

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-10 of the North Dakota Century Code, relating
2 to the North Dakota potato council and assessments; to repeal chapter 4-10.1 of the North
3 Dakota Century Code, relating to the North Dakota potato council and assessments; to provide
4 a penalty; and to provide a continuing appropriation.

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

6 **SECTION 1.** Chapter 4.1-10 of the North Dakota Century Code is created and enacted
7 as follows:

8 **4.1-10-01. Definitions.** As used in this chapter:

- 9 1. "Commissioner" means agriculture commissioner or the commissioner's designee.
10 2. "Council" means the North Dakota potato council.
11 3. "Designated handler" means a person who initially places potatoes into the
12 channels of trade and commerce or a person who processes potatoes into food for
13 human consumption. The term does not include a producer selling the producer's
14 unharvested potatoes or delivering, within the state, the producer's potatoes from
15 the farm on which they are produced to storage facilities, a packing shed, or a
16 processing plant.

NOTE: If the term "designated handler" refers to a person who initially places potatoes into the channels of trade and commerce, it appears unnecessary to then provide that the term does not include a producer who merely stores his or her potatoes.

- 17 4. "Participating producer" means a producer who has not gained exemption from the
18 payment of an assessment under this chapter for a particular year or a producer
19 who is not exempt from the payment of an assessment under the terms of this
20 chapter.

NOTE: If we are maintaining the reference to individuals who plant on less than 10 acres, do we need this subsection?

- 1 5. "Potato" means any variety of Irish potatoes harvested within this state.
- 2 6. "Producer" means any person who has an ownership interest in potatoes that the
- 3 person has:
- 4 a. Planted, on ten or more acres [4.05 hectares], during four of the previous six
- 5 calendar years; or
- 6 b. Caused to be planted, on ten or more acres [4.05 hectares], during four of the
- 7 previous six calendar years.

NOTE: Although other commodity groups opted to remove their minimum acreage requirements, representatives of the Potato Council asked that this provision be maintained.

Present law defines a grower (producer) as a person who plants, raises, and harvests potatoes. Sometimes crops are planted but, because of weather conditions, they might not be harvested. Likewise, a person might engage in all the listed activities without having an ownership interest in the crop. The proposed definition 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 producers 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 4-10.1-03.

8 **4.1-10-02. Potato districts - Establishment.** The state consists of the following five

9 potato districts:

- 10 1. Cavalier and Pembina Counties;
- 11 2. Walsh County in and west of range fifty-four;
- 12 3. Walsh County in and east of range fifty-three;
- 13 4. Benson, Grand Forks, and Nelson Counties; and
- 14 5. All remaining counties in the state.

SOURCE: Section 4-10.1-05.

15 **4.1-10-03. North Dakota potato council - Membership - Term.**

- 16 1. The North Dakota potato council is composed of:
- 17 a. One participating producer elected from each of the five districts established
- 18 in section 4.1-10-02; and
- 19 b. The agriculture commissioner, who serves as the chairman.
- 20 2. Each member of the council must be a United States citizen.

NOTE: Current law provides that every "elected" member of the council must be a citizen.

1 3. Each member of the council, other than the commissioner, must be a resident of
2 and participating producer in the district that the member represents.

NOTE: Current law provides that every "elected" member of the council must be a resident of the district that the member represents. The rewrite presumes that the same criteria applies to members who might have been "appointed" to fill a vacancy.

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

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

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

NOTE: The last sentence of this subsection is new language. It attempts to clarify the length of service in the event an individual is appointed to fill a vacancy.

SOURCE: Section 4-10.1-04.

14 **4.1-10-04. Election of council members.**

15 1. Each year during the month of May, the commissioner shall identify the districts
16 represented by council members whose terms are about to expire.

17 2. a. The commissioner shall forward to each producer residing in the district a
18 letter inviting the producer to place the producer's own name or the name of
19 another producer into nomination for election to the council.
20 b. The commissioner shall include a statement of eligibility to be completed by
21 the producer seeking election and a nomination petition to be signed by five
22 other producers.

23 3. In order for a name to be placed on the ballot, the statement of eligibility and the
24 nomination petition must be received by the council on the date specified by the
25 commissioner. That date may not be later than May thirty-first.

- 1 4. The commissioner shall prepare election ballots and mail the ballots to the
2 producers in the district, together with a statement indicating:
3 a. The last date by which the ballots must be postmarked or filed with the
4 council;
5 b. The date, time, and location at which the council will open and tabulate the
6 ballots; and
7 c. That any participating producer may be present at the time the ballots are
8 opened and tabulated.
9 5. The date selected for the opening and tabulation of ballots must be at least five
10 days after the date by which ballots must be postmarked or filed with the council.
11 6. After the election, the council shall notify the governor that the election has taken
12 place and shall provide to the governor the name and address of the newly elected
13 council member.

NOTE: Should the ballot go to all producers or just participating producers?

SOURCE: Section 4-10.1-04.

14 **4.1-10-05. Meetings.** The chairman shall call all meetings of the council and must call
15 a special meeting of the council within seven days when petitioned to do so by three council
16 members.

SOURCE: Section 4-10.1-06.

17 **4.1-10-06. Council members - Compensation.** Each member of the council is
18 entitled to receive compensation in the amount established by the council but not exceeding
19 seventy-five dollars per day plus reimbursement for expenses as provided by law for state
20 officers, if the member is attending meetings or performing duties directed by the council. The
21 compensation provided for in this section may not be paid to any member of the council who
22 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 4-10.1-06.

23 **4.1-10-07. Council - Powers.**

24 1. The council may:

- 1 a. Expend moneys collected pursuant to this chapter for its administration;
- 2 b. Employ, bond, and compensate necessary personnel;
- 3 c. Accept gifts, grants, and donations of money, property, and services to carry
- 4 out this chapter;
- 5 d. Contract with any person for any purpose permitted under this chapter;
- 6 e. Sue and be sued; and
- 7 f. Do all things necessary and proper to enforce and administer this chapter.
- 8 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 engaging in an enterprise 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:

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

SOURCE: Sections 4-10.1-02 and 4-10.1-08.

9 **4.1-10-08. Council - Duties.**

- 10 1. The council shall determine the uses to which any moneys raised under this
- 11 chapter may be expended. The uses may include the funding of research,
- 12 education programs, and market development efforts, as well as participation in
- 13 programs under the auspices of the national potato council.
- 14 2. The council shall develop and disseminate information regarding the purpose of
- 15 the potato assessment and ways in which the assessment benefits potato
- 16 producers.

NOTE: Current law authorizes the council to contract and cooperate with any person, firm, corporation, limited liability company, or association, or with any local, state, or federal department or agency for research, education, publicity, promotion, and transportation for purposes of this chapter. What is the intent behind the reference to transportation?

Other commodity groups specifically authorize participation in programs under the auspices of various national promotion groups. Is the National Potato Council an appropriate reference?

Subsection 2 contains a generic duty found in other commodity chapters.

SOURCE: Section 4-10.1-08(1).

4.1-10-09. Designated handler - Certification.

1. Before a designated handler may sell, process, or ship potatoes, the designated handler shall obtain certification from the council. The certification is available upon submission to the council of an application containing the name under which the handler is transacting business within the state, the designated handler's place of business, and the location of loading and shipping places of the designated handler's agents.
2.
 - a. If the designated handler is a corporation, the application must include the corporate name and the names and addresses of its principal officers and agents within the state.
 - b. If the designated handler is a partnership, the application must include names and addresses of the persons constituting the partnership.
 - c. If the designated handler is a limited liability company, the application must include the names and addresses of its principal managers and agents within the state.
3. The designated handler shall notify the council whenever there is a change of information required by this section.

4.1-10-10. Assessment.

1. Except as otherwise provided, an assessment at the rate of three cents per hundredweight [45.36 kilograms] is imposed upon all potatoes grown in this state or sold to a designated handler.
2. The council may increase the assessment by no more than one-half cent per hundredweight [45.36 kilograms] annually until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached.
3. This assessment is not imposed on any potatoes retained by producers for seed or for consumption by the producer, the producer's family, and nonpaying guests.

SOURCE: Section 4-10.1-09.

4.1-10-11. Collection of assessment - Records.

1. Each designated handler shall collect the assessment from the seller by deducting the assessment from the total price of the potatoes purchased by the designated handler.
2. Each designated handler shall keep documents regarding all purchases, sales, and shipments of raw potatoes for a period of three years. The records may be examined by the council upon request.
3. At the time and in the manner prescribed by the council, each designated handler shall file a report stating the quantity of potatoes that the designated handler received, sold, or shipped.

SOURCE: Section 4-10.1-09.

4.1-10-12. Submission of assessments - Civil penalty.

1. Each designated handler shall forward to the council all assessments collected by the handler no later than the thirtieth day after the end of each calendar quarter.

NOTE: Current law requires that the assessments be forwarded to the council at the time and in the manner prescribed by the council. Because a penalty could be assessed, it would be preferable to provide a specific date. Other commodity groups required the submissions no later than the 30th day after the end of each calendar quarter.

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

NOTE: Sections 4-10.1-09 and 4-10.1-16.

4.1-10-13. Refund of assessment - Letters of request.

1. To receive a refund of any assessments paid in accordance with this chapter, a producer shall:
 - a. Between January first and July fifteenth, submit a letter to the council indicating that the producer intends to request a refund of assessments paid on potatoes grown during that calendar year; and
 - b. Between June first and June fifteenth of the calendar year following the date of the letter required by subdivision a, the producer shall submit a letter to the council requesting the refund of assessments paid by the producer on potatoes grown during the previous calendar year.

- 1 2. Upon verification that the requirements of this section have been met, the council
2 shall provide the requested refund to the producer.

NOTE: Section 4-10.1-12.

3 **4.1-10-14. Expenditures.** The council shall approve all expenditures made pursuant to
4 this chapter and shall submit an itemized voucher to the office of management and budget for
5 payment.

SOURCE: Section 4-10.1-07.

6 **4.1-10-15. Continuing appropriation.** The council shall forward all moneys received
7 under this chapter to the state treasurer for deposit in the potato fund. All moneys in the potato
8 fund are appropriated on a continuing basis to the council for purposes of carrying out this
9 chapter.

SOURCE: Section 4-10.1-09.

10 **4.1-10-16. Advisory referendum.**

- 11 1. a. When petitioned to do so by fifteen percent of the participating producers, the
12 council shall conduct a referendum among the participating producers of the
13 state to determine the amount by which the assessment imposed by this
14 chapter should be raised or lowered.
- 15 b. To be considered a valid petition, no more than fifty percent of the
16 participating producers who signed the petition may reside in one district.
- 17 2. The council shall prepare the ballots and mail the ballots to each participating
18 producer at least thirty days before the last date for filing ballots.
- 19 3. Each ballot must include a statement indicating:
- 20 a. The date on which the petition was filed and the number of signatures on the
21 petition;
- 22 b. The date, time, and location at which the council will open and tabulate the
23 ballots;
- 24 c. The last date by which the ballots must be postmarked or filed with the
25 council; and
- 26 d. That any participating producer may be present at the time the ballots are
27 opened and tabulated.

1 4. The date selected by the council for the opening and tabulation of ballots must be
2 at least five days after the date by which ballots must be postmarked or filed with
3 the council.

4 5. If a majority of the participating producers voting upon the question are in favor of
5 the proposed change, the council shall submit proposed legislation to the next
6 regular session of the legislative assembly to amend this chapter.

SOURCE: Section 4-10.1-13.

7 **4.1-10-17. Penalty - Criminal.** Any person who willfully violates this chapter is guilty of
8 a class B misdemeanor.

SOURCE: Section 4-10.1-15.

9 **SECTION 18. REPEAL.** Chapter 4-10.1 of the North Dakota Century Code is
10 repealed.

CHAPTER NOTES:

- Section 4-10.1-01 was omitted from the rewrite because it entitles the chapter the "Potato Industry Promotion Act of North Dakota".
- 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. Section 54-27-10 would not apply under any circumstances because the spud fund is a revolving fund.
- 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.