

Introduced by

1 A BILL for an Act to create and enact chapter 4.1-55 of the North Dakota Century Code, relating
2 to seed potato control areas; to repeal chapter 4-26 of the North Dakota Century Code, relating
3 to seed potato control areas; and to provide a penalty.

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

5 **SECTION 1.** Chapter 4.1-55 of the North Dakota Century Code is created and enacted as
6 follows:

7 **4.1-55-01. Definition.**

8 As used in this chapter, unless the context otherwise requires, "potato" means an Irish
9 potato.

SOURCE: Section 4-26-01.

10 **4.1-55-02. Seed potato control area - Proposal - Notice of meeting.**

11 1. In order to form a seed potato control area, five individuals who own land within the
12 proposed area shall schedule and provide notice of a meeting that is open to all
13 landowners and occupants¹ in the proposed area.

14 a. The notice must define the boundaries of the proposed seed potato control area.

15 b. The notice must be published at least twice, for two successive weeks, in the
16 official newspaper of each county containing land in the proposed seed potato
17 control area.

18 2. If consented to by a majority of the landowners and occupants present at the meeting,
19 a petition to form a seed potato control area may be circulated among all landowners
20 in the proposed area.

SOURCE: Section 4-26-03.

NOTE:

¹Section 4-26-02 defines an owner (of land) as "any person who is:

- a. Registered as the owner of land in the books of the recorder's office;
- b. A purchaser of land under an agreement for purchase registered in the books of the recorder, and who is by the terms of the agreement liable to pay the taxes on the land;
or
- c. A homesteader, purchaser, or lessee of land."

Section 4-26-05 provides that if 80 percent of the "owners" sign a petition for the formation of a control area, the Seed Commissioner may order its establishment. When the definition is superimposed, it in effect gives a lessee the power to encumber the land of another. The encumbrance could be for a limited number of years or for an indefinite number of years. The encumbrance could affect the value of the property to the owner's benefit or detriment.

Because the pertinent legislative records lack detail, it is impossible to determine whether lessees were intentionally or inadvertently empowered in this fashion.

After discussing the matter with Seed Department personnel, the rewrite clarifies that all interested parties are welcome at the meeting. The rationale is that any limitation on what can be planted within an area affects both landowners and their lessees. A determination to encumber the land is, however, left within the purview of the landowners (see Section 4.1-55-04). This is subject to review and approval by the interim committee.

1 **4.1-55-03. Seed potato control area - Petition for formation.**

2 The petition to be circulated, as provided in section 4.1-55-02, must:

- 3 1. Describe the boundaries of the proposed seed potato control area; and
- 4 2. State the quality of seed that may be planted within the proposed seed potato control
- 5 area.

SOURCE: Section 4-26-04.

6 **4.1-55-04. Seed potato control area - Creation.**

- 7 1. Once the petition has been signed by at least eighty percent of the persons owning^{1,2}
- 8 land in the proposed seed control area, the petition may be presented to the seed
- 9 commissioner for approval.

NOTE:

¹See note following Section 4.1-55-02.

²Like current law, the rewrite gives equal weight to the vote of each landowner. If one section of land is owned by Mr. and Mrs. Smith, two votes could be cast. If the adjoining section of land is owned solely by Mr. Jones, only one vote could be cast. Although this is not a statutory problem, the committee may wish to consider issues of equity.

- 10 2. If the seed commissioner determines that the petition meets the requirements of this
- 11 chapter, the seed commissioner may¹order the creation of:
- 12 a. The seed potato control area as described in the petition; or
- 13 b. A seed potato control area having boundaries that are not as extensive as those
- 14 set forth in the petition.²

NOTE:

¹The rewrite, like current law, provides that upon receipt of the petition and a determination that all is in order, the Seed Commissioner "may" order the creation of the seed potato control area. This presumes that the Seed Commissioner also could determine that the petition is not a good idea and refuse to order its creation. Is this the intent?

²The rewrite, like current law, provides that the Seed Commissioner may order the creation of a seed control area that is smaller than that called for in the petition. If 80 percent of the landowners assent to the declaration of a certain area as a seed potato control area, is it the intent that the Seed Commissioner contravene the wishes of a supermajority? On the other hand, is it the intent that the Seed Commissioner have some flexibility to address aforementioned inequities? Should the rewrite include some additional rationales for the denial of a petition?

- 1 3. a. In the order establishing the seed potato control area, the seed commissioner
2 shall prescribe the quality of seed potatoes that may be planted within the control
3 area. The quality prescribed may differ from that set forth in the petition.
4 b. After the establishment of a seed potato control area, the seed commissioner
5 may issue an order changing the quality of seed potatoes that may be planted
6 within the control area.¹

SOURCE: Section 4-26-05.

NOTE:

¹If individuals agree to the formation of a seed potato control area based on the requirement that a certain quality of seed potato be planted, and if later that quality is changed, may they withdraw from or request that their land be removed from the area?

7 **4.1-55-05. Seed potato control area - Governance committee.**

- 8 1. Each seed potato control area must be governed by a committee consisting of three
9 individuals who are appointed by the seed commissioner from a list of landowners or
10 occupants within the control area.

NOTE: Current law provides only that the governance committee consist of persons who are "members" of the control area. The committee is asked to determine whether this should include occupants as well as landowners.

- 11 2. The terms of office for members of the governance committee and its rules of
12 operation must be provided for in the seed potato control area's bylaws and agreed to
13 by at least eighty percent of the landowners or occupants within the control area.
14 3. If fewer than three qualified individuals are willing or able to serve as members of the
15 governance committee, the governance committee shall consist of the lesser number.
16 If, however, no qualified individual is willing or able to serve on the governance
17 committee, the seed commissioner shall dissolve the seed potato control area.

SOURCE: Section 4-26-06.

NOTE: Subsection 3 is a new concept proposed for the interim committee's consideration. It describes what must happen in the event that there are fewer than three individuals who are willing and able to serve on the governance committee. If no individuals are available to fill that role, it calls for a dissolution of the control area.

Subsection 2 also includes a change. Current law requires that the bylaws provide for the committee members' terms of office and the constitution of a quorum. The proposed change references the governance committee's "rules of operation."

1 **4.1-55-06. Governance committee - Powers.**

2 The governance committee may:

- 3 1. Expend moneys collected pursuant to this chapter;
4 2. Employ and compensate necessary personnel; and
5 3. Do all things necessary and proper to enforce this chapter and any rules adopted to
6 implement this chapter.

SOURCE: Section 4-26-07.

NOTE: Does the committee have any authority to contract or to accept gifts, grants, and donations?

7 **4.1-55-07. Governance committee - Duties.**

8 The governance committee shall:

- 9 1. Keep a record of its expenses; and
10 2. Submit the record to the seed commissioner at the time and in the manner required by
11 the seed commissioner.

SOURCE: Section 4-26-07(2) and (3).

12 **4.1-55-08. Penalty.**

13 A person may not plant or authorize the planting of seed potatoes other than those
14 permitted within the seed potato control area.

SOURCE: Section 4-26-09.

NOTE: Section 4-26-09 also states that "only uniform North Dakota certified seed potato tags be used." Is there any reason to retain this verbiage?

15 **4.1-55-09. Assessment.**

- 16 1. The governance committee may impose an assessment at a rate determined by the
17 committee, but not exceeding two and one-half cents per hundredweight
18 [45.36 kilograms] on all seed potatoes produced within the control area.
19 2. Any person producing seed potatoes within the control area shall pay the assessment
20 at the time and in the manner required by the governance committee.

SOURCE: Sections 4-26-07(4) and 4-26-09.

1 **4.1-55-10. Sale of potatoes produced in control area.**

2 The person producing seed potatoes in a seed potato control area may not ship or transport
3 the seed potatoes out of the area unless the person obtains a permit¹ from the seed potato
4 control area governance committee and pays the assessment² provided for in this chapter.

SOURCE: Section 4-26-10.

NOTE:

¹Current law states: "No owner or lessee in a seed potato control area may ship potatoes out of the area without first obtaining a **permit** from the committee and paying the fee as fixed by the provisions of this chapter." This is the first and only reference to "a permit." According to Seed Department personnel, such a permit does not exist. It is therefore recommended that the reference be removed.

²The reference in current law to the payment of a **fee** is presumed to mean the payment of the assessment, as provided for under the preceding section.

4.1-55-11. Penalty.

5 Any person violating this chapter is guilty of a class B misdemeanor.

SOURCE: Section 4-26-11.

6 **4.1-55-12. Seed potato control area - Dissolution.**

7 Upon a showing of good cause, or as otherwise authorized by this chapter, the seed
8 commissioner may order the dissolution of a seed potato control area.

SOURCE: Section 4-26-11.

9 **SECTION 2. REPEAL.** Chapter 4-26 of the North Dakota Century Code is repealed.