

**Sixty-fifth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2017**

SENATE BILL NO. 2029  
(Legislative Management)  
(Agriculture and Natural Resources Committee)

AN ACT to create and enact chapters 4.1-18, 4.1-20, 4.1-21, 4.1-22, and 4.1-48 of the North Dakota Century Code, relating to revisions of agriculture laws regarding industrial hemp, soil conservation districts laws, forestry and tree distribution, nurseries, and potato production contracts; to amend and reenact section 57-38-34.6 of the North Dakota Century Code, relating to optional contributions to the trees for North Dakota program trust; and to provide a penalty.

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

**SECTION 1.** Chapter 4.1-18 of the North Dakota Century Code is created and enacted as follows:

**4.1-18-01. Industrial hemp (cannabis sativa l.) - Oilseed.**

Industrial hemp (cannabis sativa l.), having no more than three-tenths of one percent tetrahydrocannabinol, is recognized as an oilseed. Upon meeting the requirements of section 4.1-18-02, any person in this state may plant, grow, harvest, possess, process, sell, and buy industrial hemp (cannabis sativa l.) having no more than three-tenths of one percent tetrahydrocannabinol.

**4.1-18-02. Industrial hemp - Licensure - Reporting requirements - Continuing appropriation.**

1. Any person desiring to grow or process viable kernels of industrial hemp for commercial purposes or research shall apply to the agriculture commissioner for a license on a form prescribed by the commissioner.
  - a. The application for a license must include the name and address of the applicant and the legal description of the land area to be used to produce or process industrial hemp.
  - b. Except for employees of the state seed department, the agricultural experiment station, or the North Dakota state university extension service involved in research and extension-related activities, the commissioner shall require each applicant for initial licensure to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant.
  - c. Criminal history records provided to the commissioner under this section are confidential. The commissioner may use the records only in determining an applicant's eligibility for licensure.
  - d. Any person with a prior criminal conviction may be denied licensure.
  - e. If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid for a period of one year.
  - f. Any person licensed under this section is presumed to be growing or processing industrial hemp for commercial purposes or research.
  - g. A license required by this section is not conditioned on or subject to review or approval by the United States drug enforcement agency.



6. "Land occupier" includes any person that holds title to or is in possession of any lands lying within a district.
7. "Qualified elector" means an individual who is at least eighteen years old, is a citizen of the United States, and has resided in the precinct thirty days next preceding the election.
8. "Supervisor" means one of the members of the governing body of a district, elected or appointed, in accordance with this chapter.

**4.1-20-03. State soil conservation committee - Elective and appointive members - Records and seal.**

1. The committee shall perform the functions conferred upon it in this chapter within the limits of legislative appropriations. The committee consists of seven voting members. Five members must be elected and two must be appointed by the governor.
2. For the purpose of electing the five elective members of the committee, the state is divided into five areas.
  - a. (1) Area I includes Benson, Cavalier, Eddy, Foster, Grand Forks, Nelson, Pembina, Ramsey, Towner, Walsh, and Wells Counties.
  - (2) Area II includes Barnes, Cass, Dickey, Griggs, LaMoure, Ransom, Richland, Sargent, Steele, and Traill Counties.
  - (3) Area III includes Bottineau, Burke, Divide, McHenry, Mountrail, Pierce, Renville, Rolette, and Ward Counties.
  - (4) Area IV includes Burleigh, Emmons, Kidder, Logan, McIntosh, McLean, Morton, Oliver, Sheridan, Sioux, and Stutsman Counties.
  - (5) Area V includes Adams, Billings, Bowman, Dunn, Golden Valley, Grant, Hettinger, McKenzie, Mercer, Stark, Slope, and Williams Counties.
- b. One member of the committee must be elected from each of the five areas by vote of the members of the boards of supervisors of the districts in that area. Every voting member of a board of supervisors of a district organized under this chapter is eligible to vote in the election for a member of the committee in the area in which the district is located.
- c. Elections must be held under rules adopted by the committee and in cooperation with and at the time of the North Dakota association of soil conservation districts area meetings. If the district does not lie wholly within the boundaries of one of the five areas established under this section, the rules must provide for the assignment of the district by the committee, for the purposes of the elections, to the area within which most of its population resides.
- d. The committee shall conduct the election of members of the committee. The election need not be held on the same dates or in the same places as the general elections for state or local officers.
3. The governor shall appoint two members of the committee. The governor shall appoint individuals who can represent those interests within the state not already represented, or less fully represented, by one or more of the five elected members of the committee. The governor shall attempt, so far as feasible, to make possible suitable representation for all interests in the state in the membership of the committee, including the interests of farmers, livestock growers, rural areas, small and large cities, and industry and business, recognizing that any single member of the committee may sometimes appropriately be regarded as representing more than one of these interests.

4. The committee shall invite representatives of the state association of soil conservation districts, North Dakota state university extension service, soil conservation service, state water commission, agriculture commissioner, and game and fish department to serve as advisory, nonvoting members of the committee.
5. The term of office of every member of the committee is three years and until a successor is elected or appointed. A member of the committee is eligible for re-election and reappointment, but no member may serve for more than two full, successive terms. The governor may fill a vacancy in either an elective or appointive term for the unexpired term.

#### **4.1-20-04. Committee - Chairman - Quorum - Compensation.**

The committee shall meet annually and select its chairman, who shall serve until a successor is selected and takes office. An individual may be selected as chairman for a total of three terms. Additional meetings may be held by the committee as considered necessary by the chairman, at a time and place to be fixed by the chairman. The chairman shall call special meetings upon written request of any four members. The members of the committee are entitled to receive one hundred thirty-five dollars per day as compensation for their services on the committee, and are entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee, in the same manner and at the same rate as prescribed by law for state employees and officials.

#### **4.1-20-05. Duties and powers generally.**

The committee has the following duties and powers:

1. To offer such assistance as may be appropriate to the supervisors of districts in the carrying out of any of their powers and programs.
2. To keep the supervisors of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience among such districts and cooperation among them.
3. To secure the cooperation and assistance of state, federal, regional, interstate, and local, public, and private agencies with districts and to facilitate arrangements under which districts may assist or serve county governing bodies and other agencies in the administration of any activity concerned with the conservation of natural resources.
4. To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with state, federal, interstate, or other public or private organizations, and advise the districts concerning such agreements or forms of agreement.
5. To recommend to the director biennial budgets necessary to finance the activities of the committee and districts and to distribute moneys appropriated by the legislative assembly for grants to soil conservation districts.
6. To represent the state in matters affecting soil conservation.
7. To require annual reports from districts.
8. To establish uniform accounting methods that must be used by districts, and to establish a uniform auditing reporting system.
9. To receive from other state and local agencies for review and comment suitable descriptions of their plans, programs, and activities affecting the conservation of natural resources for purposes of coordination with district conservation programs; arrange for and participate in conferences necessary to avoid conflict among such plans and programs; call attention to omissions; and avoid duplication of effort.

**4.1-20-06. Extension service assistance to state soil conservation committee - Duties.**

The North Dakota state university extension service shall assist the committee in performing the committee's duties, within the limits of legislative appropriation. The director shall instruct extension agents to cooperate in the delivery of information and services to the districts.

**4.1-20-07. Districts - Petition - Contents - More than one petition filed.**

1. Any twenty-five qualified electors living within the limits of the area proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized in the area described in the petition. The petition must set forth:
  - a. The proposed name of the district.
  - b. The need for a soil conservation district to function in the area described in the petition.
  - c. A description of the area proposed to be organized as a district.
  - d. A request that the state soil conservation committee duly define the boundaries for the district, that an election be held within the defined area on the question of the creation of a soil conservation district in that area, and that the committee determine that such a district be created.
2. When more than one petition is filed covering parts of the same area, the state soil conservation committee may consolidate all or any of such petitions.

**4.1-20-08. Hearings on petitions - When held - Notice - Determinations.**

1. Within thirty days after a petition under section 4.1-20-07 has been filed, the state soil conservation committee shall cause publication of due notice of a hearing on the desirability of creation of a soil conservation district, the appropriate boundaries to be assigned to the district, the propriety of the petition and the other proceedings taken under this chapter, and upon all other relevant questions. All qualified electors living within the area described in the petition, and of lands within any area considered for addition to the area described in the petition, and all other interested parties have the right to attend and be heard at the hearing. If it appears at the hearing that it may be desirable to include within the proposed district additional area outside of the area within which due notice of hearing has been given, the hearing must be adjourned and due notice of further hearing must be given throughout the entire area considered for inclusion in the district, and further hearing must be held.
2. If the committee determines, upon the facts presented at the hearing and upon other available relevant facts and information, there is need, in the public interest, for a soil conservation district to function in the area considered at the hearing, the committee shall record that determination and define the district boundaries by metes and bounds or legal subdivisions. In making the determination and defining the boundaries, the committee shall give due weight and consideration to:
  - a. The topography of the area considered and of the state;
  - b. The composition of soils, distribution of erosion, prevailing land use practices, and desirability and necessity of including within the boundaries the area under consideration;
  - c. The benefits the area may receive from being included within such boundaries;
  - d. The relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under this chapter; and

e. Any other relevant physical, geographic, and economic factors, having due regard to the legislative policy set forth in section 4.1-20-01.

3. If the committee determines, after the hearing and due consideration of the relevant facts, there is no need for a soil conservation district to function in the area considered at the hearing, the committee shall record that determination and deny the petition. After six months has expired from the date of the denial of that petition, a subsequent petition covering the same or substantially the same area may be filed and a new hearing held and new determinations made.

**4.1-20-09. Election - When held - Contents of ballot - Who may vote.**

After the committee has determined the necessity for the organization of a district and has defined the boundaries of the proposed district, the committee shall hold an election within the proposed district upon the creation of the proposed district and shall cause due notice of the election to be given. The question must be submitted by ballot in substantially the following form:

Shall a soil conservation district be created embracing lands situated in the counties of \_\_\_\_\_ and \_\_\_\_\_ and described as follows: (Here inserting description).

Yes

No

All qualified electors residing within the boundaries of the proposed district are entitled to vote in the election.

**4.1-20-10. Publication of election results - Determination of feasibility of operation of district.**

The committee shall publish the results of any election. If a majority of the votes cast are in favor of the creation of a district, the committee shall determine whether the operation of a district within the boundaries specified on the election is administratively feasible. In making that determination, the committee shall consider such factors, objects, and other determinations as to accomplish the policy and scope of this chapter as set forth in section 4.1-20-01.

**4.1-20-11. District determined feasible - Statement filed with secretary of state.**

If the committee determines the operation of a proposed district is administratively feasible, the committee shall file with the secretary of state a certified statement identifying the boundaries and name of that district. The statement must include the reasons for the formation of the district and the result of the election.

**4.1-20-12. District to be a political subdivision - Boundaries of district.**

Upon the certification by the committee to the secretary of state under section 4.1-20-11, the district becomes a political subdivision of the state and a body corporate and politic. The secretary of state shall issue to the committee a certificate of the due organization of the district under the seal of the state and record the certificate with the application and statement. The boundaries of the district include the area as determined by the committee, but may not include any area included within the boundaries of another soil conservation district.

**4.1-20-13. Petition to include additional area within existing district.**

Petitions to include additional area within an existing district may be filed with the committee at any time, and the proceedings provided in connection with a petition to organize a district must be observed in the case of a petition for such inclusion. A portion of a district may upon petition of a majority of the qualified electors in that portion, and without an election, be annexed to an adjoining district, and become a part of that adjoining district upon filing the petition with the state soil conservation committee.

**4.1-20-14. Districts presumed to be organized legally - Copy of certificates as evidence.**

In any suit, action, or proceeding involving or relating to the validity or enforcement of any contract, proceeding, or action of a district, the district is deemed to have been established in accordance with the provisions of this chapter, upon proof of the issuance of the certificate of organization by the secretary of state. A copy of the certificate, when duly certified by the secretary of state, is admissible in evidence in any suit, action, or proceeding and is proof of the filing and its contents.

**4.1-20-15. Notice to file nominating petitions and of election of district supervisors.**

As soon as practicable after the issuance by the secretary of state of the certificate of organization of a soil conservation district, and before the next general election, the committee shall give notice that nominating petitions may be filed with the county auditor, and that at the next general election held in the district three supervisors must be elected, who must be land occupiers of the district and who constitute the governing body of the district.

**4.1-20-16. Nominating petitions - Petitions required - Final filing date.**

Any individual running for the office of supervisor shall present to the county auditor of the county in which the district lies a petition giving that individual's name and mailing address and the title and term of the office, and containing the signatures of not less than twenty-five nor more than three hundred qualified electors of the district. When a district lies in more than one county, the petition must be filed with the county auditor of the county where the candidate resides, and that county auditor shall certify to the county auditors of the other counties in which the district lies the name and mailing address of the candidate filing such petition. At the same time, the county auditor, or auditors in the case of multicounty districts, also shall certify to the secretary of state the name and mailing address of each individual filing a nominating petition according to this section. An individual may not participate directly or indirectly in the nomination for more than one individual for each office to be filled. The final filing date for nominating petitions is no later than four p.m. sixty-four days before the day of the election.

Upon receipt of the petition or the certification as provided in this section, the county auditor shall place, without fee, the name of the candidate so nominated on the no-party ballot at the ensuing general election.

**4.1-20-17. Regular election of district - When held - Regulations governing.**

The regular election of soil conservation districts must be held at the same time, and at the same place, as the general election is held. All qualified electors in the district may vote in any regular election of the district. Any land occupier living in the district desiring to be a candidate for the office of supervisor at a district election and who has failed to file a nominating petition may campaign and be elected as a write-in candidate for the office.

**4.1-20-18. Supervisors - Terms of office - Vacancies - Removal - Compensation - Expenses.**

1. At each general election, one district supervisor must be elected for a term of six years, or until the successor is duly elected and qualified, to each expiring or vacant term. The county auditor of the county or counties in which the district lies shall return to the secretary of state before four p.m. on the tenth day following any general election a certified abstract of the votes cast in the county at the election for each candidate for district supervisor. The secretary of state shall canvass the returns and issue certificates of election under chapter 16.1-15.
2. To be eligible for election to the office of district supervisor, candidates must be land occupiers and physically living in the district. Candidates must be elected on a nonpartisan ballot. If the office of any supervisor becomes vacant, the remaining members of the board of supervisors, with the advice and consent of the committee, shall fill the vacancy by appointment. If vacancies occur in the office of two supervisors, the remaining supervisor and the committee shall fill the vacancy. If the offices of all supervisors of a district become vacant, the committee shall fill the vacancies by appointment. A supervisor appointed to fill a vacancy holds office

until the next general election. A supervisor elected to fill a vacancy serves the balance of the unexpired term in which the vacancy occurred.

3. Upon resolution of the three elected supervisors, a soil conservation district, may appoint two additional supervisors who shall serve for a term of one year from the date of appointment. Those supervisors must be appointed by a majority of the three elected supervisors and have all the powers, voting privileges, duties, and responsibilities of elected supervisors, except that the expense allowances of the appointed supervisors must be paid by the local soil conservation district concerned. As far as possible, the appointed supervisors shall represent interests within the district which are not represented by the elected supervisors.
4. After notice given and hearing held in accordance with chapter 28-32, a supervisor of a soil conservation district may be removed from office by the committee.
5. Upon a majority vote of the supervisors, the supervisors of a soil conservation district are entitled to receive compensation of up to sixty-two dollars and fifty cents for attending each regular or special meeting or for attending other meetings or events in the performance of their official duties. Supervisors of soil conservation districts are entitled to receive travel and subsistence expenses necessarily incurred in attending district, state, or other meetings. The compensation and all other expenses including travel incurred by district supervisors while transacting district business must be paid from district funds.

#### **4.1-20-19. Soil conservation district supervisors - Training.**

As soon as practicable after an individual is elected or appointed to the position of a soil conservation district supervisor, the individual shall attend a training session delivered by the state soil conservation committee. An individual who has attended a training session as an elected or as an appointed soil conservation district supervisor may not be required to attend any additional or subsequent session.

#### **4.1-20-20. Supervisors may employ assistants - Attorney general and state's attorneys to advise - Reports to committee.**

The supervisors may employ necessary permanent and temporary officers, agents, or employees, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general or the state's attorney of any county in which the district is situated for those legal services as the supervisors may require. The supervisors may delegate to their chairman or to any of their number such duties as they may deem proper and shall furnish to the committee, upon request, copies of any ordinances, rules, regulations, orders, contracts, or other documents the supervisors adopt or employ, and any other information concerning their activities as the committee may require.

#### **4.1-20-21. Assistance for district supervisors.**

Upon request of the supervisors of a soil conservation district, a board of county commissioners may assign an employee or employees of the county to assist the supervisors in the performance of the supervisors' duties authorized by this chapter. The board of county commissioners of each county within a soil conservation district may provide assistance for the supervisors. The duties of the employee or employees are under the direct supervision of the supervisors of the soil conservation district.

#### **4.1-20-22. Supervisors to provide for surety bonds, keeping records, and annual audit.**

The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property of the district, for the keeping of a full and accurate record of all the supervisors' proceedings and of all resolutions, regulations, and orders issued or adopted by the supervisors, and for an annual audit of the accounts of receipts and disbursements of the district. The surety bonds provided for in this section may be issued by the state bonding fund.

**4.1-20-23. Supervisors may consult city or county representatives.**

The supervisors may invite the governing body of any city or county located within or near the district to designate a representative to advise and consult with the supervisors on issues that may affect the property, water supply, or other interests of the city or county.

**4.1-20-24. Powers and duties of districts and supervisors.**

1. A soil conservation district may exercise the public powers ordinarily exercised by a political subdivision of the state, and the district and the supervisors of the district have the following powers in addition to those granted in other sections of this chapter:
  - a. To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed; to publish the results of those surveys, investigations, or research; and to disseminate information concerning the preventive and control measures. To avoid duplication of research activities, a district may not initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies.
  - b. To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other lands within the district after obtaining the consent of the occupier of those lands or the necessary rights or interests in those lands, to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled.
  - c. To carry out preventive and control measures within the district, including engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction of the land, and on any other lands within the district upon obtaining the consent of the occupier of those lands or the necessary rights or interest in those lands.
  - d. To cooperate or enter agreements with, and, within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion control and prevention operations within the district, subject to the conditions as the supervisors may deem necessary to advance the purposes of this chapter.
  - e. To obtain options upon and to acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property, real or personal, or any property rights or interest; to maintain, administer, and improve any properties acquired; to receive income from those properties and to expend that income in carrying out the purposes and provisions of this chapter; and to sell, lease, or dispose of otherwise any of its property or interest therein in furtherance of the purposes and the provisions of this chapter.
  - f. To make available, on terms the soil conservation district prescribes, to land occupiers, government units or qualified electors within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and any other material or equipment as will assist those land occupiers, government units or qualified electors to carry on operations upon their lands for the conservation of soil and water resources and for the prevention and control of soil erosion.
  - g. To construct, improve, and maintain structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.

- h. To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans must specify in such detail as may be possible the acts, procedures, performances, and avoidances that are necessary or desirable for the effectuation of those plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land, and to publish such plans and information and bring them to the attention of occupiers of lands within the district.
- i. To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States, or any of its agencies or of this state or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries, and to accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies or from this state or any of its agencies, and to use or expend those moneys, services, materials, or other contributions in carrying on its operations.
- j. To sue and be sued in the name of the district.
- k. To have a seal, which seal must be noticed judicially.
- l. To have perpetual succession unless terminated as provided in this chapter.
- m. To make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and to borrow funds and pledge all or any part of any income from the district's facilities, equipment, and operations for repayment.
- n. To make, amend, or repeal regulations consistent with this chapter.
- o. To require contributions in money, services, materials, or otherwise to any operations conferring benefits under this chapter and to require land occupiers to enter and perform agreements or covenants to use the lands in a manner that will prevent or control erosion.
- p. To expend moneys for education, promotion, and recognition activities consistent with the purposes of this chapter.
- q. To levy taxes as follows:

  - (1) The supervisors may make a general fund tax levy, not exceeding two and one-half mills, for the payment of the expenses of the district, including mileage and other expenses of the supervisors, and technical, administrative, clerical, and other operating expenses.
  - (2) Immediately after the completion of the district budget and the adoption of the annual tax levy by the district supervisors, but not later than July first, the supervisors shall send one certified copy of the levy as adopted to the county auditor of each county in the district.
  - (3) The county auditor of each county in the district shall extend the levy upon the tax list of the county for the current year against each description of real property lying both within the county and the district in the same manner and with the same effect as other taxes are extended.

- (4) The treasurer of each county in the district shall collect all district taxes together with interest and penalty thereon in the same manner as the general taxes are collected, and shall pay over to the soil conservation district by the tenth working day of each month, all taxes so collected during the preceding month, with interest and penalties collected thereon and shall immediately send notification of such payment to the treasurer of the soil conservation district.
  - (5) Voter-approved levy authority authorized by electors of a district under the provisions of this section before January 1, 2015, remains in effect through taxable year 2024 or for the time period authorized by the electors, whichever expires first.
2. Any provisions with respect to the acquisition, operation, or disposition of property by other public bodies are not applicable to a district unless the same specifically are made applicable by law.

**4.1-20-25. Supervisors may formulate land use regulations for submission to qualified electors.**

The supervisors of any district may formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion, and may conduct public meetings and hearings upon tentative regulations as may be necessary to assist the supervisors in this work. The proposed regulations must be embodied in a proposed ordinance for submission to the qualified electors in the district, and copies of the proposed ordinance must be available for inspection by the qualified electors in the district during the period of time between the publication of the notice of election upon the ordinance and the date of the election.

**4.1-20-26. Notice of election - Form of ballot - Conduct of election - Who may vote.**

The notice of election on a proposed ordinance submitted to the qualified electors in the district under section 4.1-20-24 must be provided in the manner required by section 4.1-20-14 relating to notice of election of supervisors, and must recite the contents of the proposed ordinance or must state where copies of the proposed ordinance may be examined. The question of adoption or rejection of the proposed ordinance must be submitted by ballot at an election to be held in the district. The ballot must be in substantially the following form:

Shall proposed ordinance number \_\_\_\_\_, prescribing land use regulations for conservation of soil and prevention of erosion be adopted?

Yes  \_\_\_\_\_

No  \_\_\_\_\_

The supervisors shall supervise the election, prepare appropriate regulations governing the conduct of the election, and publish the result of the election. The right to vote in the election is limited to qualified electors residing within the district. No informalities in the conduct of the election or in any matters relating to the election may invalidate the election or its result if the notice of election has been given substantially as required by this section and the election has been fairly conducted.

**4.1-20-27. Two-thirds voter approval required to adopt ordinance - Effect of ordinance after adoption.**

An ordinance under this chapter does not become effective unless it is approved by at least two-thirds of the qualified electors voting on the question. If a proposed ordinance is approved, the supervisors shall enact it into law. Land use regulations prescribed in any ordinance adopted by the supervisors pursuant to this section have the force and effect of law in the district and are binding and obligatory upon all qualified electors living within the district.

**4.1-20-28. What may be contained in land use regulations.**

The land use regulations that may be adopted by the supervisors under this chapter may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures.
2. Provisions requiring observance of particular methods of cultivation, including contour cultivating, contour furrowing, lister furrowing, sowing, planting, stripcropping, and seeding and planting of lands to water conserving and erosion-preventing plants, trees, and grasses, forestation, and reforestation.
3. Specifications of cropping programs and tillage practices to be observed.
4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be controlled adequately if cultivation is carried on.
5. Provisions for any other means, measures, operations, and programs as may assist conservation of soil and water resources and prevent or control soil erosion in the district, having due regard to the declaration of policy set forth in this chapter.

**4.1-20-29. Regulations to be uniform - Copies furnished in district.**

Land use regulations must be uniform throughout the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected but uniform as to all lands within each class or type. Copies of land use regulations adopted under this chapter must be printed and made available to all qualified electors living within the district.

**4.1-20-30. Amending, supplementing, or repealing land use regulations.**

Any qualified elector living within a district at any time may file a petition with the supervisors asking that any or all of the land use regulations in any ordinance adopted by the supervisors under this chapter be amended, supplemented, or repealed. Land use regulations in that ordinance may not be amended, supplemented, or repealed except in accordance with the procedure prescribed in this chapter for the adoption of land use regulations. Elections on adoption, amendment, supplementation, or repeal of land use regulations may not be held more than once in any six-month period.

**4.1-20-31. Supervisors to enforce land use regulations.**

The supervisors may enter upon any land within the district to determine whether land use regulations adopted under this chapter are being observed.

**4.1-20-32. Failure to perform land use regulations - Hearing on - Supervisors to perform - Costs and expenses.**

1. If the supervisors of any district find any land use regulations prescribed in any ordinance are not being observed on particular lands, tending to increase erosion on those lands and interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court a duly verified petition setting forth:
  - a. The adoption of the ordinance prescribing land use regulations;
  - b. The alleged failure of the defendant land occupier to observe the regulations and perform particular work, operations, or avoidances required by the regulations and that the failure tends to increase erosion on those lands and interfere with the prevention or control of erosion on other lands within the district; and

- c. Requesting that the court order the defendant to perform the work, operations, or avoidances within a reasonable time and that if the defendant fails to do so, the supervisors may:
  - (1) Enter upon the land;
  - (2) Perform the necessary work to bring the condition of the land into conformity with the regulations; and
  - (3) Assess the costs and expenses of the work, with interest, to the defendant.
2. Upon presentation of a petition under subsection 1, the court shall cause process to be issued against the defendant, and shall hear the case.
  - a. If it appears to the court testimony is necessary for the proper disposition of the matter, the court may take evidence or appoint a referee to take evidence as it may direct and report the evidence to the court with the referee's findings of fact and conclusions of law.
  - b. If a referee is appointed, the report of the referee constitutes a part of the proceedings upon which the determination of the court must be made.
  - c. The court may dismiss the petition or it may order the defendant to perform the work, operations, or avoidances. The court may provide upon the failure of the defendant to initiate performance as ordered by the court within the time specified in the order of the court and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the necessary work to bring the condition of the land into conformity with the regulations and assess the costs and expenses of the work, with interest at the rate of five percent per annum, to the defendant.
  - d. If the person in possession of lands subject to a petition under subsection 1 is other than the owner, the owner of those lands must be joined as a party defendant. In all cases, notice must be given to all other interested parties in person, or by publication in the manner provided in this chapter for publication of due notice.
  - e. In any case under this section, the court shall retain jurisdiction until any work ordered by the court has been completed.
3. Upon completion of any work ordered by the court under subsection 2, the supervisors may file a petition with the court and serve a copy upon the defendants, stating the costs and expenses sustained by the supervisors in the performance of the work and asking for judgment in that amount, with interest. The court may enter judgment for the amount of costs and expenses approved by the court plus interest at the rate of five percent per annum until paid. The supervisors may certify to the county auditor of the county in which the district is located the amount of the judgment, which is a lien upon the lands and must be collected as taxes or assessments are collected. As the judgment is paid or collected, the proceeds must be paid over to the district that certified the judgment to the auditor.

#### **4.1-20-33. Board of adjustment - Members - Appointment - Vacancies - Compensation.**

When the supervisors of any district adopt an ordinance prescribing land use regulations, the supervisors shall provide by ordinance for the establishment of a board of adjustment to consist of three members, each to be appointed for a term of three years, except the members first appointed who are appointed for terms of one, two, and three years respectively. The members of each board of adjustment must be appointed by the committee with the advice and approval of the supervisors of the district for which the board has been established, and are removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason. A hearing on the removal of a member of a board of adjustment must be conducted jointly by the committee and the supervisors. A vacancy on a board of adjustment must be filled in the same manner as the original appointment except the

appointment is for the unexpired vacant term. Members of the committee and the supervisors of the district may not serve as members of the board of adjustment. The members of the board shall receive five dollars a day for the time spent on the work of the board in addition to their expenses, including traveling expenses necessarily incurred in the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board upon the certificate of the chairman of the board.

**4.1-20-34. Board of adjustment - Rules - Chairman - Meetings - Quorum - Records.**

The board of adjustment shall adopt rules to govern its procedure, in accordance with this chapter and any ordinance adopted under this chapter. The board shall designate, and may replace at any time, a chairman from among its members. Meetings of the board must be held at the call of the chairman and at any other time as the board may determine. Any two members of the board constitute a quorum. The chairman, or another member of the board designated by the chairman to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board are open to the public. The board shall keep a full and accurate record of its proceedings, all documents filed with it, and all orders entered by the board. The record must be filed in the office of the board and is a public record.

**4.1-20-35. Petition to board of adjustment to vary land use regulations - Service - Hearing - Board's powers.**

Any qualified elector residing in the district may file a petition with the board of adjustment seeking a variance from strictly complying with the land use regulations. Copies of a petition must be served upon the chairman of the supervisors of the district where the lands are located and upon the chairman of the committee. The board shall fix a time for the hearing of the petition and cause due notice of the hearing to be given. The petitioner may appear in person, by agent, or by attorney at the hearing and the supervisors and the committee may appear and be heard. If the board determines on the facts presented at the hearing that there are great practical difficulties or unnecessary hardships in the way of applying the strict letter of any of the land use regulations upon the lands of the petitioner, the board shall make and record the determination and findings of fact as to the specific conditions that establish the great practical difficulties or unnecessary hardships. Upon the findings and determination, the board may enter an order authorizing a variance from the terms of the land use regulations in its application to the lands of the petitioner consistent with the spirit of the land use regulations, and with substantial justice and the public health, safety, and welfare.

**4.1-20-36. Taking of testimony at hearing.**

At the request of the board of supervisors, the testimony at a hearing conducted under section 4.1-20-35 must be taken by a court reporter, by a stenographer, or by use of an electronic recording device. The board of supervisors is responsible for the cost of taking testimony.

**4.1-20-37. Aggrieved petitioner and supervisors may appeal to district court from order of board - Procedure.**

Any petitioner or the supervisors of any district may appeal an order of a board of adjustment to the district court as provided in section 28-34-01.

**4.1-20-38. Cooperation among district supervisors.**

The supervisors of any two or more districts organized under this chapter may cooperate with one another in the exercise of any or all powers conferred in this chapter.

**4.1-20-39. State agencies to cooperate with district supervisors.**

Agencies of this state having jurisdiction over any state-owned lands, and agencies of any county or other political subdivision of this state having jurisdiction over any county-owned or other publicly owned lands lying within the boundaries of any district shall cooperate to the fullest extent with the

supervisors of the district in the effectuation of programs and operations undertaken by the supervisors under this chapter. The supervisors have free access to enter and perform work upon such publicly owned lands. The provisions of land use regulations adopted under this chapter have the force and effect of law over all such publicly owned lands and must be in all respects observed by the agencies administering such lands.

**4.1-20-40. Discontinuance of districts - Petition - Referendum - Eligible qualified electors.**

Five years after the date a district was organized, twenty-five percent of the qualified electors living within the boundaries of the district may file a petition with the state soil conservation committee to terminate the operations of the district. The committee then shall conduct public hearings upon the petition to determine whether there is sufficient basis for an election to be held. If the committee determines there is sufficient basis for an election, the committee shall give due notice of the holding of an election and shall issue appropriate regulations governing the conduct of the election within sixty days after the committee has made its determination. The question to be voted on at the election must be submitted by ballot in substantially the following form:

Should the (insert name of district) be terminated? Yes  \_\_\_\_\_

No  \_\_\_\_\_

All qualified electors residing within the boundaries of the district are eligible to vote in the election. The committee shall supervise the election. Informalities in the conduct of the election or in any matters relating to the election do not invalidate the election or its result if notice of the election has been given substantially as required by this chapter and the election has been fairly conducted.

**4.1-20-41. Duties of committee after election on discontinuance of the district has been held.**

The committee shall publish the result of any election on the question of discontinuance of a district immediately after the vote has been had. If a majority of the votes cast in the election favored the discontinuance of the district, the committee shall make its certificate that it has determined that the continued operation of the district is not administratively feasible. If a majority of the votes cast in the referendum favored the continuance of the district, the committee shall consider and determine whether the continued operation of the district within the defined boundaries is administratively feasible. If the committee determines the continued operation of the district is administratively feasible, the committee shall record that determination and deny the petition for discontinuance, and if the committee determines the continued operation thereof is not administratively feasible, the committee shall record the determination and certify its determination to the supervisors of the district. In making its determination, the committee shall give due weight and regard to the number and attitudes of the qualified electors residing within the district, the number voting in the referendum, the proportion that the votes cast in favor of the discontinuance of the district are of the total number of votes cast, the probable expense of carrying on erosion control operations within the district, and any other economic and social factors as may be relevant to the determination having regard to the legislative policy as set forth in this chapter.

**4.1-20-42. Termination of affairs of district - Disposal of property - Certificate of dissolution.**

Upon receipt from the committee of its certification that the committee has determined the continued operation of the district is not administratively feasible, the supervisors shall proceed to terminate the affairs of the district. The supervisors of the district may dispose of all or part of any property belonging to the district at public auction and shall use the proceeds of the sale to pay any liabilities. The balance of any funds and undisposed property becomes the property of the county or counties the district is a part of as directed by the supervisors. The supervisors thereupon shall file an application, duly verified, with the secretary of state for the discontinuance of the district, and shall transmit with such application the certificate of the committee setting forth its determination that the continued operation of the district is not administratively feasible. The application must recite what property, if any, of the district has been disposed of, the liabilities paid, and the property or proceeds paid over as provided herein and must set forth a full accounting of such properties and their sale.

proceeds. The secretary of state shall issue to the supervisors a certificate of dissolution and record the certificate in an appropriate record in the secretary of state's office.

**4.1-20-43. Ordinances, regulations, and contracts of districts after dissolution.**

After a certificate of dissolution has been issued as provided in section 4.1-20-42, all ordinances and regulations that have been adopted and in force within the dissolved district are of no further force and effect. All contracts that have been made, to which the district supervisors are parties, remain in force and effect for the period provided in the contracts, and the committee is substituted for the district or supervisors as party to the contracts. The committee is entitled to all the benefits and subject to all the liabilities under the contracts and has the same right as the supervisors of the district would have had.

**4.1-20-44. Petitions for discontinuance of district - Limitation on filing.**

The state soil conservation committee may not entertain petitions for the discontinuance of any district, conduct elections upon those petitions, or make determinations pursuant to the petitions in accordance with the provisions of this chapter more than once in any five-year period.

**4.1-20-45. Consolidation of districts - Petition - Election - Conduct of election.**

Two or more districts may be consolidated into one district by compliance with this chapter. A petition for consolidation of soil conservation districts must be filed with the state soil conservation committee and must be signed by at least twenty-five qualified electors living in each district. Upon the filing of a petition, the committee by resolution shall fix a date for an election to be held in each district and shall direct the supervisors to cause notice of the election to be posted in at least five conspicuous places within the district and to be published once each week for two consecutive weeks before the election in a newspaper of general circulation in the districts involved. Only qualified electors living within the district are eligible to vote at the election. The notice must state the date of the election, identify each polling place for holding the election, the time when the polls will open and close, and the question to be submitted to the qualified electors. The notice must be substantially in the following form:

On \_\_\_\_\_, \_\_\_\_\_, an election will be held at

\_\_\_\_\_ for the purpose of submitting

(Designate polling place or places)

to the qualified electors within \_\_\_\_\_ soil conservation

(Name of district)

district the question as to whether \_\_\_\_\_ soil conservation

(Names of districts)

districts embracing the following townships \_\_\_\_\_

(Designate townships, by number and range)

shall be consolidated into one soil conservation district.

The ballot must be in the following form:

Shall \_\_\_\_\_ soil conservation districts embracing the

(Names of districts)

following townships \_\_\_\_\_ be

(Designate townships, by number and range)

consolidated into one soil conservation district?

Yes \_\_\_\_\_

No \_\_\_\_\_

The board of supervisors of the district shall appoint the board of election for each polling place. The board of election must consist of one inspector, one judge, and one clerk. Members of the election board are entitled to receive five dollars for their services.

**4.1-20-46. Conduct of election - Canvass of votes.**

An election upon the question of consolidating two or more soil conservation districts must be conducted in accordance with the laws of the state prescribing the conduct of general elections. After the polls are closed, the board of election shall canvass the votes and the clerk of the board shall certify to the board of supervisors of the clerk's district and to the committee the result of the election.

The committee shall publish the result of the election. If a majority of the ballots cast on the question in each district are for consolidation, the committee shall file with the secretary of state a statement certifying that the consolidated district has been duly and regularly established.

**4.1-20-47. Supervisors of consolidated district - Terms of office - Powers and duties.**

The members of the board of supervisors of a newly consolidated district are the supervisors from each of the districts that have been consolidated whose existing terms of office would last expire if the new consolidated district were not established. Those members shall determine by lot the order in which their terms of office in the consolidated district will expire. If more than three districts are consolidated, the members of the board of supervisors of the consolidated district must be determined by lot among the supervisors from the districts whose existing terms would expire last. If only two districts are consolidated, the third member of the board of supervisors of the consolidated district must be determined by lot among the remaining supervisors from both such districts. The supervisors thus selected shall hold office until the next general election of the district and until their successors are elected and qualified. Supervisors of a consolidated district have all the powers and duties of supervisors of a soil conservation district as enumerated in this chapter. The name of a consolidated district must be determined by the new supervisors of the consolidated district.

**4.1-20-48. Costs and expenses of consolidation - Disposition of property - Contracts of districts after consolidation.**

All costs and expenses incidental to the consolidation of two or more districts must be borne equally by each of the consolidated districts. All property and money of the districts that have been consolidated become the property of the newly established district. All contracts to which the supervisors of each of the districts consolidated are parties remain in force and effect for the period provided in the contracts and the supervisors of the consolidated district are substituted as parties in the contracts. Supervisors of a consolidated district are entitled to all the benefits and subject to all the liabilities under the contracts and have the same rights as the supervisors of the district that entered the contract would have had if a consolidated district had not been established.

**4.1-20-49. Soil conservation trust lands.**

The state of North Dakota holds in trust for use by the soil conservation districts of the state for the soil conservation program the property in Burleigh County described as follows:

Township one hundred thirty-eight north, range eighty west, fifth principal meridian: west one-half of section fifteen and that portion of the southeast quarter of section sixteen described as follows: beginning at the southeast corner of said section sixteen, thence running north on the east line of said section six hundred sixty feet [201.17 meters]; thence west parallel with the south line of

said section two thousand three hundred ten feet [704.09 meters]; thence south six hundred sixty feet [201.17 meters] to a point on the south line of said section two thousand three hundred ten feet [704.09 meters] west of the southeast corner of said section; thence east along the south line of said section two thousand three hundred ten feet [704.09 meters] to the place of beginning; containing thirty-five acres [14.16 hectares], more or less.

Subject, however, to the following rights, easements, exceptions, and reservations:

1. Easements for existing or established roads, highways, and public utilities, if any.
2. Right reserved by the Department of the Army "to enter thereon and remove gravel and use the established rubbish disposal area as long as any part of Fort Lincoln Military Reservation is used by the Department of the Army".
3. Reservation to the United States of America and its assigns of an undivided three-fourths interest in all coal, oil, gas, and other minerals, including three-fourths of all sand, gravel, stone, clay and similar materials, in or under the property, together with the usual mining rights, powers, and privileges, including the right at any and all times, to enter upon the land and use those parts of the surface as may be necessary in prospecting for, mining, saving and removing the minerals or materials, provided the quantities of sand, gravel, stone, clay and similar materials, as may be required, may be utilized in the operation or improvement of the lands.

The lands, having been conveyed to the state of North Dakota by the United States of America for use in carrying out the soil conservation program of the soil conservation districts of the state, are further subject to the condition the land must be used for public purposes and if at any time cease to be so used must revert to and become revested in the United States. Upon approval by the United States of America in accordance with the original grant of the trust lands, the trust lands may be leased, sold, conveyed, traded for, or replaced by other land suitable for the benefit of the soil conservation program in this state. No lease, sale, conveyance, trade, or replacement of the trust lands may be made under conditions that will cause or may cause the reversion of the lands back to the United States of America.

The control, custody, possession, supervision, management, operation, and transfer of the trust lands and any replacement lands is hereby vested in the North Dakota association of soil conservation districts for use in carrying out the soil conservation program of the soil conservation districts of the state and the association in such control, custody, possession, supervision, management, operation, and transfer shall hold all accumulations of personal property or surplus funds derived from said lands in trust for the soil conservation districts of the state for use in carrying out the soil conservation program. Any transfer, sale, trade, or replacement of trust lands is excepted from section 38-09-01, and the North Dakota association of soil conservation districts may transfer all or a portion of the minerals held by the state or the association which are located under the trust lands. Any funds generated through bonuses, leases, royalties, or otherwise generated by minerals reserved by the association or funds generated from the sale of minerals must be held in trust as provided in this section.

**SECTION 3.** Chapter 4.1-21 of the North Dakota Century Code is created and enacted as follows:

**4.1-21-01. State forester - Appointment - Qualifications - Duties.**

The board of higher education shall appoint the state forester.

1. The state forester must be a graduate of an accredited school of forestry with a minimum education of a bachelor of science degree in forestry. The office of the state forester must be located in Bottineau. The state forester shall serve as the director of the state forest service and, subject to the approval of the board of higher education and the president of North Dakota state university, may employ assistants and secure office facilities and equipment necessary for the administration of this chapter and the performance of the powers and duties of the office.

2. The state forester shall:

- a. Supervise the raising and distribution of seeds and forest tree planting stock as provided in this chapter.
- b. Promote practical forestry and compile and disseminate information relative to practical forestry to landowners, community groups, schools, and other organizations interested in forestry.
- c. Encourage the development, use, and wise stewardship of forest resources.
- d. Provide assistance to landowners, producers, and public bodies relating to forestry, reforestation, protection of forest resources, prevention and suppression of fires, planting of trees and shrubs, and the growing, harvesting, marketing, and management of forest resources.

**4.1-21-02. State nursery - Maintenance - Purpose.**

A state nursery, under the direction of the state forester, must be maintained at Towner. The nursery shall propagate seeds and forest tree planting stock adapted to the climatic conditions of this state.

**4.1-21-03. Powers - Cooperative state agreements.**

Under the general supervision of the board of higher education, the state forester may:

1. Establish procedures for the administration of this chapter.
2. Provide grants to, and enter cooperative agreements with, public and private entities for purposes consistent with this chapter.
3. Establish councils to advise the state forester on the administration of this chapter.

**4.1-21-04. State forester reserve account.**

The state forester reserve account is established as a special account in the state treasury. All moneys received for charges in excess of the cost of production of seedlings from the state nursery must be deposited in the reserve account. The state forester may use the reserve account within limits of legislative appropriations for expenses relating to nursery seedling losses or other unanticipated events requiring additional funding as determined necessary by the state forester. If the balance of the state forester reserve account exceeds one million dollars, charges for state nursery seedlings must not exceed estimated production costs until the account balance is less than seven hundred thousand dollars, at which time the state forester may charge one hundred ten percent of production costs.

**4.1-21-05. Distribution of seeds and planting stock.**

Seeds and planting stock from the state nursery may be distributed by the state forester to citizens and landowners of this state upon payment by them of a price not greater than one hundred ten percent of the cost to the state of production in the case of planting stock or collection in the case of seeds, and the cost of transportation from the nursery. The seeds and planting stock may be used to establish or reestablish forests, windbreaks, shelterbelts, living snow fences, farm woodlots, Christmas tree plantings, wildlife habitats, and other conservation tree plantings and for erosion control and water quality management.

**4.1-21-06. State forester may accept land for forestry purposes.**

The state forester may accept gifts, donations, or contributions of land suitable for forestry purposes and may enter agreements for acquiring, by lease, purchase, or otherwise, such lands as in the state forester's judgment are desirable for state forestry purposes.

**4.1-21-07. Obligations incurred in acquiring land - Payment.**

Obligations incurred by the state forester in the acquisition of land under this chapter must be paid solely and exclusively from revenues derived from that land, and may not impose any liability upon the general credit and taxing power of the state.

**4.1-21-08. Powers of state forester when lands acquired or leased.**

When lands are acquired or leased under section 4.1-21-06, the state forester may make expenditures from any funds not otherwise obligated for the management, development, and utilization of those areas. The state forester may provide recreational services within those areas and may charge a user fee in an amount sufficient to cover the cost of providing those services. The state forester may sell or otherwise may dispose of products from those lands and may make necessary rules to carry out the purposes of this chapter.

**4.1-21-09. Revenue received from lands acquired or leased - Regulations governing - Payments in lieu of taxes.**

All revenues derived from lands acquired or leased under this chapter must be segregated by the state treasurer for the use of the state forester in the acquisition, management, development, and use of such lands. However, from those revenues derived from agricultural leases there must be paid over to the governing body of the county in which those lands are located, an amount sufficient to cover the loss of tax revenues, if any, resulting from such acquisition or lease.

**4.1-21-10. State forester may sell, exchange, or lease lands.**

The state forester may sell, exchange, or lease lands under the state forester's jurisdiction when in the state forester's judgment it is advantageous to the best orderly development and management of state forests and state parks, except any sale, lease, or exchange may not be contrary to the terms of any contract that the state has entered.

**4.1-21-11. Agreements for shelterbelt lands by state.**

Any board or officer having the control or management of any real estate belonging to or controlled by this state or any of its political subdivisions may enter agreements with the officers and agents of the United States for the improvement by the United States of any of those lands by the establishment and maintenance on those lands of shelterbelts composed of trees, other plants, and necessary protective structures and works. Every agreement must describe particularly the land to be covered by the shelterbelt, must be recorded at the expense of the United States in the county where the land is situated, and thereafter all leases, sales, and other disposition of such land are subject to the agreement.

**4.1-21-12. Trees for North Dakota program and trust fund.**

The trees for North Dakota program is created for the public purpose of strengthening the tradition of tree planting and management in this state.

A special fund known as the trees for North Dakota program trust fund is established in the state treasury. Income earned on moneys in the fund must be credited to the fund. The state forester shall deposit all program funds received from governmental and private sources in the trust fund. Program funds may be expended for direct costs or distributed for grants and contracts by the state forester within the limits of legislative appropriations for defraying the costs associated with execution of the trees for North Dakota program.

Any political subdivision of the state may provide financial aid or supportive services to the trees for North Dakota program.

**SECTION 4.** Chapter 4.1-22 of the North Dakota Century Code is created and enacted as follows:

#### **4.1-22-01. Definitions.**

In this chapter, except as otherwise provided:

1. "Certificate of inspection" means a document issued or authorized by the commissioner stating nursery stock is practically free from damaging pests.
2. "Commissioner" means the agriculture commissioner or the commissioner's designee.
3. "Grower" means any person that takes a reproductive part of nursery stock and increases the size and development of the stock for at least one full growing season. A grower includes a person producing nursery stock from tissue culture.
4. "Infested" means infected with a quantity of pests or so exposed to a quantity of pests that it would be reasonable to believe potential for harm or threat to the health of the host nursery stock exists.
5. "Nonhardy" means plant species, varieties, and cultivars that will not survive climatic conditions in North Dakota.
6. "Nursery" means any place where nursery stock is propagated, grown, or offered for sale.
7. "Nursery stock" means all trees, shrubs, woody vines and their parts that are capable of propagation or growth, except seed. Only plants intended for outdoor planting are considered nursery stock.
8. "Pest" means any invertebrate animal, pathogen, parasitic plant, or other similar organism that can cause damage to nursery stock.
9. "Place of business" means each separate location from which nursery stock is being offered for sale.
10. "Viable nursery stock" means nursery stock that is capable of living and accomplishing the purpose for which it is grown, whether for foliage, flowers, fruit, or special use.

#### **4.1-22-02. Administration - Rulemaking authority.**

The commissioner shall administer this chapter. The commissioner may adopt rules under chapter 28-32 to implement this chapter.

#### **4.1-22-03. Authority for inspection.**

The commissioner shall inspect all nursery stock being grown in North Dakota at least once each year and may enter and inspect any nursery or place of business during normal business hours.

#### **4.1-22-04. Authority for abatement - Removal from sale.**

After giving notice to the owner or the owner's agent, the commissioner may destroy, treat, or remove from sale, at the owner's expense, any nursery stock offered for sale found to be not viable, not accompanied by a certificate of inspection, not labeled correctly, or infested with a pest.

#### **4.1-22-05. Certification of nursery stock.**

The commissioner shall issue a certificate of inspection annually for nursery stock grown in licensed nurseries within the state found to be practically free from damaging pests. Certificates expire on December thirty-first each year unless canceled at an earlier date. Certification may be withheld by the commissioner when nursery stock is infested with a pest or if weeds or other objects prevent an adequate inspection of the nursery stock. All nursery stock being offered for sale within the state must be from officially inspected sources. A copy of a certificate of inspection from the state of origin must accompany each commercial lot or shipment of nursery stock that is transported into or offered for sale

within North Dakota. All copies of the North Dakota certificate of inspection required for shipping purposes must be approved by the commissioner.

**4.1-22-06. Nursery license - Fee.**

A person may not sell nursery stock without a license issued by the commissioner. Licenses expire on December thirty-first each year unless revoked at an earlier date. An application for renewal of license with any additional information required by the commissioner must be submitted and accompanied by a fee of fifty dollars on or before December thirty-first each year. A separate license is required for each place of business. A fee of ten dollars must be submitted for each additional license, other than the principal place of business. A license may not be issued to a grower unless the grower has first been issued a certificate of inspection.

**4.1-22-07. Labeling and standards for nursery stock.**

A person may not sell or offer for sale any nursery stock not labeled in accordance with the international code of nomenclature for cultivated plants with the complete correct botanical or approved recognized common name. All nonhardy trees and shrubs, as determined by the commissioner, must be labeled "nonhardy in North Dakota". All nursery stock offered for sale or distribution must be in a viable condition and must be stored and displayed under conditions that will maintain its viability. Materials used to coat the aerial parts of the plant which change the appearance of the plant surface to prevent adequate inspection are prohibited.

**4.1-22-08. Misrepresentation.**

A person may not misrepresent the name, age, origin, grade, variety, quality, or hardiness of any nursery stock being offered for sale.

**4.1-22-09. Reciprocal agreements.**

The commissioner may enter reciprocal agreements with officers of other states for the recognition of official licenses and inspection certificates.

**4.1-22-10. Exemptions.**

The commissioner may exempt certain nursery stock, nurseries, or persons from all or part of the provisions of this chapter. Exemptions from licenses and fees may include:

1. Persons growing and propagating nursery stock for research or experimental purposes;
2. Soil conservation districts selling nursery stock for the prevention of soil and wind erosion or other conservation plantings; and
3. Persons growing nursery stock for noncommercial purposes or that the commissioner designates as exempt.

**4.1-22-11. Penalties - Criminal - Civil - License revocation or nonrenewal.**

1. It is a class B misdemeanor for any person to violate this chapter, or any rules adopted under this chapter.
2. Any person who violates any provision of this chapter, or rule adopted under this chapter, is subject to a civil penalty not to exceed five hundred dollars for each violation. The civil penalty may be adjudicated by the courts or by the commissioner through an administrative hearing under chapter 28-32.
3. The department may maintain, in accordance with the laws of this state, an appropriate civil action in the name of the state against any person violating this chapter or rules adopted under this chapter.

4. The commissioner may refuse to grant a license to any person found guilty of repeated violations of this chapter or rules adopted under this chapter, or to any person who has failed to pay an adjudicated civil penalty for violation of this chapter within thirty days after a final determination that the civil penalty is owed.

**SECTION 5.** Chapter 4.1-48 of the North Dakota Century Code is created and enacted as follows:

**4.1-48-01. Definitions.**

In this chapter, unless the context or subject matter otherwise requires:

1. "Buyer" means an individual, group of individuals, organization, or entity that in the ordinary course of business buys potatoes or byproducts of potatoes grown in this state or that contracts with a potato producer to grow potatoes in this state.
2. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.
3. "Potatoes" means potatoes or byproducts of potatoes produced for use in or as food, seed, feed, or other byproducts of the farm for the same or similar use.
4. "Producer" means an individual, group of individuals, organization, or entity that produces or causes to be produced potatoes by contracting with a buyer or processor to provide management, labor, machinery, facilities, or any production input for the production of potatoes.

**4.1-48-02. Unfair acts and practices prohibited.**

The following prohibited acts or practices, when engaged in by a buyer in connection with a potato production contract or purchase involving potatoes constitute unfair acts or practices for purposes of this chapter. A buyer may not:

1. Use coercion, intimidation, the threat of retaliation or the threat of contract termination, cancellation, or nonrenewal to impose, demand, compel, or dictate terms, payment or manner of payment, or the signing of a contract by a potato producer.
2. Use coercion, intimidation, the threat of retaliation, or the threat of contract termination, cancellation, or nonrenewal to require a producer to make capital improvements such as buildings or equipment.
3. Interfere with, restrain, or coerce a producer in the exercise of the right to join, form, or assist a producer bargaining cooperative or association.
4. Refuse to deal with a producer because of the exercise of the right to join and belong to a producer bargaining cooperative or association.
5. Refuse to provide to the producer, upon request, the statistical information and the data used to determine compensation paid to the producer for settlement.
6. Refuse to allow a producer or the producer's designated representative to observe, by actual observation at the time of weighing, the weights and measures used to determine the producer's compensation at settlement.
7. Use the performance of any other producer to determine the settlement of a producer.
8. Refuse to bargain with an established producer bargaining cooperative or association formed for the purpose of negotiating contracts and agreements.

**4.1-48-03. Civil liability for damages from an unfair act or practice.**

A person who engages in conduct that constitutes an unfair act or practice under section 4.1-48-02 is liable to a producer for all damages caused to the producer by the unfair act or practice.

**4.1-48-04. Good faith - Damages for violation - Penalty.**

There is an implied promise of good faith by all parties to a potato production contract. In an action to recover damages, if the court or a jury finds there has been a breach of the implied promise of good faith, in addition to other damages authorized by law, attorney's fees and court costs may be awarded.

**4.1-48-05. Recapture of capital investment required by a potato production contract.**

1. A contractor may not terminate or cancel a contract that requires a producer to make a capital investment in buildings or equipment that cost one hundred thousand dollars or more and have a useful life of five or more years until:
  - a. The producer has been given written notice of the intention to terminate or cancel the contract at least one hundred eighty days before the effective date of the termination or cancellation, or as provided in subsection 3; and
  - b. The producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.
2. Except as provided in subsection 3, if a producer fails to comply with the provisions of a contract that requires a capital investment subject to subsection 1, a contractor may not terminate or cancel that contract until:
  - a. The contractor has given written notice with all the reasons for the termination or cancellation at least ninety days before termination or cancellation, or as provided in subsection 3; and
  - b. The recipient of the notice fails to correct the reasons stated for termination or cancellation in the notice within sixty days of receipt of the notice.
3. The one hundred eighty-day notice period under subsection 1, and the ninety-day notice period and the sixty-day notice period under subsection 2, are waived and the contract may be canceled or terminated immediately if the alleged grounds for termination or cancellation are:
  - a. Voluntary abandonment of the contract relationship by the producer; or
  - b. Conviction of the producer of an offense directly related to the business conducted under the contract.

**SECTION 6. AMENDMENT.** Section 57-38-34.6 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-34.6. Optional contributions to trees for North Dakota program trust fund.**

An individual may designate on the tax return of that individual a contribution to the trees for North Dakota program trust fund of any amount of one dollar or more to be added to tax liability or deducted from any refund that would otherwise be payable by or to the individual. The tax commissioner shall notify taxpayers of this optional contribution on the individual state income tax returns. The tax commissioner shall transfer the amount of optional contributions under this section to the state treasurer for deposit in the trees for North Dakota program trust fund for use as provided in chapter ~~4-21.24.1-21~~.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2029.

Senate Vote:    Yeas 47            Nays 0            Absent 0

House Vote:    Yeas 90            Nays 0            Absent 4

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2017.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2017,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State