

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-04 of the North Dakota Century Code, relating
2 to the corn utilization council and assessment; to repeal chapter 4-10.6 of the North Dakota
3 Century Code, relating to the corn utilization council and assessment; to provide a penalty; and
4 to provide a continuing appropriation.

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

6 **SECTION 1.** Chapter 4.1-04 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-04-01. Definitions.** As used in this chapter:

- 9 1. "Commissioner" means the agriculture commissioner or the commissioner's
10 designee.
- 11 2. "Corn" means all varieties of corn, except sweet corn and popcorn.
- 12 3. "Council" means the North Dakota corn utilization council.
- 13 4. "Designated handler" means:
- 14 a. Any grain warehouse, licensed grain buyer, processing plant, or ethanol plant
15 which purchases corn from a producer; and
- 16 b. Any person having a claim against the producer if the actual or constructive
17 possession of the corn is taken as security, partial payment, or in satisfaction
18 of a mortgage, pledge, lien, or claim.
- 19 5. "Producer" means any person who has an ownership interest in corn that the
20 person has:
- 21 a. Planted during four of the previous six calendar years; or
22 b. Caused to be planted during four of the previous six calendar years.

NOTE: Present law defines a grower as a person who plants, raises, and harvests corn. Sometimes crops are planted but, because of weather conditions, 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 of two growing seasons. (The committee is asked to determine an appropriate ratio.)

NOTE: The definitions applicable to the phrases "marketed in this state", "participating grower", and "voting grower" were removed from this section.

SOURCE: Section 4-10.6-01.

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

1. Richland County;
2. Cass, Steele, and Traill Counties;
3. Benson, Bottineau, Burke, Cavalier, Divide, Grand Forks, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Renville, Rolette, Towner, Walsh, Ward, and Williams Counties;
4. Barnes, Eddy, Foster, Griggs, and Stutsman Counties;
5. Sargent and Ransom Counties;
6. Dickey and LaMoure Counties; and
7. All remaining counties in which corn is grown.

SOURCE: Section 4-10.6-03.

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

1. The council consists of one producer elected from each of the seven districts established in section 4.1-04-02.
2. Each member of the council must be a resident of the district that the member represents.
3. A member of the council may not have requested a refund under section 4.1-04-14 during the preceding year.

NOTE: The committee is asked to review the "one" year time period and determine its appropriateness.

4. The term of each member is four years and begins on April first following the member's election. The terms must be staggered so that no more than two expire each year.

5. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council, by majority vote, shall appoint another qualified producer for the remainder of the term.

NOTE: Current law provides that the council shall appoint another qualified grower from "any" district to complete the term. The rewrite provides that the council must appoint another qualified producer, i.e., one who meets the requirements set forth in this section.

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

NOTE: The final sentence of subsection 6 is new language that tries to clarify the length of service in the event an individual is appointed to complete a vacancy.

SOURCE: Section 4-10.6-02.

4.1-04-04. Election of council member.

1. No later than January first of the year in which the term of a council member is to expire, the council shall appoint a nominating committee consisting of at least two producers who reside in the council member's district and who have not requested a refund under section 4.1-04-14 during the preceding year.

NOTE: Current law provides that the elections must be conducted no later than April 1. Current law also provides that a member's term begins on April 1. In order to allow time for the nominating committee to effectuate its charge, and for others to be nominated via a petition process, it is recommended that sufficient time be accorded to each step. The dates inserted in this section are for discussion purposes and subject to committee approval.

2. No later than February first, the committee shall nominate a qualified producer as a candidate for council membership.

3. Other qualified producers may become candidates for council membership by submitting to the council, no later than March first, a petition signed by at least five producers who reside in the district to be represented.

4. a. If a qualified producer submits a petition in accordance with subsection 3, the council shall:

(1) Determine the date, time, and place for the election;

1 (2) Publish that information in the official newspaper of each county in the
2 district for two consecutive weeks;

3 (3) Prepare the ballots; and

4 (4) Conduct the election.

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

10 5. Any producer who resides in the district may vote in the election.

NOTE: Current law does not clarify whether eligibility to vote for a council member belongs to those who reside in the district or to those who farm in the district. The proposed language is for discussion purposes and subject to committee approval.

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

NOTE: Statutes applicable to other commodity groups require that the Governor be notified regarding the new council member. In the interest of consistency, this same requirement is inserted in this chapter.

SOURCE: Section 4-10.6-02.

13 **4.1-04-05. Election costs - Responsibility.** All costs of holding an election are the
14 responsibility of the council.

NOTE: 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.

15 **4.1-04-06. Meetings.**

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

17 2. The chairman shall call all meetings of the council and shall call a special meeting
18 of the council within seven days when petitioned to do so by three council
19 members.

SOURCE: Section 4-10.6-04.

20 **4.1-04-07. Council members - Compensation.** Each member of the council is
21 entitled to receive compensation in the amount established by the council but not exceeding

1 seventy-five dollars per day plus reimbursement for expenses as provided by law for state
2 officials if the member is attending meetings or performing duties directed by the council. The
3 compensation provided for in this section may not be paid to any member of the council who
4 receives a salary or other compensation as an employee or official of this state.

SOURCE: Section 4-10.6-04.

5 **4.1-04-08. Council - Powers.** The council may:

- 6 1. Expend moneys collected pursuant to this chapter for its administration;
- 7 2. Employ, bond, and compensate necessary personnel;
- 8 3. Accept gifts, grants, and donations of money, property, and services to carry out
9 this chapter;
- 10 4. Contract with any person for any purpose related to this chapter, including
11 research, education, publicity, promotion, and transportation;
- 12 5. Sue and be sued; and
- 13 6. Do all things necessary and proper to enforce and administer this chapter.

SOURCE: Section 4-10.6-06.

14 **4.1-04-09. Council - Duties.**

- 15 1. The council shall determine the uses for which any moneys raised under this
16 chapter may be expended. The uses may include the funding of research,
17 education programs, and market development efforts, as well as participation in
18 programs under the auspices of other state and national corn promotion groups.
- 19 2. The council shall develop and disseminate information regarding the purpose of
20 the corn assessment and ways in which the assessment benefits corn producers.

NOTE: Current law provides that the council shall "develop and disseminate information and instructions relating to the purpose of the corn assessment and manner in which refunds may be claimed, and shall cooperate with governmental agencies and private businesses engaged in the purchase of corn." In the interest of consistency among the commodity chapters, this section includes proposed language articulating the council's role in determining how its moneys are to be spent and also referencing its participation with other state and national groups.

SOURCE: Section 4-10.6-11.

21 **4.1-04-10. Designated handler - Certificate.**

- 22 1. Before a designated handler may sell, process, or ship corn, the designated
23 handler shall obtain a certificate from the council.

- 1 2. The certificate is available upon submission to the council of an application
2 containing the name under which the designated handler is transacting business
3 within the state, the designated handler's place of business, and the location of
4 loading and shipping places of the designated handler's agents.
- 5 a. If the designated handler is a corporation, the application must include the
6 corporate name and the names and addresses of the principal officers and
7 agents within the state.
- 8 b. If the designated handler is a partnership, the application must include the
9 name of the partnership and the names and addresses of the persons
10 constituting the partnership.
- 11 c. If the designated handler is a limited liability company, the application must
12 include the name of the limited liability company and the names and
13 addresses of its principal managers and agents within the state.
- 14 3. The designated handler shall notify the council whenever there is a change of
15 information required by this section.

SOURCE: Section 4-10.6-07.

16 **4.1-04-11. Assessment.** Until the commissioner certifies that a national corn checkoff
17 is in effect, an assessment at the rate of one-quarter of one percent of the value of a bushel
18 must be imposed upon all corn grown and sold in this state.

NOTE: Given the current definition of "marketed in this state", it appears that the assessment is placed only on corn sold and delivered to a designated handler residing in or doing business in this state. However, Section 4-10.6-09 provides for the sale of corn to a person who is not a designated handler. This needs to be reconciled. The rewrite proposes language clarifying that the assessment is applicable to all corn grown and sold in this state and in later sections further clarifying responsibility for submission of the assessment to the council.

SOURCE: Section 4-10.6-08.

19 **4.1-04-12. Collection of assessment - Records.**

- 20 1. A designated handler shall collect the assessment from the producer by deducting
21 the assessment from the purchase price of the corn.
- 22 2. Each designated handler shall keep documents regarding all purchases, sales, and
23 shipments of corn for a period of three years. The records may be examined by
24 the council upon request.

NOTE: Current law requires that the documents be kept permanently. Other commodity groups have suggested that three years is a sufficient retention period.

1 3. At the time and in the manner prescribed by the council, each designated handler
2 shall file a report with the council. The report must state, in individual and total
3 amounts, the quantity of all corn that the designated handler received, sold, or
4 shipped, and the source of all corn that the designated handler received, sold, or
5 shipped.

NOTE: Current law requires that the designated handler file a report with the council. It does not indicate what should be in the report. Other commodity groups have language referencing the quantity and source of their particular commodity that the designated handler received, sold, and shipped.

SOURCE: Sections 4-10.6-09 and 4-10.6-10.

6 **4.1-04-13. Submission of assessment by producer.** If a producer sells corn to a
7 person who is not a designated handler, the producer shall forward the assessment to the
8 council at the time and in the manner prescribed by the council.

NOTE: This section articulates the current law requiring a producer to submit the assessment to the council, if the producer sells corn to a person who is not a designated handler. Current law, however, imposes no recordkeeping requirement on the producer.

SOURCE: Sections 4-10.6-09 and 4-10.6-10.

9 **4.1-04-14. Refund of assessment - Form.**

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

NOTE: In accordance with the committee's directive for consistency, producers are being given 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.

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

SOURCE: Section 4-10.6-11.

1 **4.1-04-15. Reimbursement for double payments.** Notwithstanding section
2 4.1-04-14, if a producer documents to the council that the producer has paid the assessment
3 more than once on the same corn, the council shall reimburse the producer for the double
4 payment.

SOURCE: Section 4-10.6-11.

5 **4.1-04-16. Submission of assessments - Civil penalty.**

6 1. Each designated handler shall forward to the council all assessments collected by
7 the designated handler within thirty days after the end of each calendar quarter.

SOURCE: Section 4-10.6-10.

8 2. If a designated handler fails to submit the assessments as required by this section,
9 the council may levy a penalty equal to ten percent of the assessment due, plus
10 interest at the rate of twelve percent per annum from the due date.

NOTE: Should there be any penalty if a producer fails to submit assessments that are required under this chapter?

SOURCE: Sections 4-10.6-10 and 4-10.6-14.

11 **4.1-04-17. Expenditures - Approval - Records.** The council shall approve all
12 expenditures made pursuant to this chapter. The expenditures must be recorded on itemized
13 vouchers and the records must be maintained as directed by the state records administrator.

SOURCE: Section 4-10.6-06.

14 **4.1-04-18. Continuing appropriation.** The council shall forward all moneys received
15 under this chapter to the state treasurer for deposit in the "corn fund". All moneys in the corn
16 fund are appropriated on a continuing basis to the council to be used exclusively to carry out
17 this chapter.

SOURCE: Section 4-10.6-10.

18 **4.1-04-19. Advisory referendum.**

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

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

- 1 2. The council shall determine the date on which in-person voting will take place.
- 2 3. The council shall prepare the ballots and make the ballots available to producers at
- 3 each county extension office in the state.
- 4 4. Each ballot must include a statement indicating:
- 5 a. The date, time, and location at which the council will open and tabulate the
- 6 ballots; and
- 7 b. That any producer may be present at the time the ballots are opened and
- 8 tabulated.
- 9 5. a. Beginning no sooner than thirty days before the date established for in-person
- 10 voting in accordance with subsection 2, the council also shall provide
- 11 absentee ballots upon request to:
- 12 (1) Producers who are not residents of this state but who paid an
- 13 assessment in accordance with this chapter during the preceding
- 14 twelve months; and
- 15 (2) Producers who expect to be absent from their county of residence on
- 16 the date established for in-person voting in accordance with
- 17 subsection 2.
- 18 b. The council shall include with each absentee ballot requested a form
- 19 indicating that the producer is eligible to participate in the referendum. The
- 20 form must be signed by the absentee producer and returned with the
- 21 absentee ballot.
- 22 **NOTE:** Is this a form statement to be signed or an actual oath/affirmation?
- 23 c. In order to be counted, an absentee ballot and the voter's statement of
- 24 eligibility must be received by the council at least forty-eight hours before the
- 25 time at which the council stated it would open and tabulate ballots.
- 26 6. If a majority of the producers voting upon the question are in favor of the proposed
- 27 change, the council shall submit proposed legislation to the next regular session of
 the legislative assembly to amend this chapter.

NOTE: In the interest of consistency, the committee might wish to examine the requirements of this advisory referendum as opposed to the referenda of other commodity groups.

SOURCE: Section 4-10.4-12.

- 1 **4.1-04-20. Penalty.** Any person who willfully violates this chapter is guilty of a class B
2 misdemeanor.

SOURCE: Section 4-10.6-16.

- 3 **SECTION 2. REPEAL.** Chapter 4-10.6 of the North Dakota Century Code is repealed.

CHAPTER NOTE: Sections 4-10.6-13 and 4-10.6-15 were not included in the chapter rewrite. Section 4-10.6-13 states that if a designated handler fails to pay the required assessment, the council may enforce collection in any appropriate court within the state. This duplicates enforcement authority given to the council in proposed Section 4.1-04-08. 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. This duplicates Chapter 44-04 provisions governing public records.