the district represented by the member whose term is to expire.
2. The director shall notify each county representative in the district of the meeting, by registered mail, at least five days before the meeting.
3. The meeting must be held at a central location within the district.
4. At the meeting, the county representatives shall elect one from among themselves to serve as the council member from that district.
5. The director shall notify the governor that the election has taken place and shall provide to the governor the name and address of the newly elected council member.

SOURCE: Section 4-10.4-03.

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

NOTE: The 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.

SOURCE: New concept.

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

NOTE: Section 1-01-10 provides that a "majority of any board or commission" constitutes a quorum. 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.

SOURCE: Section 4-10.4-05.

4.1-02-08. Election of chairman - Meetings.

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

SOURCE: Section 4-10.4-05.

1 **4.1-02-09. Council members - Compensation.** Each member of the council is
2 entitled to receive compensation in the amount established by the council, but not exceeding
3 seventy-five dollars per day plus reimbursement for expenses as provided by law for state
4 officers, if the member is attending meetings or performing duties directed by the council. The
5 compensation provided for in this section may not be paid to any member of the council who
6 receives a salary or other compensation as an employee or official of this state.

NOTE: Should we just say the Agriculture Commissioner may not receive compensation under this section? What should be done about a council member who is a state trooper or a professor and does the council work on his or her own time and independent of his or her state employment?

SOURCE: Section 4-10.4-05.

7 **4.1-02-10. Council - Powers.**

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

NOTE: Present law prohibits the council from participating in a "competitive business enterprise." (Is this intended to prohibit the council from forming a custom combining operation that might compete with a producer or is it intended to allow a business that is not financially successful (competitive) but preclude one that is successful?)

In the interest of clarifying exactly what is intended by this prohibition, the rewrite prohibits the council from engaging in a "commercial" business enterprise.

The committee may, however, want to determine whether this prohibition should be:

1. Left without exception until changed by a future Legislative Assembly; or
2. Tempered by allowing the activity if approved by "a supermajority of the council" or by "a majority of the participating producers."

SOURCE: Sections 4-10.4-02, 4-10.4-07, and 4-10.4-11.

17 **4.1-02-11. Council - Duties.**

- 1 1. The council shall determine the uses to which any moneys raised under this
2 chapter may be expended. The uses may include the funding of research,
3 education programs, and market development efforts, as well as participation in
4 programs under the auspices of the United States grains council.

NOTE: Are there other national groups that should be noted?

- 5 2. The council shall develop and disseminate information regarding the purpose of
6 the barley assessment and ways in which the assessment benefits barley
7 producers.

NOTE: Current law 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, language was crafted to better define the duties of the council.

SOURCE: Sections 4-10.4-07 and 4-10.4-09.

8 **4.1-02-12. Assessment.**

- 9 1. An assessment at the rate of ten mills per bushel [35.24 liters] is imposed upon all
10 barley grown in this state, delivered to this state, or sold to a first purchaser in this
11 state.
12 2. The assessment imposed by this section does not apply to _____.

NOTE: If there are exemptions (i.e., some groups exempt seed producers), then those should be noted here.

Section 4-10.4-08(4) provides that the assessment "must be deducted as provided by this chapter whether the barley is stored or sold in this or any other state" It appears that the language requiring the assessment on all barley "grown in this state, delivered to this state, or sold to a first purchaser in this state" includes the language of Section 4-10.4-08(4).

SOURCE: Section 4-10.4-08.

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

- 14 1. The first purchaser shall collect the assessment from the seller by deducting the
15 assessment from the total price of the barley being purchased by the first
16 purchaser.
17 2. The first purchaser shall keep documents regarding all purchases, sales, and
18 shipments of barley for a period of three years. The first purchaser shall make
19 these records available to the council for examination at all reasonable times.

NOTE: Current law requires that these records be kept permanently. Other groups have suggested three years. For how many years should these records be kept?

1 3. No later than thirty days after the conclusion of each calendar quarter, each first
2 purchaser shall file with the council a report stating the quantity of all barley
3 received, sold, or shipped by the first purchaser.

SOURCE: Section 4-10.4-08.

4 **4.1-02-14. Submission of assessments - Civil penalty.**

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

SOURCE: Sections 4-10.4-08 and 4-10.4-12.

10 **4.1-02-15. Out-of-state sale - Submission of assessment by producer - Civil**
11 **penalty.**

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

NOTE: 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 in a timely fashion. The proposed penalty is included in this section for committee consideration.

SOURCE: Section 4-10.4-08.

22 **4.1-02-16. Refund of assessment.**

- 23 1. To receive a refund of any assessment paid in accordance with this chapter, a
24 producer shall submit to the council a written request for a refund application within
25 sixty days after the date of the assessment or final settlement.

2. The producer must complete the refund application and return the application to the council, together with a record of the assessment collected, within ninety days after the date of the assessment or final settlement. The council shall then refund the net amount of the assessment that had been collected.

3. If a request for a refund is not submitted to the council within the prescribed time period, the producer is presumed to have agreed to the assessment.

SOURCE: Section 4-10.4-09.

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

SOURCE: Section 4-10.4-09.

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

SOURCE: Section 4-10.4-06.

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

NOTE: This section clarifies that the money in the barley fund is appropriated to the council on a continuing basis.

4.1-02-20. Advisory referendum.

1. a. When petitioned to do so by at least fifteen percent of the participating producers, the council shall conduct a referendum among the participating producers of the state to determine the amount by which the assessment imposed by this chapter should be raised or lowered.

b. To be considered a valid petition, no more than fifty percent of the participating producers who signed the petition may reside in one district.

2. The council shall prepare the ballots and mail the ballots to each participating producer at least thirty days before the last date for filing ballots.

3. Each ballot must include a statement indicating:

- 1 a. The date on which the petition was filed and the number of signatures on the
2 petition;
3 b. The date, time, and location at which the council will open and tabulate the
4 ballots;
5 c. The last date by which the ballots must be postmarked or filed with the
6 council; and
7 d. That any participating producer may be present at the time the ballots are
8 opened and tabulated.
9 4. The date selected by the council for the opening and tabulation of ballots must be
10 at least five days after the date by which ballots must be postmarked or filed with
11 the council.
12 5. If a majority of the participating producers voting upon the question are in favor of
13 the proposed change, the council shall submit a bill to the next legislative assembly
14 to amend this chapter.

NOTE: Current law is not clear regarding what happens after tabulation of the ballots. Other commodity groups having similar sections require the submission of a bill to the next Legislative Assembly. This language is included in subsection 5 for the committee's consideration.

SOURCE: Section 4-10.4-10.

- 15 **4.1-02-21. Penalty.** Any person who willfully violates this chapter is guilty of a class B
16 misdemeanor.

SOURCE: Section 4-10.4-14.

- 17 **SECTION 2. REPEAL.** Chapter 4-10.4 of the North Dakota Century Code is repealed.

CHAPTER NOTE: Section 4-10.4-13 was omitted from the rewrite because it duplicates public record provisions found in Chapter 44-04 and record retention provisions found in Chapter 54-46.